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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>).

May 2009 through February 2010

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
INDEX 2 Volume 25		
		April 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
25:22	June 17, 2009	July 6, 2009
25:23	July 1, 2009	July 20, 2009
25:24	July 15, 2009	August 3, 2009
25:25	July 29, 2009	August 17, 2009
25:26	August 12, 2009	August 31, 2009
FINAL INDEX Volume 25		
		October 2009
26:1	August 26, 2009	September 14, 2009
26:2	September 9, 2009	September 28, 2009
26:3	September 23, 2009	October 12, 2009
26:4	October 7, 2009	October 26, 2009
26:5	October 21, 2009	November 9, 2009
26:6	November 4, 2009	November 23, 2009
26:7	November 17, 2009 (Tuesday)	December 7, 2009
INDEX 1 Volume 26		
		January 2010
26:8	December 2, 2009	December 21, 2009
26:9	December 15, 2009 (Tuesday)	January 4, 2010
26:10	December 29, 2009 (Tuesday)	January 18, 2010
26:11	January 13, 2010	February 1, 2010
26:12	January 27, 2010	February 15, 2010

*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 2009 VAC Supplement includes final regulations published through *Virginia Register* Volume 25, Issue 13, dated March 2, 2009). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 2. Agriculture			
2 VAC 5-100-10 through 2VAC5-100-40	Repealed	25:16 VA.R. 2831	5/13/09
2 VAC 5-320-10	Erratum	25:13 VA.R. 2565	--
2 VAC 5-325-10	Erratum	25:13 VA.R. 2565	--
2 VAC 5-330-30	Erratum	25:13 VA.R. 2565	--
2 VAC 5-330-30	Amended	25:15 VA.R. 2710	3/9/09
2 VAC 5-340-140	Erratum	25:13 VA.R. 2565	--
2 VAC 5-340-170	Erratum	25:13 VA.R. 2565	--
2 VAC 5-350-20	Erratum	25:13 VA.R. 2565	--
2 VAC 5-370-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-380-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-390-20	Erratum	25:13 VA.R. 2566	--
2 VAC 5-390-80	Erratum	25:13 VA.R. 2566	--
2 VAC 5-400-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-440-20	Erratum	25:13 VA.R. 2566	--
Title 4. Conservation and Natural Resources			
4 VAC 20-270-10 emer	Amended	25:14 VA.R. 2591	2/26/09-3/28/09
4 VAC 20-270-30 emer	Amended	25:14 VA.R. 2591	2/26/09-3/28/09
4 VAC 20-270-30	Amended	25:16 VA.R. 2831	3/26/09
4 VAC 20-270-40 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-270-40	Amended	25:16 VA.R. 2832	3/26/09
4 VAC 20-270-55 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-270-55	Amended	25:16 VA.R. 2832	3/26/09
4 VAC 20-270-60 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-490-20	Amended	25:14 VA.R. 2593	3/1/09
4 VAC 20-490-30	Amended	25:14 VA.R. 2595	3/1/09
4 VAC 20-490-40	Amended	25:14 VA.R. 2595	3/1/09
4 VAC 20-490-41	Amended	25:14 VA.R. 2595	3/1/09
4 VAC 20-530-10 emer	Amended	25:14 VA.R. 2596	2/26/09-3/28/09
4 VAC 20-530-20 emer	Amended	25:14 VA.R. 2596	2/26/09-3/28/09
4 VAC 20-530-31 emer	Amended	25:14 VA.R. 2597	2/26/09-3/28/09
4 VAC 20-530-31	Amended	25:16 VA.R. 2833	3/26/09
4 VAC 20-530-40 emer	Amended	25:14 VA.R. 2597	2/26/09-3/28/09
4 VAC 20-620-70	Amended	25:14 VA.R. 2597	3/1/09
4 VAC 20-700-20	Amended	25:14 VA.R. 2598	3/1/09
4 VAC 20-950-30	Amended	25:16 VA.R. 2833	4/1/09
4 VAC 20-1200-10	Added	25:16 VA.R. 2834	4/1/09
4 VAC 20-1200-20	Added	25:16 VA.R. 2834	4/1/09
4 VAC 20-1200-30	Added	25:16 VA.R. 2834	4/1/09
4 VAC 20-1210-10 emer	Added	25:16 VA.R. 2835	3/26/09-4/24/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-1210-20 emer	Added	25:16 VA.R. 2835	3/26/09-4/24/09
4 VAC 20-1210-30 emer	Added	25:16 VA.R. 2835	3/26/09-4/24/09
4 VAC 25-31 (Forms)	Amended	25:16 VA.R. 2835	--
4 VAC 25-130 (Forms)	Amended	25:16 VA.R. 2836	--
4 VAC 50-60-10	Amended	25:16 VA.R. 2838	7/1/09
4 VAC 50-60-1100 through 4VAC50-60-1140	Amended	25:16 VA.R. 2849-2851	7/1/09
4 VAC 50-60-1150	Amended	25:16 VA.R. 2851	5/13/09
4 VAC 50-60-1160 through 4 VAC 50-60-1180	Amended	25:16 VA.R. 2853-2868	7/1/09
4 VAC 50-60-1182	Added	25:16 VA.R. 2869	7/1/09
4 VAC 50-60-1184	Added	25:16 VA.R. 2869	7/1/09
4 VAC 50-60-1186	Added	25:16 VA.R. 2870	7/1/09
4 VAC 50-60-1188	Added	25:16 VA.R. 2871	7/1/09
4 VAC 50-60-1190	Amended	25:16 VA.R. 2871	7/1/09
Title 5. Corporations			
5 VAC 5-20-10	Amended	25:14 VA.R. 2601	3/11/09
5 VAC 5-20-20	Amended	25:14 VA.R. 2601	3/11/09
5 VAC 5-20-80	Amended	25:14 VA.R. 2602	3/11/09
5 VAC 5-20-90	Amended	25:14 VA.R. 2602	3/11/09
5 VAC 5-20-100	Amended	25:14 VA.R. 2602	3/11/09
5 VAC 5-20-120 through 5 VAC 5-20-150	Amended	25:14 VA.R. 2603-2604	3/11/09
5 VAC 5-20-170	Amended	25:14 VA.R. 2604	3/11/09
5 VAC 5-20-180	Amended	25:14 VA.R. 2605	3/11/09
5 VAC 5-20-240 through 5 VAC 5-20-280	Amended	25:14 VA.R. 2605-2608	3/11/09
Title 8. Education			
8 VAC 20-80-10 through 8VAC20-80-190	Repealed	25:16 VA.R. 2872	*****
8 VAC 20-81-10 through 8VAC20-81-340	Added	25:16 VA.R. 2872-2967	*****
Title 9. Environment			
9 VAC 20-80 (Forms)	Amended	25:18 VA.R. 3149	--
9 VAC 25-32-480	Erratum	25:15 VA.R. 2804	--
9 VAC 25-580 (Forms)	Amended	25:18 VA.R. 3154	--
Title 10. Finance and Financial Institutions			
10 VAC 5-200-60	Amended	25:14 VA.R. 2609	3/1/09
10 VAC 5-200-110	Amended	25:14 VA.R. 2609	3/1/09
10 VAC 5-200-130	Added	25:14 VA.R. 2613	3/1/09
Title 11. Gaming			
11 VAC 10-20-330	Amended	25:18 VA.R. 3162	6/1/09
11 VAC 10-50-30	Amended	25:17 VA.R. 3005	5/27/09
11 VAC 10-70-20	Amended	25:15 VA.R. 2712	4/15/09
11 VAC 10-70-90	Amended	25:15 VA.R. 2712	4/15/09
11 VAC 10-120-80	Amended	25:17 VA.R. 3006	5/27/09
11 VAC 10-180-10	Amended	25:17 VA.R. 3007	5/27/09
11 VAC 10-180-35	Amended	25:17 VA.R. 3007	5/27/09
11 VAC 10-180-70	Amended	25:17 VA.R. 3008	5/27/09
11 VAC 10-180-80	Amended	25:17 VA.R. 3009	5/27/09
11 VAC 10-180-110	Amended	25:17 VA.R. 3010	5/27/09
Title 12. Health			
12 VAC 5-230-540	Amended	25:13 VA.R. 2316	4/1/09
12 VAC 5-230-550	Amended	25:13 VA.R. 2317	4/1/09
12 VAC 5-230-560	Amended	25:13 VA.R. 2317	4/1/09

***** Regulatory process suspended in 25:16 VA.R. 2968

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-10-150	Amended	25:14 VA.R. 2614	4/15/09
12 VAC 30-10-930	Amended	25:14 VA.R. 2615	4/15/09
12 VAC 30-20-90	Amended	25:14 VA.R. 2615	4/15/09
12 VAC 30-20-500	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-20-520	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-50-10	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-110-40	Amended	25:14 VA.R. 2619	4/15/09
12 VAC 30-110-370	Amended	25:14 VA.R. 2619	4/15/09
12 VAC 30-110-380	Repealed	25:14 VA.R. 2619	4/15/09
12 VAC 30-110-670	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-680	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-700	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-720	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-741	Amended	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-980	Amended	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-990	Repealed	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-1000	Repealed	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-1040	Amended	25:14 VA.R. 2623	4/15/09
12 VAC 30-120-140	Amended	25:14 VA.R. 2624	4/15/09
12 VAC 30-130-260	Amended	25:14 VA.R. 2626	4/15/09
12 VAC 30-130-270	Amended	25:14 VA.R. 2626	4/15/09
12 VAC 30-130-290	Amended	25:14 VA.R. 2627	4/15/09
12 VAC 30-130-370	Repealed	25:14 VA.R. 2628	4/15/09
12 VAC 30-130-380	Amended	25:14 VA.R. 2628	4/15/09
12 VAC 30-130-410	Repealed	25:14 VA.R. 2628	4/15/09
12 VAC 30-130-540	Amended	25:14 VA.R. 2629	4/15/09
12 VAC 30-130-800	Amended	25:14 VA.R. 2630	4/15/09
12 VAC 30-130-820	Amended	25:14 VA.R. 2632	4/15/09
12 VAC 30-130-890	Amended	25:14 VA.R. 2633	4/15/09
12 VAC 30-130-910	Amended	25:14 VA.R. 2634	4/15/09
12 VAC 30-141-60	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-141-120	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-141-660	Amended	25:16 VA.R. 2969	5/13/09
12 VAC 30-141-720	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-141-760	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-150-40	Amended	25:14 VA.R. 2636	4/15/09
Title 13. Housing			
13 VAC 5-63-220	Amended	25:17 VA.R. 3013	6/1/09
13 VAC 5-100-10	Amended	25:13 VA.R. 2363	2/12/09
13 VAC 5-100-20	Amended	25:13 VA.R. 2364	2/12/09
Title 14. Insurance			
14 VAC 5-170-20	Amended	25:18 VA.R. 3186	5/21/09
14 VAC 5-170-30	Amended	25:18 VA.R. 3186	5/21/09
14 VAC 5-170-50	Amended	25:18 VA.R. 3188	5/21/09
14 VAC 5-170-60	Amended	25:18 VA.R. 3188	5/21/09
14 VAC 5-170-70	Amended	25:18 VA.R. 3190	5/21/09
14 VAC 5-170-75	Added	25:18 VA.R. 3194	5/21/09
14 VAC 5-170-80	Amended	25:18 VA.R. 3196	5/21/09
14 VAC 5-170-85	Added	25:18 VA.R. 3197	5/21/09
14 VAC 5-170-150	Amended	25:18 VA.R. 3199	5/21/09
14 VAC 5-170-215	Added	25:18 VA.R. 3237	5/21/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 18. Professional and Occupational Licensing			
18 VAC 10-20-683	Erratum	25:15 VA.R. 2804	--
18 VAC 48-60-13	Added	25:15 VA.R. 2769	5/15/09
18 VAC 48-60-17	Added	25:15 VA.R. 2769	5/15/09
18 VAC 48-60-20	Amended	25:15 VA.R. 2770	5/15/09
18 VAC 48-60-60	Amended	25:15 VA.R. 2770	5/15/09
18 VAC 60-20-16	Amended	25:17 VA.R. 3015	7/1/09
18 VAC 60-20-190	Amended	25:16 VA.R. 2970	5/13/09
18 VAC 65-20-60	Amended	25:17 VA.R. 3016	7/1/09
18 VAC 65-30-180	Amended	25:17 VA.R. 3016	7/1/09
18 VAC 76-20-60	Amended	25:16 VA.R. 2971	5/13/09
18 VAC 76-20-70	Amended	25:16 VA.R. 2971	5/13/09
18 VAC 76-40-20	Amended	25:18 VA.R. 3239	7/1/09
18 VAC 90-20-35	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-25-15	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-30-100	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-50-20	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-60-20	Amended	25:17 VA.R. 3018	7/1/09
18 VAC 90-60-90	Amended	25:16 VA.R. 2972	5/13/09
18 VAC 90-60-91	Added	25:16 VA.R. 2972	5/13/09
18 VAC 90-60-92	Added	25:16 VA.R. 2973	5/13/09
18 VAC 105-20-60	Amended	25:18 VA.R. 3240	7/1/09
18 VAC 110-20-10 emer	Amended	25:17 VA.R. 3018	4/10/09-4/9/10
18 VAC 110-20-21	Added	25:17 VA.R. 3025	7/1/09
18 VAC 110-20-400 emer	Amended	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-740 emer	Added	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-750 emer	Added	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-760 emer	Added	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-770 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 110-20-780 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 110-20-790 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 110-20-800 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 112-20-25	Amended	25:17 VA.R. 3025	7/1/09
18 VAC 112-20-81	Added	25:18 VA.R. 3240	6/10/09
18 VAC 112-20-90	Amended	25:18 VA.R. 3241	6/10/09
18 VAC 112-20-130	Amended	25:18 VA.R. 3241	6/10/09
18 VAC 112-20-131	Amended	25:18 VA.R. 3241	6/10/09
18 VAC 112-20-150	Amended	25:18 VA.R. 3242	6/10/09
18 VAC 120-40-15	Amended	25:15 VA.R. 2774	5/14/09
18 VAC 120-40-85	Added	25:15 VA.R. 2774	5/14/09
18 VAC 120-40-240	Amended	25:15 VA.R. 2774	5/14/09
18 VAC 120-40-411.1	Amended	25:15 VA.R. 2775	5/14/09
18 VAC 125-20-120	Amended	25:17 VA.R. 3026	7/1/09
18 VAC 125-30-80	Amended	25:17 VA.R. 3026	7/1/09
18 VAC 130-20-30	Erratum	25:15 VA.R. 2804	--
18 VAC 140-20-100	Amended	25:18 VA.R. 3247	7/1/09
Title 24. Transportation and Motor Vehicles			
24 VAC 30-92-10 through 24 VAC 30-92-150	Added	25:15 VA.R. 2777-2801	3/9/09

PETITIONS FOR RULEMAKING

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Initial Agency Notice

Title of Regulation: **9VAC25-260. Water Quality Standards.**

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

Name of Petitioner: City of Roxboro, North Carolina.

Nature of Petitioner's Request: Designate an approximately one-mile segment of the Dan River in Virginia downriver of Danville near the VA/NC state line as public water supply.

Agency's Plan for Disposition of Request: Public-notice receipt of the petition and provide for a 21-day public comment period. Upon close of the public comment period, review any comments received and then present the petition and the results of the public comment period to the board at a future meeting for their consideration.

Public Comments: Comments may be submitted until June 15, 2009.

Agency Contact: David C. Whitehurst, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4116.

VA.R. Doc. No. R09-24; Filed May 5, 2009, 11:38 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Initial Agency Notice

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.**

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

Name of Petitioner: Ana Colon.

Nature of Petitioner's Request: Amend 18VAC85-20-235, which requires an applicant to pass Parts 1, 2, and 3 of the United States Medical Licensing Examination® within 10 years or to hold board certification.

Agency's Plan for Disposition of Request: The board will receive public comment on the petition for rulemaking and will consider any public comment and the petition at a meeting of the board on June 25, 2009.

Public Comments: Comments may be submitted until June 24, 2009.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4426, or email william.harp@dhp.virginia.gov.

VA.R. Doc. No. R09-25; Filed May 11, 2009, 10:46 a.m.

BOARD OF MEDICINE

Initial Agency Notice

Title of Regulation: **18VAC85-50. Regulations Governing the Practice of Physician Assistants.**

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

Name of Petitioner: Ernestine Wagner.

Nature of Petitioner's Request: Amend regulations for physician assistants to remove the requirement for a supervising physician to see a patient at every 4th visit or on the 2nd visit if not significantly improved.

Agency's Plan for Disposition of Request: The board will receive public comment on the petition for rulemaking and will consider any public comment and the petition at a meeting of the board on June 25, 2009.

Public Comments: Comments may be submitted until June 11, 2009.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4426, or email william.harp@dhp.virginia.gov.

VA.R. Doc. No. R09-26; Filed May 11, 2009

BOARD OF LONG-TERM CARE ADMINISTRATORS

Agency Decision

Title of Regulation: **18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators.**

Statutory Authority: §§ 54.1-2400 and 54.1-3102 of the Code of Virginia.

Name of Petitioner: Cynthia Payne.

Nature of Petitioner's Request: To allow a registered nurse who meets the experience requirements for an assisted living administrator to be licensed without an additional examination.

Agency Decision: Request denied.

Statement of Reasons for Decision: Because of meeting cancellations, the board was unable to act on the petition until

Petitions for Rulemaking

May 5, 2009, at which time the members voted to deny the request and retain the current requirements for licensure.

Agency Contact: Lisa R. Hahn, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4424, FAX (804) 524-4413, or email lisa.hahn@dhp.virginia.gov.

VA.R. Doc. No. R09-08; Filed May 5, 2009, 2:12 p.m.

BOARD OF SOCIAL WORK

Initial Agency Notice

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work.**

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

Name of Petitioner: Shirley A. Johnson.

Nature of Petitioner's Request: To amend qualifications for licensure by allowing a person who holds a degree in a related field of study and has been licensed for 10 or more years as a licensed social worker in another state to be licensed in Virginia.

Agency's Plan for Disposition of Request: The petition will be published in the Register of Regulations and circulated to interested parties for comment until June 24, 2009. Following the comment period, the board will consider the request for amendments at its next meeting scheduled for July 17, 2009.

Public Comments: Comments may be submitted until June 24, 2009.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4441, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R09-23; Filed April 28, 2009, 9:14 a.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending the following regulations: **12VAC5-381, Regulations for the Licensure of Home Care Organizations**. The purpose of the proposed action is to update the regulations in light of changes occurring since 2005. The board amendments under consideration include, but are not limited to:

1. Amending the licensure process to provide a better understanding of the section requirements for first-time providers,
2. Adding a section addressing allowable business locations,
3. Clarifying the financial controls section so there is better understanding of the requirements for first-time providers,
4. Easing or eliminating the requirements pertaining to the medical social services section, and
5. Clarifying the supervisory criteria in the personal care section to allow expansion and greater consumer access to needed personal care services. In addition, the department believes there is provider community support for increasing service fees.

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

Statutory Authority: § 32.1-162.12 of the Code of Virginia.

Public Comments: Public comments may be submitted until June 24, 2009.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA 23230-4920, telephone (804) 367-2102, FAX (804) 367-2149, or email carrie.eddy@vdh.virginia.gov.

VA.R. Doc. No. R09-1941; Filed April 23, 2009, 2:40 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Common Interest Community Board has withdrawn the Notice of Intended Regulatory

Action for **18VAC48-20, Condominium Regulations**, which was published in 25:5 VA.R. 791 November 10, 2008. The Notice of Intended Regulatory Action is being withdrawn pursuant to SB 1143 of the 2009 Acts of Assembly.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-0362, FAX (804) 367-4297, or email cic@dpor.virginia.gov.

VA.R. Doc. No. R09-1567; Filed May 1, 2009, 12:17 p.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 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The board is required by § 2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

Proposed Regulation

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: in General (amending 4VAC15-20-65).**

Statutory Authority: §§ 29.1-103, 29.1-305, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

June 2, 2009 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on May 11, 2009.

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

Summary:

The proposed amendments (i) add a resident bear hunting license with a fee of \$25 and a nonresident bear hunting license with a fee of \$150 to the list of license and permit fees; (ii) eliminate bear from the resident bear, deer, and turkey hunting license, for licensees 16 years of age or older; (iii) eliminate bear from the resident junior bear, deer, and turkey hunting license, for licensees under 16 years of age; and (iv) eliminate bear from the nonresident bear, deer, and turkey hunting licenses.

4VAC15-20-65. Hunting, trapping, and fishing license and permit fees.

In accordance with the authority of the board under § 29.1-103 (16) of the Code of Virginia, the following fees are

established for hunting, trapping, and fishing licenses and permits:

Virginia Resident Licenses to Hunt	
Type license	Fee
Resident License to Hunt, for licensees 16 years of age or older	\$17.00
County or City Resident License to Hunt in County or City of Residence Only, for licensees 16 years of age or older	\$10.00
Resident Senior Citizen Annual License to Hunt, for licensees 65 years of age or older	\$6.00
Resident Junior License to Hunt, for licensees 12 through 15 years of age, optional for licensees under 12 years of age	\$7.50
Resident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	\$15.00
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, and to fish in designated stocked trout waters (also listed under Virginia Resident Licenses to Fish)	\$102.00
Resident Junior Lifetime License to Hunt, for licensees under 12 years of age at the time of purchase	\$250.00
Resident Lifetime License to Hunt, for licensees at the time of purchase:	
through 44 years of age	\$255.00
45 through 50 years of age	\$205.00
51 through 55 years of age	\$155.00
56 through 60 years of age	\$105.00
61 through 64 years of age	\$55.00
65 years of age and over	\$15.00

Regulations

Totally and Permanently Disabled Resident Special Lifetime License to Hunt	\$10.00	Virginia Nonresident Licenses for Additional Hunting Privileges	
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Fish)	\$10.00	Type license or permit	Fee
		Nonresident Bear , Deer, and Turkey Hunting License, for licensees:	
		16 years of age or older	\$65.00
		12 through 15 years of age	\$15.00
		under 12 years of age	\$12.00
Virginia Resident Licenses for Additional Hunting Privileges		<u>Nonresident Bear Hunting License</u>	<u>\$150.00</u>
Type license or permit	Fee	Nonresident Archery License to Hunt with bow and arrow during archery hunting season	\$30.00
Resident Bear , Deer, and Turkey Hunting License, for licensees 16 years of age or older	\$17.00	Nonresident Crossbow License to Hunt with crossbow during archery hunting season	\$30.00
Resident Junior Bear , Deer, and Turkey Hunting License, for licensees under 16 years of age	\$7.50	Nonresident Muzzleloading License to Hunt during muzzleloading hunting season	\$30.00
<u>Resident Bear Hunting License</u>	<u>\$25.00</u>	Nonresident Shooting Preserve License to Hunt within the boundaries of a licensed shooting preserve	\$17.00
Resident Archery License to Hunt with bow and arrow during archery hunting season	\$17.00	Nonresident Bonus Deer Permit	\$30.00
Resident Crossbow License to Hunt with crossbow during archery hunting season	\$17.00	Miscellaneous Licenses or Permits to Hunt	
Resident Muzzleloading License to Hunt during muzzleloading hunting season	\$17.00	Type license or permit	Fee
Resident Bonus Deer Permit	\$17.00	Waterfowl Hunting Stationary Blind in Public Waters License	\$22.50
Virginia Nonresident Licenses to Hunt		Waterfowl Hunting Floating Blind in Public Waters License	\$40.00
Type license	Fee	Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Fish)	\$17.00
Nonresident License to Hunt, for licensees 16 years of age or older	\$85.00	Virginia Resident and Nonresident Licenses to Trap	
Nonresident Three-Day Trip License to Hunt	\$45.00	Type license	Fee
Nonresident Youth License to Hunt, for licensees:		Resident License to Trap, for licensees 16 years of age or older	\$40.00
under 12 years of age	\$12.00	County or City Resident License to Trap in County or City of Residence Only	\$15.00
12 through 15 years of age	\$15.00	Resident Junior License to Trap, for licensees under 16 years of age	\$10.00
Nonresident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	\$30.00	Resident Senior Citizen License to Trap, for licensees 65 years of age or older	\$6.00
Nonresident Lifetime License to Hunt	\$505.00		

Regulations

Resident Senior Citizen Lifetime License to Trap, for licensees 65 years of age or older	\$15.00	Resident Special Lifetime License to Fish in Designated Stocked Trout Waters, for licensees at the time of purchase:	
Totally and Permanently Disabled Resident Special Lifetime License to Trap	\$10.00	through 44 years of age	\$255.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Trap	\$10.00	45 through 50 years of age	\$205.00
Nonresident License to Trap	\$155.00	51 through 55 years of age	\$155.00
		56 through 60 years of age	\$105.00
		61 through 64 years of age	\$55.00
		65 years of age and over	\$15.00
Virginia Resident Licenses to Fish		Totally and Permanently Disabled Resident Special Lifetime License to Freshwater Fish	\$10.00
Type license	Fee	Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Hunt)	\$10.00
Resident License to Freshwater Fish	\$17.00		
County or City Resident License to Freshwater Fish in County or City of Residence Only	\$10.00	Virginia Nonresident Licenses to Fish	
Resident License to Freshwater Fish, for licensees 65 years of age or older	\$6.00	Type license	Fee
Resident License to Fish in Designated Stocked Trout Waters	\$17.00	Nonresident License to Freshwater Fish	\$35.00
Resident License to Freshwater and Saltwater Fish	\$29.00	Nonresident License to Freshwater Fish in Designated Stocked Trout Waters	\$35.00
Resident License to Freshwater Fish for Five Consecutive Days	\$10.00	Nonresident License to Freshwater and Saltwater Fish	\$47.00
Resident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$15.00	Nonresident License to Freshwater Fish for Five Consecutive Days	\$15.00
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, and to fish in designated stocked trout waters (also listed under Virginia Resident Licenses to Hunt)	\$102.00	Nonresident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$20.00
Resident Special Lifetime License to Freshwater Fish, for licensees at the time of purchase:		Nonresident Special Lifetime License to Freshwater Fish	\$505.00
through 44 years of age	\$255.00	Nonresident Special Lifetime License to in Fish in Designated Stocked Trout Waters	\$505.00
45 through 50 years of age	\$205.00	Miscellaneous Licenses or Permits to Fish	
51 through 55 years of age	\$155.00	Type license or permit	Fee
56 through 60 years of age	\$105.00	Permit to Fish for One Day at Board-Designated Stocked Trout Fishing Areas with Daily Use Fees	\$3.50; effective January 1, 2007: \$5.50
61 through 64 years of age	\$55.00		
65 years of age and over	\$15.00		

Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Hunt)	\$17.00
Special Guest Fishing License	\$55.00

VA.R. Doc. No. R09-1957; Filed May 6, 2009, 11:04 a.m.

Proposed Regulation

Title of Regulation: 4VAC15-40. **Game:** in General (amending 4VAC15-40-60, 4VAC15-40-170, 4VAC15-40-210; adding 4VAC15-40-22, 4VAC15-40-195).

Statutory Authority: §§ 29.1-103, 29.1-305, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

June 2, 2009 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on May 11, 2009.

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

Summary:

The proposed amendments (i) establish a special license to hunt bears: \$25 for residents and \$150 for nonresidents; (ii) add crossbow to several provisions pertaining to the use or possession of weapons for hunting; (iii) replace the word "gun" with the word "firearm"; (iv) prohibit possession or transportation of a loaded firearm or loaded crossbow in or on any vehicle at any time on national forest and department-owned lands; (v) add a primer or battery to the definition of a loaded muzzleloading firearm; (vi) define a loaded crossbow; (vii) change the word "leghold" to "foothold" in regard to traps; (viii) provide the option of using trap tags with a permanent identification number issued by the department instead of the trapper's name and address; (ix) require that body-gripping traps that are completely submerged by water be visited by the trapper at least once every 72 hours; and (x) clarify that foothold traps with teeth on the jaws or foothold traps with a jaw spread exceeding 6-1/2 inches may not be set on land.

4VAC15-40-22. Special license for hunting bear.

There shall be a special license to hunt bears that shall be in addition to the state resident license to hunt or state nonresident license to hunt. The fee for the special bear license shall be \$25 for a resident and \$150 for a nonresident.

4VAC15-40-60. Hunting with dogs or possession of weapons in certain locations during closed season.

A. Department-owned lands west of the Blue Ridge Mountains and national forest lands statewide. It shall be unlawful to have in possession a bow, crossbow, or ~~a gun~~ which any firearm that is not unloaded and cased or dismantled on all national forest lands statewide and on department-owned lands and on other lands managed by the department under cooperative agreement located in counties west of the Blue Ridge Mountains except during the period when it is lawful to take bear, deer, grouse, pheasant, quail, rabbit, raccoon, squirrel, turkey, or waterfowl on these lands.

B. Department-owned lands east of the Blue Ridge Mountains. It shall be unlawful to have in possession a bow, crossbow, or ~~gun~~ which any firearm that is not unloaded and cased or dismantled on department-owned lands and on other lands managed by the department under cooperative agreement located in the counties east of the Blue Ridge Mountains except during the period when it is lawful to take bear, deer, grouse, pheasant, quail, rabbit, raccoon, squirrel, turkey, waterfowl or migratory gamebirds on these lands.

C. Certain counties. Except as otherwise provided in 4VAC15-40-70, it shall be unlawful to have either a shotgun or a rifle in one's possession when accompanied by a dog in the daytime in the fields, forests or waters of the counties of Augusta, Clarke, Frederick, Page, Shenandoah and Warren, and in the counties east of the Blue Ridge Mountains, except Patrick, at any time except the periods prescribed by law to hunt game birds and animals.

D. Shooting ranges and authorized activities. The provisions of this section shall not prohibit the conduct of any activities authorized by the board or the establishment and operation of archery and shooting ranges on the lands described in subsections A, B and C of this section. The use of firearms, crossbows, and bows in such ranges during the closed season period will be restricted to the area within the established range boundaries. Such weapons shall be required to be unloaded and cased or dismantled in all areas other than the range boundaries. The use of firearms, crossbows, or bows during the closed hunting period in such ranges shall be restricted to target shooting only and no birds or animals shall be molested.

E. It shall be unlawful to chase with a dog or train dogs on national forest lands or department-owned lands except during authorized hunting, chase, or training seasons that specifically permit these activities on these lands or during raccoon hound field trials on these lands between September 1 and March 31, both dates inclusive, that are sanctioned by bona fide national kennel clubs and authorized by permits required and issued by the department and the U.S. Forest Service.

Regulations

F. It shall be unlawful to possess or transport ~~a~~ any loaded ~~gun~~ firearm, or loaded crossbow in or on any vehicle at any time on national forest lands or department-owned lands.

G. The provisions of this section shall not prohibit the possession, transport and use of loaded firearms by employees of the Department of Game and Inland Fisheries while engaged in the performance of their authorized and official duties, nor shall it prohibit possession and transport of loaded concealed handguns where the individual possesses a concealed handgun permit as defined in § 18.2-308 of the Code of Virginia.

H. Meaning of "possession" of bow, crossbow, or firearm and definition of "loaded ~~gun~~ crossbow" and "loaded firearm." For the purpose of this section, the word "possession" shall include, but not be limited to, having any bow, crossbow, or firearm in or on one's person, vehicle or conveyance. For the purpose of this section, a "loaded ~~gun~~ firearm" shall be defined as a firearm in which ammunition is chambered or loaded in the magazine or clip when such magazine or clip is ~~found~~ engaged or partially engaged in a firearm. The definition of a loaded muzzleloading ~~gun~~ firearm will include a ~~gun~~ which muzzleloading firearm that is capped, or has a charged pan, or has a primer or battery installed in the firearm. The definition of a "loaded crossbow" is a crossbow that is cocked and has either a bolt or arrow engaged or partially engaged on the shooting rail or track of the crossbow, or with a "trackless crossbow" when the crossbow is cocked and a bolt or arrow is nocked.

4VAC15-40-170. Marking of traps by person setting.

Any person setting or in possession of a steel ~~leghold~~ foothold or body gripping trap or snare shall have it marked by means of a nonferrous metal tag bearing ~~his~~ the name and address of the trapper or an identification number issued by the department. This requirement shall not apply to landowners on their own land, nor to a bona fide tenant or lessee within the bounds of land rented or leased by him, nor to anyone transporting any such trap from its place of purchase.

4VAC15-40-195. Visiting completely submerged, body-gripping traps.

Body-gripping traps that are completely submerged by water must be visited at least once every 72 hours.

4VAC15-40-210. Restricted use of certain steel foothold traps.

It shall be unlawful to set ~~above the ground on land~~ any steel foothold trap with teeth set upon the jaws or with a maximum inside jaw spread exceeding 6-1/2 inches measured perpendicular to the hinges.

VA.R. Doc. No. R09-1958; Filed May 6, 2009, 11:05 a.m.

Proposed Regulation

Title of Regulation: **4VAC15-50. Game: Bear (amending 4VAC15-50-10, 4VAC15-50-20, 4VAC15-50-70, 4VAC15-50-71, 4VAC15-50-81, 4VAC15-50-110, 4VAC15-50-120; adding 4VAC15-50-21, 4VAC15-50-22).**

Statutory Authority: §§ 29.1-103, 29.1-305, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

June 2, 2009 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on May 11, 2009.

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

Summary:

The proposed amendments adjust the time periods of the bear hunting general firearms season in multiple localities; adjust the time periods of the bear hunting muzzleloading firearms season in multiple localities; add two weeks to the statewide bear archery season so that it is concurrent with the early deer archery season; allow for bear hunters with a muzzleloading firearms hunting license to possess a muzzleloading gun when and where the special archery bear season overlaps the early special muzzleloading bear season; adjust the bear hunting seasons' limits on the numbers of bear that may be taken in multiple localities; prohibit the use of dogs for bear hunting in certain areas; remove the second week from the hound training season in certain counties; define weapons possession; and enable the proposed special bear hunting license.

4VAC15-50-10. Open season; generally.

Except as otherwise provided by local legislation and with the specific exceptions provided in the sections appearing in this chapter, it shall be lawful to hunt bear from the fourth Monday in November through the first Saturday in January, both dates inclusive, except in the counties of Accomack, Amelia, Appomattox, ~~Arlington~~, Brunswick, Buckingham, Campbell, ~~Caroline~~, ~~Charles City~~, Charlotte, ~~Chesterfield~~, Clarke, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Gloucester, Goochland, Greensville, Halifax, ~~Hanover~~, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, ~~Louisa~~, Lunenburg, ~~Mathews~~, Mecklenburg, Middlesex, ~~New Kent~~, Northampton, ~~Northumberland~~, Nottoway, Orange, Pittsylvania, ~~Powhatan~~, Prince Edward, Prince George, ~~Prince William~~, ~~Richmond~~, Southampton, Spotsylvania, Stafford, Surry, ~~and~~ Sussex, ~~Westmoreland~~, and York; and in the cities of Hampton, Newport News, and Norfolk.

4VAC15-50-20. Open season; first Monday in December and for 11 consecutive hunting days following in certain counties or portions of counties and on the Clinch Mountain and Hidden Valley Wildlife Management Areas and on Department of Forestry lands in Washington and Russell counties.

It shall be lawful to hunt bear from the first Monday in December and for 11 consecutive hunting days following, both dates inclusive, ~~on the Clinch Mountain and Hidden Valley Wildlife Management Areas, on Department of Forestry lands in Washington and Russell counties, and in the counties of Buchanan, Campbell (west of Norfolk Southern Railroad), Carroll, Dickenson, Floyd, Franklin, Grayson, Henry, Lee, Montgomery (south of Interstate 81), Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski (south of Interstate 81), Roanoke (south of Interstate 81), Russell, Scott, Smyth (south of Interstate 81), Tazewell (that part north of Route 19 that is west of Route 16), Washington (south of Interstate 81 and that part north of Interstate 81 that is west of Route 19), Wise, and Wythe (south of Interstate 81)~~

4VAC15-50-21. Open season; second Monday in December and for five consecutive hunting days following in certain counties or portions of counties.

It shall be lawful to hunt bear from the second Monday in December and for five consecutive hunting days following in the counties of Amelia, Appomattox, Brunswick, Buckingham, Campbell (east of Norfolk Southern Railroad), Charlotte, Cumberland, Dinwiddie, Greenville, Halifax, Isle of Wight, Lunenburg, Mecklenburg, Nottoway, Pittsylvania (east of Norfolk Southern Railroad), Prince Edward, Prince George, Southampton, Surry, and Sussex.

4VAC15-50-22. Open season; Saturday prior to the fourth Monday in November through the first Saturday in January, both dates inclusive, in certain counties or portions of counties.

It shall be lawful to hunt bear from the Saturday prior to the fourth Monday in November through the first Saturday in January, both dates inclusive, in the counties of Alleghany, Augusta (west of Interstate 81), Bath, Botetourt (west of Interstate 81), Highland, Roanoke (north of Interstate 81), Rockbridge (west of Interstate 81), Rockingham (west of Interstate 81), and Shenandoah (west of Interstate 81).

4VAC15-50-70. Bow and arrow hunting.

A. It shall be lawful to hunt bear during the special archery season with bow and arrow from the ~~second~~ first Saturday in October through the ~~Saturday~~ Friday prior to the ~~second~~ third Monday in November, both dates inclusive.

B. It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-50-71, may be in the possession of a properly licensed muzzleloading gun

hunter when and where the early special archery bear season overlaps the early special muzzleloading bear season.

C. Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

D. It shall be unlawful to use dogs when hunting with bow and arrow from the second Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

E. It shall be lawful for persons with permanent physical disabilities, who are in full compliance with the requirements of 4VAC15-40-20 B, to hunt bear subject to the provisions of subsections A through D of this section. For the purpose of the application of subsections A through D to this subsection the phrase "bow and arrow" includes crossbow.

4VAC15-50-71. Muzzleloading gun hunting.

A. ~~Except as otherwise provided by specific exceptions in this chapter, it shall be lawful to hunt bear during the special muzzleloading season with muzzleloading guns from the Tuesday Saturday prior to the third second Monday in November and for three consecutive hunting days following, through the Friday prior to the third Monday in November, both dates inclusive, except in Alleghany, Amherst, Augusta (west of Interstate 81 and that part east of Interstate 81 that is south of Interstate 64), Bath, Bedford, Bland, Botetourt, Buchanan, Campbell (west of Norfolk Southern Railroad), Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Henry, Highland, Lee, Montgomery, Nelson, Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski, Roanoke, Rockbridge, Rockingham (west of Interstate 81), Russell, Scott, Shenandoah (west of Interstate 81), Smyth, Tazewell, Washington, Wise and Wythe counties and in the cities of Chesapeake, Suffolk and Virginia Beach.~~

B. It shall be lawful to hunt bear during the special muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in the counties (including the cities and towns within) of Accomack, Caroline, Charles City, Chesterfield, Culpeper, Essex, Fauquier, Fairfax, Fluvanna, Gloucester, Goochland, Hanover, Henrico, James City, King George, King William, King and Queen, Lancaster, Loudoun, Louisa, New Kent, Northampton, Northumberland, Orange, Powhatan, Prince William, Richmond, Spotsylvania, Stafford, Mathews, Middlesex, Westmoreland, and York and in the cities of Hampton, Newport News, Norfolk, and Portsmouth.

~~B. C.~~ It shall be unlawful to hunt bear with dogs during any special season for hunting with muzzleloading guns.

~~C. D.~~ A muzzleloading gun, for the purpose of this section, means a single shot weapon, excluding muzzleloading

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pistols, .45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent or smokeless powder).

~~D.~~ E. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

4VAC15-50-81. Validating tags and checking bear by licensee or permittee.

A. Any person killing a bear shall, before removing the carcass from the place of kill, validate an appropriate tag on their special license for hunting bear, ~~deer, and turkey~~ or special permit by completely removing the designated notch area from the tag. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a bear tag from any special license for hunting bear, ~~deer, and turkey~~ or special permit prior to the killing of a bear. A bear tag that is mistakenly validated (notched) prior to the killing of a bear must be immediately voided by the licensee or permittee by writing, in ink, the word "VOID" on the line provided on the license tag.

B. Upon killing a bear and validating (notching) a license tag or special permit, as provided above, the licensee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass and validated (notched) license tag or special permit to an authorized bear checking station or to an appropriate representative of the department in the county or adjoining county in which the bear was killed. Upon presentation of the carcass and validated (notched) license tag or special permit to the bear checking station, the licensee shall surrender or allow to be removed one premolar tooth from the carcass. At such time, the person checking the carcass will be given a game check card. The successful hunter shall then immediately record the game check card number, in ink, on the line provided adjacent to the license tag that was validated (notched) in the field. The game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass.

C. It shall be unlawful for any person to destroy the identity (sex) of any bear killed unless and until the license tag or special permit is validated (notched) and checked as required by this section. Successful bear hunters are allowed to dismember the carcass to pack it out from the place of kill, after an appropriate license tag has been validated (notched) as required above, as long as the sex of the animal remains identifiable and all the parts of the carcass are present when the bear is checked at an authorized bear checking station. Any bear found in the possession of any person without a

validated (notched) license tag or documentation that the bear has been checked at an authorized bear checking station as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

4VAC15-50-110. Use of dogs in hunting bear.

A. It shall be unlawful to use dogs for the hunting of bear during the open season for hunting deer in the counties west of the Blue Ridge Mountains and in the counties of Amherst (west of U.S. Route 29), Bedford, and Nelson (west of Route 151); and within the boundaries of the national forests.

B. It shall be unlawful to use dogs for the hunting of bear during the first 12 hunting days of the open season for hunting deer in the counties of Greene and Madison.

C. It shall be unlawful to use dogs for the hunting of bear in the counties of Campbell (west of Norfolk Southern Railroad), Carroll (east of the New River), Fairfax, Floyd, Franklin, Grayson (east of the New River), Henry, Loudoun, Montgomery (south of Interstate 81), Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski (south of Interstate 81), ~~and Roanoke (south of Interstate 81)~~, Wythe (southeast of the New River or that part bounded by Route 21 on the west, Interstate 81 on the north, the county line on the east, the New River on the southeast and Cripple Creek on the south); in the city of Lynchburg; and on Amelia, Chester F. Phelps, G. Richard Thompson, and Pettigrew wildlife management areas.

4VAC15-50-120. Bear hound training season.

A. Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to chase black bear with dogs, without capturing or taking, in all counties and cities or in the portions in which bear hunting is permitted except in the counties of Accomack, Amelia, Appomattox, Brunswick, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesterfield, Clarke, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Gloucester, Goochland, Grayson, Greenville, Halifax, Hanover, Henrico, Henry, Isle of Wight, James City, King & Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Montgomery (south of Interstate 81), New Kent, Northampton, Northumberland, Nottoway, Orange, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski (south of Interstate 81), Richmond, Roanoke (~~south of a continuous line formed by Route 785, Route 311 and Route 779~~), Roanoke (south of a continuous line formed by Route 785, Route 311 and Route 779) (south of Interstate 81), Smyth (south of Interstate 81), Southampton, Spotsylvania, Stafford, Surry, Sussex, Washington (south of Interstate 81), Westmoreland, Wythe (south of Interstate 81), and York, and in the cities of Hampton, Newport News and Norfolk, from the second Saturday in August through the last Saturday in September. ~~¶~~

shall be unlawful to have in immediate possession a firearm, bow or any weapon or device capable of taking a black bear while participating in the bear hound training season.

B. ~~Except as otherwise specifically provided in the sections appearing in this chapter, it~~ It shall be lawful to chase black bear with dogs, without capturing or taking, in the counties of Brunswick, Greenville, Lunenburg, and Mecklenburg from the first Monday in December ~~and for 11 five~~ consecutive hunting days following, both dates inclusive, ~~except bear dog training will be unlawful on Sunday in these counties during this period. It shall be unlawful to have in immediate possession a firearm, bow or any weapon or device capable of taking a black bear while participating in the bear hound training season.~~

C. It shall be unlawful to have in possession a firearm, bow, crossbow or any weapon capable of taking a black bear while participating in the bear hound training season. The meaning of "possession" for the purpose of this section shall include, but not be limited to, having a firearm, bow, crossbow or any weapon capable of taking a black bear in or on one's person, vehicle, or conveyance.

VA.R. Doc. No. R09-1960; Filed May 6, 2009, 11:05 a.m.

Proposed Regulation

Title of Regulation: **4VAC15-70. Game: Bobcat (amending 4VAC15-70-50).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

June 2, 2009 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on May 11, 2009.

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

Summary:

The proposed amendments exempt licensed taxidermists who ship bobcat pelts out of state for tanning purposes or individuals who ship bobcat pelts out of state to be tanned for personal use from the requirement to affix a Convention on International Trade in Endangered Species (CITES) tag to the animal pelt.

4VAC15-70-50. Pelts to be sealed before sale, etc.

It shall be unlawful to buy, sell, barter, traffic or trade in, bargain for, solicit for, purchase, or transport out of the Commonwealth, any bobcat pelts until the pelts have been sealed by an agent or other individual designated by the department. This requirement shall not apply to licensed

taxidermists who ship bobcat pelts out of state for tanning purposes or to individuals who ship bobcat pelts out of state to be tanned for personal use. All bobcat pelts or unskinned carcasses required to be sealed under the provisions of this section must be sealed not later than April 1 of the license year in which the animal is taken.

VA.R. Doc. No. R09-1959; Filed May 5, 2009, 11:06 a.m.

Proposed Regulation

Title of Regulation: **4VAC15-90. Game: Deer (amending 4VAC15-90-21, 4VAC15-90-70, 4VAC15-90-80, 4VAC15-90-90, 4VAC15-90-91, 4VAC15-90-231; adding 4VAC15-90-23).**

Statutory Authority: §§ 29.1-103, 29.1-305, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

June 2, 2009 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on May 11, 2009.

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 proposed amendments adjust the time periods of the deer hunting general firearms season in multiple localities; adjust the time periods of the deer hunting muzzleloading firearms seasons in multiple localities; allow deer hunters with a muzzleloading license to possess a muzzleloading gun when and where the early special archery deer season overlaps the early special muzzleloading deer season; adjust the deer hunting seasons' limits on the numbers of deer that may be taken in multiple localities; adjust the deer hunting seasons' days in multiple localities during which deer of either sex may be taken; establish a youth deer hunting day, with certain restrictions, for hunters 15 years of age and under; and enable the proposed special bear hunting license.

4VAC15-90-21. Four-week open season; certain cities, towns, and counties or parts thereof.

It shall be lawful to hunt deer on the Saturday prior to the third Monday in November and for 24 consecutive hunting days following in the counties (including the cities and towns within) of Floyd, Franklin, Henry, and Patrick ~~and~~ ~~Pittsylvania (west of Norfolk Southern Railroad).~~

4VAC15-90-23. Youth deer hunting day.

It shall be lawful for deer hunters 15 years of age and under, when in compliance with all applicable laws and license

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requirements, to hunt deer on the last Saturday in September when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or is exempt from purchasing a hunting license except in Fairfax, Loudoun, and Prince William counties. Deer of either sex may be taken on this special youth deer hunting day, except in Buchanan, Dickenson, and Wise counties where only antlered deer may be taken. Adult hunters accompanying youth deer hunters on this day may not carry or discharge weapons. Blaze orange is required for all persons participating in the hunt on this day unless otherwise exempted by state law. Deer hunting with dogs is prohibited.

4VAC15-90-70. Bow and arrow hunting.

A. It shall be lawful to hunt deer during the early special archery season with bow and arrow from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive, ~~except where there is a closed general hunting season on deer.~~

B. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer during the late special archery season with bow and arrow from the Monday following the close of the general firearms season on deer through the first Saturday in January, both dates inclusive, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County) and in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and ~~Pittsylvania (west of Norfolk Southern Railroad) and~~ on the Chester F. Phelps Wildlife Management Area and on national forest lands in Frederick County and from December 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line) and Virginia Beach.

C. Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section (except on PALS (Public Access Lands) in Dickenson County where it shall be unlawful to take antlerless deer during the special archery seasons provided for in subsections A and B of this section).

D. It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-90-80, may be in the possession of a properly licensed muzzleloading gun hunter when and where the early special archery deer season overlaps the early special muzzleloading deer season.

E. Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

F. It shall be unlawful to use dogs when hunting with bow and arrow during any special archery season.

G. For the purpose of the application of subsections A through I to this section, the phrase "bow and arrow" includes crossbows.

H. It shall be lawful to hunt antlerless deer during the special urban archery season with bow and arrow from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, and from the Monday following the first Saturday in January through the last Saturday in March, both dates inclusive, within the incorporated limits of any city or town in the Commonwealth (except in the cities of Chesapeake, Suffolk, and Virginia Beach) and the counties of Fairfax and York provided that its governing body submits by certified letter to the department prior to April 1, its intent to participate in the special urban archery season. Any city, town, or county no longer participating in this season shall submit by certified letter to the department prior to April 1 notice of its intent not to participate in the special urban archery season.

I. It shall be lawful to hunt antlerless deer during the special antlerless archery season with bow and arrow from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, in Loudoun and Prince William counties, except on department-owned lands.

4VAC15-90-80. Muzzleloading gun hunting.

A. It shall be lawful to hunt deer during the early special muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in all cities, towns, and counties where deer hunting with a rifle or muzzleloading gun is permitted, except in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line) and Virginia Beach.

B. It shall be lawful to hunt deer during the late special muzzleloading season with muzzleloading guns starting 18 consecutive hunting days immediately prior to and inclusive of the first Saturday in January, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County), and east of the Blue Ridge Mountains in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick ~~and Pittsylvania (west of Norfolk Southern Railroad)~~ and on national forest lands in Frederick County and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line), and Virginia Beach.

C. Deer of either sex may be taken during the entire early special muzzleloading season ~~in all cities, towns, and counties east of the Blue Ridge Mountains (except on national forest lands, state forest lands, state park lands except Oconeechee~~

State Park, department owned lands and Philpott Reservoir) and on the second Saturday only east of the Blue Ridge Mountains on state forest lands, state park lands except Occoneechee State Park, department owned lands and on Philpott Reservoir. Deer of either sex may be taken during the entire early special muzzleloading season on Occoneechee State Park. Deer of either sex may be taken during the early special muzzleloading season only on the second Monday in November in all counties west of the Blue Ridge Mountains (except Clarke, Buchanan, Dickenson, Floyd, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, and in Grayson Highlands State Park and national forest lands in Grayson County, and on private lands in Frederick, Roanoke, and Warren counties) and on national forest and department-owned lands in Roanoke County and on national forest lands in Frederick and Warren counties and on national forest lands in Amherst, Bedford, and Nelson counties. Additionally, deer of either sex may be taken during the entire early special muzzleloading season in Clarke and Floyd counties and on private lands in Frederick, Roanoke and Warren counties, unless otherwise noted below:

- Deer of either sex may be taken on the second Saturday only of the early special muzzleloading season on state forest lands, state park lands (except Occoneechee State Park), department-owned lands and Philpott Reservoir.

- Antlered bucks only—no either sex deer hunting days during the early special muzzleloading season on national forest lands in Amherst, Bedford, and Nelson counties.

D. Deer of either sex may be taken during the entire late special muzzleloading season in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29 except on national forest lands), Bedford (except on national forest lands), Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151 except on national forest lands), Patrick, and Pittsylvania (west of Norfolk Southern Railroad). It shall be lawful to hunt deer of either sex during the last six days of the late special muzzleloading season in all counties west of the Blue Ridge Mountains (except Buchanan, Dickenson, Floyd, in Grayson Highlands State Park and national forest lands in Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, and on private lands in Roanoke and Warren Counties) and on national forest and department-owned lands in Roanoke County and on national forest lands in Warren County and on national forest lands in Amherst, Bedford, Frederick, and Nelson counties and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line), and Virginia Beach. Provided further it shall be lawful to hunt deer of either sex during the last day only of the late special muzzleloading season in the counties of Lee, Russell, Scott, Smyth, Tazewell, and Washington and in Grayson Highlands State Park and national forest lands in Grayson County. Additionally, deer of either sex may be taken during the entire late special muzzleloading season in Floyd County and on private lands

in Roanoke and Warren Counties, on the second Saturday only during the early special muzzleloading season west of the Blue Ridge Mountains unless otherwise noted below:

- Deer of either sex may be taken during the entire early special muzzleloading season in Clarke and Floyd counties and on private lands in Carroll, Frederick, Grayson, Montgomery, Roanoke, and Warren counties.

- Antlered bucks only—no either sex deer hunting days during the early special muzzleloading season in Buchanan, Dickenson, Lee, Russell, Smyth, Tazewell, Washington, and Wise counties and on national forest lands in Alleghany, Botetourt, Frederick, Grayson, Page, Rockingham, Scott, Shenandoah, Warren, and on national forest and department-owned lands in Augusta, Bath, Highland, and Rockbridge counties and on Grayson Highlands State Park and on private lands west of Routes 613 and 731 in Rockingham County.

E. Deer of either sex may be taken during the last six days of the late special muzzleloading season unless otherwise listed below:

- Deer of either sex may be taken full season during the entire late special muzzleloading season in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29 except on national forest lands), Bedford (except on national forest lands), Campbell (west of Norfolk Southern Railroad), Floyd, Franklin, Henry, Nelson (west of Route 151, except on national forest lands), and Patrick and on private lands in Carroll, Grayson, Montgomery, Roanoke and Warren counties.

- Deer of either sex may be taken the last day only during the late special muzzleloading season in Dickenson (north of Route 83), Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wise counties and on national forest lands in Alleghany, Amherst, Bedford, Botetourt, Frederick, Grayson, Nelson, Page, Rockingham, Shenandoah, and Warren counties, and on national forest and department-owned lands in Augusta, Bath, Highland, and Rockbridge counties and on private lands west of Routes 613 and 731 in Rockingham County and Grayson Highlands State Park.

- Antlered bucks only—no either-sex deer hunting days during the late special muzzleloading season in Buchanan and Dickenson (south of Route 83).

F. Deer of either sex may be taken full season during the special muzzleloading seasons within the incorporated limits of any city or town in the Commonwealth that allows deer hunting except in the counties of Buchanan, Dickenson, and Wise and in the cities of Chesapeake, Suffolk, and Virginia Beach.

G. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns.

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~~G. H.~~ A muzzleloading gun, for the purpose of this section, means a single shot weapon, excluding muzzleloading pistols, .45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent or smokeless powder).

~~H. I.~~ It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

4VAC15-90-90. Bag limit, bonus deer permits and special antlerless provision for youth hunters and earn a buck.

A. The bag limit for deer east of the Blue Ridge Mountains (except on national forest lands in Amherst, Bedford, and Nelson counties) is two per day, six per license year, three of which must be antlerless, except that a fourth deer of either sex may be taken in Greensville, Southampton, Surry, and Sussex counties using a designated tag on the bonus deer permit.

B. The bag limit for deer west of the Blue Ridge Mountains and on national forest lands in Amherst, Bedford, and Nelson counties is one per day, five per license year, three of which must be antlerless. ~~Only one antlered buck may be taken during the special early muzzleloading season per hunter.~~ Only one antlered buck taken in Shenandoah County per license year may have less than four antler points one inch or longer on one side of the antlers.

C. Except as noted in subsection E below, ~~antlerless~~ antlerless deer may be taken only during designated either-sex deer hunting days during the special archery seasons, special muzzleloading seasons, and the general firearms season.

D. Bonus deer permits shall be valid on private land in counties and cities where deer hunting is permitted (except Buchanan, Dickenson, and Wise counties) during the special archery seasons, special muzzleloading seasons, and the general firearms season. Bonus deer permits shall be valid on public lands, including state parks, state forests, national wildlife refuges, military areas, etc., as authorized by the managing agency. Unless otherwise posted or authorized in writing for wildlife management areas by the department, or for national forest lands by the U.S. Forest Service, the use of bonus permits is prohibited on department-owned and national forest lands. Bonus deer permits shall be valid for antlerless deer only, except that one designated either-sex tag may be used per license year in Greensville, Southampton, Surry, and Sussex counties. Deer taken on bonus permits shall count against the daily bag limit but are in addition to the seasonal bag limit.

E. Deer hunters 15 years of age and under, including those exempt from purchasing a hunting license, when in compliance with all applicable laws and license requirements,

may take one antlerless deer per license year on days other than designated either-sex deer hunting days during the special muzzleloading seasons or the general firearms season in all counties that have at least one either-sex deer hunting day during the general firearms deer season.

F. Earn a buck. At least one antlerless deer must be taken on private lands in Bedford, Fairfax, Fauquier, Franklin, Loudoun, Patrick, Prince William, or Roanoke counties before the second antlered deer of the license year may be taken on private lands in any of these counties. Furthermore, at least two antlerless deer must have been taken on private lands in Bedford, Fairfax, Fauquier, Franklin, Loudoun, Patrick, or Prince William counties before the third antlered deer of the license year may be taken on private lands in any of these counties.

4VAC15-90-91. General firearms season either-sex deer hunting days.

A. During the general firearms deer season, deer of either sex may be taken within:

Accomack County: full season.

Albemarle County: full season.

Alleghany County: the second Saturday and the last two hunting days.

-National forest lands: ~~the second Saturday and~~ the last hunting day.

Amelia County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

-Amelia WMA: the second and third Saturdays and the last six hunting days.

Amherst County (east of U.S. Route 29): the second, third, and fourth Saturdays and the last 24 hunting days.

Amherst County (west of U.S. Route 29): full season.

-National forest lands: ~~the second Saturday and~~ the last hunting day.

Appomattox County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

-Appomattox-Buckingham State Forest: the second ~~Saturday and~~ third Saturdays.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

Arlington County: full season.

Augusta County: the second Saturday and the last six hunting days.

-National forest and department-owned lands: ~~the second Saturday and~~ the last hunting day.

Bath County: the second Saturday and the last two hunting days.

-National forest and department-owned lands: ~~the second Saturday and~~ the last hunting day.

Bedford County: full season.

-National forest lands: ~~the second Saturday and~~ the last hunting day.

Bland County: the second Saturday and the last six hunting days.

-National forest lands: the second Saturday and the last hunting day.

Botetourt County: full season.

-National forest lands: ~~the second Saturday and~~ the last hunting day.

Brunswick County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

Buchanan County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Buckingham County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

-Horsepen Lake WMA: the second and third Saturdays and the last six hunting days.

-Appomattox-Buckingham State Forest: the second ~~Saturday and third Saturdays.~~

-Featherfin WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

Campbell County (east of Norfolk Southern Railroad): the second, third, and fourth Saturdays and the last 24 hunting days.

Campbell County (west of Norfolk Southern Railroad): full season.

Caroline County: the second ~~and~~ third and fourth Saturdays and the last ~~six~~ 24 hunting days.

Carroll County: full season.

-National forest and department-owned lands: the second Saturday and the last hunting day.

Charles City County: ~~the second and third Saturdays and the last 12 hunting days~~ full season.

-Chickahominy WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Charlotte County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

Chesapeake (City of): ~~the first and second Saturdays following October 1st and the last 12 hunting days~~ full season.

Chesterfield County: ~~the second and third Saturdays and the last 12 hunting days~~ full season.

Clarke County: full season.

Craig County: ~~the second Saturday and the last six hunting days~~ full season.

-National forest lands: the second Saturday and the last hunting day.

Culpeper County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

-Chester F. Phelps WMA: the second Saturday.

Cumberland County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

-Cumberland State Forest: the second ~~Saturday and third Saturdays.~~

Dickenson County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Dinwiddie County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

Essex County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Fairfax County: full season (restricted to certain parcels of land by special permit).

Fauquier County: full season.

-G. Richard Thompson WMA: the second Saturday and the last hunting day.

-Chester F. Phelps WMA: the second Saturday.

Floyd County: full season.

Fluvanna County: second and third Saturdays and the last ~~six~~ 12 hunting days.

Franklin County: full season.

-Philpott Reservoir: the second Saturday and the last six hunting days.

-Turkeycock Mountain WMA: the second ~~Saturday and third Saturdays~~ and the last ~~two~~ six hunting days.

Frederick County: full season

-National forest lands: ~~the second Saturday and~~ the last hunting day.

Giles County: ~~the second Saturday and the last six hunting days~~ full season.

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-National forest lands: the second Saturday and the last hunting day.

Gloucester County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Goochland County (east of U.S. Route 522): the second, third, and fourth Saturdays and the last 24 hunting days.

Goochland County (west of U.S. Route 522): the second and third Saturdays and last ~~six~~ 12 hunting days.

Grayson County: full season.

-National forest lands and ~~portions of Grayson Highland Highlands~~ State Park ~~open to hunting: the second Saturday and~~ the last hunting day.

Greene County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Greensville County: full season.

Halifax County: the second, third, and fourth Saturdays and the last 24 hunting days.

Hanover County: the second, third, and fourth Saturdays and the last 24 hunting days.

Henrico County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Henry County: full season.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six hunting days.

-Turkeycock Mountain WMA: the second ~~Saturday~~ and third Saturdays and the last ~~two~~ six hunting days.

Highland County: the second Saturday and the last two hunting days.

-National forest and department-owned lands: ~~the second Saturday and~~ the last hunting day.

Isle of Wight County: full season.

-Ragged Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

James City County: ~~the second and third Saturdays and last 12 hunting days~~ full season.

King and Queen County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

King George County: the second ~~and~~ third, and fourth Saturdays and the last ~~12~~ 24 hunting days.

King William County: the second ~~and~~ third, and fourth Saturdays and the last ~~12~~ 24 hunting days.

Lancaster County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Lee County: the second Saturday and the last two hunting days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Loudoun County: full season.

Louisa County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

Lunenburg County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

Madison County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

-Rapidan WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

Mathews County: the second ~~and~~ third, and fourth Saturdays and last ~~12~~ 24 hunting days.

Mecklenburg County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

-Dick Cross WMA: the second and third Saturdays and the last six hunting days.

Middlesex County: the second ~~and~~ third, and fourth Saturdays and last ~~12~~ 24 hunting days.

Montgomery County: full season.

-National forest lands: the second Saturday and the last hunting day.

Nelson County (east of Route 151): the second, third, and fourth Saturdays and the last 24 hunting days.

-James River WMA: the second Saturday and the last six hunting days.

Nelson County (west of Route 151): full season.

-National forest lands: ~~the second Saturday and~~ the last hunting day.

New Kent County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Northampton County: full season.

Northumberland County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Nottoway County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

Orange County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Page County: the second Saturday and the last two hunting days.

-National forest lands: ~~the second Saturday and~~ the last hunting day.

Patrick County: full season.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six hunting days.

Pittsylvania County (~~east of Norfolk Southern Railroad~~): the second, third, and fourth Saturdays and the last 24 hunting days.

-White Oak Mountain WMA: the second Saturday and the last hunting day.

~~Pittsylvania County (west of Norfolk Southern Railroad): full season.~~

Powhatan County: the second ~~and~~ third, and fourth Saturdays and the last ~~12~~ 24 hunting days.

-Powhatan WMA: the second and third Saturdays and the last six hunting days.

Prince Edward County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

-Briery Creek WMA: the second and third Saturdays and the last six hunting days.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

-Prince Edward State Forest: the second ~~Saturday and~~ third Saturdays.

Prince George County: the second ~~and~~ third, and fourth Saturdays and the last ~~six~~ 24 hunting days.

Prince William County: full season.

Pulaski County: ~~the second Saturday and the last six hunting days~~ full season.

-National forest lands: the second Saturday and the last hunting day.

Rappahannock County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Richmond County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Roanoke County: full season.

-National forest and department-owned lands: the second Saturday and the last hunting day.

Rockbridge County: the second Saturday and the last two hunting days.

-National forest and department-owned lands: ~~the second Saturday and~~ the last hunting day.

Rockingham County: the second Saturday and the last six hunting days.

-National forest lands and private lands west of Routes 613 and 731: ~~the second Saturday and~~ the last hunting day.

Russell County: the second Saturday and the last two hunting days.

-Clinch Mountain WMA, Hidden Valley WMA, and ~~state forest lands: the second Saturday and~~ the Channels State Forest: the last hunting day.

Scott County: the second Saturday and the last six hunting days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Shenandoah County: full season.

-National forest lands: ~~the second Saturday and~~ the last hunting day.

Smyth County: the second Saturday and the last ~~two~~ six hunting days.

-National forest lands, Clinch Mountain WMA, and ~~Hidden Valley WMA~~ Hungry Mother State Park: ~~the second Saturday and~~ the last hunting day.

Southampton County: full season.

Spotsylvania County: the second, third, and fourth Saturdays and the last 24 hunting days.

Stafford County: the second, third, and fourth Saturdays and the last 24 hunting days.

Suffolk (City of; ~~east of the Dismal Swamp line~~): ~~the first and second Saturdays following October 1st and the last 12 hunting days~~; full season.

~~Suffolk (City of; west of the Dismal Swamp line): the second, third, and fourth Saturdays and the last 24 hunting days.~~

Surry County: full season.

-Carlisle Tract of the Hog Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Sussex County: full season.

Tazewell County: the second Saturday and the last two hunting days.

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-National forest lands, Clinch Mountain WMA, and Hidden Valley WMA: ~~the second Saturday and~~ the last hunting day.

Virginia Beach (City of): ~~the first and second Saturdays following October 1 and the last 12 hunting days~~ full season.

Warren County: full season.

-National forest lands: ~~the second Saturday and~~ the last hunting day.

Washington County: the second Saturday and the last ~~two~~ six hunting days.

-National forest lands, Clinch Mountain WMA, Hidden Valley WMA, and ~~state forest lands: the second Saturday and~~ the Channels State Forest: the last hunting day.

Westmoreland County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Wise County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Wythe County: ~~the second Saturday and the last six hunting days~~ full season.

-National forest lands and Big Survey WMA: the second Saturday and the last hunting day.

York County: full season.

B. Except as provided in the subsection A of this section, deer of either sex may be taken full season during the general firearms deer season within the incorporated limits of any city or town, state park, national wildlife refuge, or military installation that allows deer hunting.

4VAC15-90-231. Validating tags and checking deer by licensee or permittee.

A. Any person killing a deer shall, before removing the carcass from the place of kill, validate an appropriate tag on his special license for hunting ~~bear, deer, and turkey~~, bonus deer permit, or special permit by completely removing the designated notch area from the tag. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a deer tag from any special license for hunting ~~bear, deer, and turkey~~, bonus deer permit, or special permit prior to the killing of a deer. A deer tag that is mistakenly validated (notched) prior to the killing of a deer must be immediately voided by the licensee or permittee by writing, in ink, the word "VOID" on the line provided on the license tag.

B. Upon killing a deer and validating (notching) a license tag, bonus deer permit or special permit, as provided above, the licensee or permittee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the

carcass and validated (notched) license tag, bonus deer permit or special permit to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the deer was killed or report the kill through the department's automated harvest reporting system. At such time, the person checking or reporting the carcass will be given a game check card furnished by the department or a confirmation number from the automated reporting system. The successful hunter shall then immediately record the game check card number or confirmation number, in ink, on the line provided on the tag that was validated (notched) in the field. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If the kill is reported using the automated harvest reporting system, no check card is required as long as the hunter who killed the animal is in possession of the carcass. If the automated harvest reported carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass.

C. It shall be unlawful for any person to destroy the identity of the sex of any deer killed unless and until the license tag, bonus deer permit or special permit is validated (notched) and checked as required by this section. Successful deer hunters are allowed to dismember the carcass to pack it out from the place of kill, after an appropriate license tag has been validated (notched) as required above, as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the deer is checked at a big game check station or reported through the automated harvest reporting system. Any deer found in the possession of any person without a validated (notched) license tag or documentation that the deer has been checked (via a big game check station or the automated harvest reporting system) as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

VA.R. Doc. No. R09-1961; Filed May 6, 2009, 11:06 a.m.

Proposed Regulation

Title of Regulation: **4VAC15-170. Game: Otter (amending 4VAC15-170-21, 4VAC15-170-30).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

June 2, 2009 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on May 11, 2009.

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

Summary:

The proposed amendments (i) establish a uniform trapping season and bag limit for river otters in all counties west of the Blue Ridge Mountains by opening counties that are currently closed and (ii) exempt licensed taxidermists who ship otter pelts out of state for tanning purposes or individuals who ship otter pelts out of state to be tanned for personal use from the requirement to affix a CITES tag to the animal pelt.

4VAC15-170-21. Open season for trapping in certain counties west of the Blue Ridge Mountains; carcass presented to department agent; season bag limit.

A. It shall be lawful to trap otter in all counties west of the Blue Ridge Mountains from December 1 through the last day of February, both dates inclusive, ~~in the counties of Augusta, Alleghany, Bath, Bland, Botetourt, Carroll, Craig, Floyd, Giles, Grayson, Montgomery, Pulaski, Roanoke, Roekbridge, and Wythe.~~

B. The entire skinned carcass of all otters trapped in counties west of the Blue Ridge Mountains must be presented to an agent of the department within three days of capture.

C. The season bag limit for trapping otter shall be two per trapper in counties west of the Blue Ridge Mountains ~~where otter trapping is permitted.~~

4VAC15-170-30. Pelts to be sealed before sale, etc.

It shall be unlawful to buy, sell, barter, exchange, traffic or trade in, bargain for, solicit for, purchase or transport out of the Commonwealth, any otter pelts until the pelts have been sealed by an agent of the department. This requirement shall not apply to licensed taxidermists who ship otter pelts out of state for tanning purposes or to individuals who ship otter pelts out of state to be tanned for personal use. All otter pelts required to be sealed under the provisions of this chapter must be sealed not later than April 1 of the license year in which the animal is taken.

VA.R. Doc. No. R09-1962; Filed May 6, 2009, 11:08 a.m.

Proposed Regulation

Title of Regulation: **4VAC15-210. Game: Raccoon (amending 4VAC15-210-20).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

June 2, 2009 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on May 11, 2009.

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

Summary:

The proposed amendments (i) allow raccoon chase, without capturing or taking, on national forest and department-controlled lands in the counties of Bland, Buchanan, Craig, Dickenson, Giles, Lee, Montgomery north of I-81, Pulaski north of I-81, Russell, Scott, Smyth north of I-81, Tazewell, Washington north of I-81, Wise, and Wythe north of I-81, from the second Saturday in August through the last Saturday in September and (ii) add crossbow to the list of weapons and items that one may not have in possession during raccoon chase without capturing or taking.

4VAC15-210-20. Open season; counties west of Route 29; possession of certain devices unlawful.

A. It shall be lawful to chase raccoon with dogs, without capturing or taking, on private lands in all counties and portions of counties west of Route 29 and in the counties of Loudoun (west of Route 15); Prince William (west of Route 15); and on Fairystone Farms, G. Richard Thompson, Rapidan, and Turkeycock Wildlife Management Areas from August 1 through May 31, both dates inclusive. ~~It shall be unlawful to have in possession a firearm, bow, axe, saw, or any tree climbing device while hunting during this chase season. The meaning of "possession" for the purpose of this section shall include, but not be limited to, having these devices in or on one's person, vehicle or conveyance while engaged in the act of chasing.~~

B. It shall be lawful to chase raccoon with dogs, without capturing or taking, on national forest and department-controlled lands in the counties of Bland, Buchanan, Craig, Dickenson, Giles, Lee, Montgomery (north of Interstate 81), Pulaski (north of Interstate 81), Russell, Scott, Smyth (north of Interstate 81), Tazewell, Washington (north of Interstate 81), Wise, and Wythe (north of Interstate 81) from the second Saturday in August through the last Saturday in September.

C. It shall be unlawful to have in possession a firearm, bow, crossbow, axe, saw, or any tree climbing device while hunting during this chase season. The meaning of "possession" for the purpose of this section shall include, but not be limited to, having these devices in or on one's person, vehicle, or conveyance while engaged in the act of chasing.

VA.R. Doc. No. R09-1963; Filed May 6, 2009, 11:07 a.m.

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Proposed Regulation

Title of Regulation: **4VAC15-230. Game: Squirrel (amending 4VAC15-230-21, 4VAC15-230-60, 4VAC15-230-61).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

June 2, 2009 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on May 11, 2009.

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

Summary:

The proposed amendments (i) make it lawful during the spring squirrel season to hunt squirrel on private lands and on the Featherfin, Hardware River, Little North Mountain, Merrimac Farms, and Rapidan wildlife management areas; (ii) remove the prohibition on using dogs to hunt squirrels during the spring season; (iii) allow the hunting of fox squirrel in the counties of Albemarle, Bedford, Franklin, Greene, Patrick, and Prince William; (iv) add private lands and Little North Mountain, Merrimac Farms, and Rapidan wildlife management areas to the lands on which fox squirrel may be hunted in the spring season; and (v) remove the prohibition on using dogs to hunt fox squirrels during the spring season.

4VAC15-230-21. Spring season for gray and red squirrel ~~on certain wildlife management areas.~~

~~A.~~ It shall be lawful to hunt gray and red squirrels from the first Saturday in June through the third Saturday in June, both dates inclusive, on private lands and on Amelia Wildlife Management Area, Big Survey Wildlife Management Area, Briery Creek Wildlife Management Area, Chickahominy Wildlife Management Area, Dick Cross Wildlife Management Area, Dismal Swamp Wildlife Management Area, Fairystone Wildlife Management Area (including Fairystone State Park and Philpott Reservoir), Featherfin Wildlife Management Area, Goshen Wildlife Management Area, Hardware River Wildlife Management Area, Havens Wildlife Management Area, Hog Island Wildlife Management Area (Carlisle Tract only), Horsepen Wildlife Management Area, James River Wildlife Management Area, Little North Mountain Wildlife Management Area, Merrimac Farms Wildlife Management Area, Pettigrew Wildlife Management Area, Phelps Wildlife Management Area, Powhatan Wildlife Management Area (including the Goochland Tract), Rapidan Wildlife Management Area,

Thompson Wildlife Management Area, Turkeycock Mountain Wildlife Management Area, and White Oak Mountain Wildlife Management Area.

~~B. It shall be unlawful to hunt gray and red squirrels with dogs during the spring squirrel season.~~

4VAC15-230-60. Fox squirrel. Open season; first Saturday in September through January 31.

It shall be lawful to hunt fox squirrel from the first Saturday in September through January 31, both dates inclusive, in the counties of Albemarle, Alleghany, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Carroll, Clarke, Craig, Culpeper, Dickenson, Fauquier, Floyd, Franklin, Frederick, Giles, Grayson, Greene, Highland, Lee, Loudoun, Madison, Montgomery, Orange, Page, Patrick, Prince William, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Washington, Warren, Wise and Wythe.

4VAC15-230-61. Spring season for fox squirrel ~~on certain wildlife management areas.~~

~~A.~~ It shall be lawful to hunt fox squirrels from the first Saturday in June through the third Saturday in June, both dates inclusive, on private lands in all counties open to fox squirrel hunting during the regular squirrel season, and on Big Survey Wildlife Management Area, Goshen Wildlife Management Area, Havens Wildlife Management Area, Little North Mountain Wildlife Management Area, Merrimac Farms Wildlife Management Area, Phelps Wildlife Management Area, Rapidan Wildlife Management Area, and Thompson Wildlife Management Area.

~~B. It shall be unlawful to hunt fox squirrels with dogs during the spring squirrel season.~~

VA.R. Doc. No. R09-1964; Filed May 6, 2009, 11:07 a.m.

Proposed Regulation

Title of Regulation: **4VAC15-240. Game: Turkey (amending 4VAC15-240-10, 4VAC15-240-11, 4VAC15-240-20, 4VAC15-240-31, 4VAC15-240-81, 4VAC15-240-91).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

June 2, 2009 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on May 11, 2009.

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

Summary:

The proposed amendments add one day to the early segment of the six-week fall turkey season in counties primarily east and west of the Blue Ridge Mountains; add one day to the early segment of the two-week and four-week fall turkey season; require hunters to use the automated harvest reporting system to report wild turkeys killed in the spring gobbler season, rather than present turkey carcasses at a game check station; remove reference to "bear" with regard to special hunting licenses as a new section will be promulgated that pertains to special licenses for hunting bear; remove references to presenting a turkey carcass at an authorized check station; and require licensed exempt hunters to use the automated harvest reporting system to report turkeys killed in the spring gobbler season.

4VAC15-240-10. Open season; generally.

Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to hunt turkeys from the Saturday prior to the last Monday in October and for ~~11~~ 12 consecutive hunting days following; on Thanksgiving Day; and on the Monday nearest December 9 through the first Saturday in January, both dates inclusive.

4VAC15-240-11. Open season; certain counties and areas; Saturday prior to the last Monday in October and for ~~11~~ 12 hunting days following, on Thanksgiving Day, and on the Monday closest to December 2 through the last Saturday in December, both dates inclusive.

Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to hunt turkeys in counties, cities and towns east of the Blue Ridge Mountains except Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad) from the Saturday prior to the last Monday in October and for ~~11~~ 12 consecutive hunting days following, on Thanksgiving Day, and on the Monday nearest December 2 through the last Saturday in December, both dates inclusive.

4VAC15-240-20. Open season; certain counties and areas; Saturday prior to the last Monday in October and for ~~11~~ 12 hunting days following, and on Thanksgiving Day.

It shall be lawful to hunt turkeys on the Saturday prior to the last Monday in October and for ~~11~~ 12 consecutive hunting days following, and on Thanksgiving Day in the counties of Accomack, Buchanan, Isle of Wight, Northampton, Prince George, Southampton, Surry, and Sussex and the City of Suffolk.

4VAC15-240-31. Open season; certain counties and areas; Saturday prior to the last Monday in October and for ~~11~~ 12 hunting days following, on Thanksgiving Day, and on

the Monday closest to December 2 and for 11 hunting days following.

It shall be lawful to hunt turkeys on the Saturday prior to the last Monday in October and for ~~11~~ 12 consecutive hunting days following, on Thanksgiving Day, and on the Monday closest to December 2 and for 11 hunting days following in the counties of Charles City, Gloucester, James City, King George, Lancaster, Mathews, Middlesex, New Kent, Northumberland, Richmond, Westmoreland, and York (except on Camp Peary).

4VAC15-240-81. Validating tags and checking turkey by licensee.

A. Any person killing a turkey shall, before removing the carcass from the place of kill, validate an appropriate tag on his special license for hunting ~~bear~~, deer and turkey by completely removing the designated notch area from the tag. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a turkey tag from any special license for hunting ~~bear~~, deer, and turkey prior to the killing of a turkey. A turkey tag that is mistakenly validated (notched) prior to the killing of a turkey must be immediately voided by the licensee by writing, in ink, the word "VOID" on the line provided on the tag.

B. Upon killing a turkey and validating (notching) a license tag, as provided above, the licensee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, ~~present the carcass and validated (notched) license tag to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the turkey was killed or~~ report their spring kill (as provided by 4VAC15-240-40) through the department's automated harvest reporting system. At such time, the person ~~checking or~~ reporting the carcass will be given a ~~game check card furnished by the department or a~~ confirmation number from the automated harvest reporting system. The successful hunter shall then immediately record the ~~game check card number or~~ confirmation number, in ink, on the line provided on the license tag that was validated (notched) in the field. ~~If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If a spring season kill is reported using the automated harvest reporting system, no check card is required as long as the hunter who killed the animal is in possession of the carcass.~~ If the automated harvest reported spring carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is

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left unattended, this written documentation must be securely attached to the carcass.

C. It shall be unlawful for any person to destroy the identity of the sex of any turkey killed unless and until the license tag is validated (notched) and ~~checked~~ reported using the automated harvest reporting system as required by this section. Any turkey found in the possession of any person without a validated (notched) license tag or documentation that the turkey has been ~~checked (via a big game check station or the automated harvest reporting system)~~ reported using the automated harvest reporting system as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

4VAC15-240-91. Checking turkey by persons exempt from license requirement or holding a license authorization number.

A. Upon killing a turkey, any person exempt from the license requirement as described in § 29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in § 29.1-339, or the holder of a permanent license issued pursuant to § 29.1-301 E, or the holder of a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever comes first, and without unnecessary delay, ~~present the carcass to an authorized checking station or to any appropriate representative of the department in the county or adjoining county in which the turkey was killed or report their spring kill (as provided by 4VAC15-240-40) through the department's automated harvest reporting system. At such time, the person checking or reporting the carcass shall be given a game check card furnished by the department or a confirmation number from the automated harvest reporting system. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass.~~ If a spring-season kill is reported using the automated harvest reporting system, the successful hunter shall immediately create written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number. This written documentation must be kept in possession with the carcass until the carcass is processed. If the automated harvest reported carcass is transferred to the possession of another individual, the written documentation must be transferred with the carcass to the individual and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass.

B. It shall be unlawful for any person to destroy the identity of the sex of any turkey killed until the turkey is ~~checked~~ reported using the automated harvest reporting system as

required by this section. Any turkey that has not been ~~checked (via a big game check station or the automated harvest reporting system)~~ reported using the automated harvest reporting system as required by this section found in the possession of any person exempt from license requirements or holding a license authorization number shall be forfeited to the Commonwealth to be disposed of as provided by law.

VA.R. Doc. No. R09-1965; Filed May 6, 2009, 11:08 a.m.

Proposed Regulation

Title of Regulation: **4VAC15-270. Game: Firearms (amending 4VAC15-270-20, 4VAC15-270-80).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

June 2, 2009 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on May 11, 2009.

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

Summary:

The proposed amendments remove the City of Suffolk from the list of counties and cities where hunting bear and deer with rifles is prohibited and include crows on the list of species that may be hunted with unplugged shotguns.

4VAC15-270-20. Rifles prohibited in hunting bear and deer in certain counties and cities.

Except as otherwise provided in 4VAC15-270-30 of this chapter or by local ordinance, it shall be unlawful to use a rifle of any caliber for the hunting of bear and deer in the counties of Chesterfield, Isle of Wight, New Kent, Southampton and Sussex and in the ~~cities~~ City of Chesapeake and ~~Suffolk (that portion formerly Nansemond County);~~ however, nothing in this section shall prohibit the use of muzzleloading guns, as described in 4VAC15-90-80 F, for hunting deer during the late special muzzleloading deer season in the City of Chesapeake.

4VAC15-270-80. Shotgun shell capacity for nonmigratory game, crows, and migratory game birds.

A. It shall be lawful to hunt nonmigratory game and crows with unplugged shotguns.

B. It shall be unlawful to hunt migratory game birds with a shotgun capable of holding more than three shells in the magazine and chamber combined, unless otherwise

authorized by the director and consistent with applicable federal regulations.

VA.R. Doc. No. R09-1966; Filed May 6, 2009, 11:09 a.m.

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-395. General Permit for Emergency Situations and Water Quality Improvement Projects (amending 4VAC20-395-10, 4VAC20-395-20, 4VAC20-395-30, 4VAC20-395-40).**

Statutory Authority: §§ 28.2-103 and 28.2-1207 of the Code of Virginia.

Effective Date: June 30, 2009.

Agency Contact: Jane Warren, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

This regulation describes the qualifications, procedures, and manner of registration to qualify for a general permit for activities requiring authorization from the Marine Resources Commission when such activities involve state-owned subaqueous beds in nontidal waterways that are (i) necessary for emergency activities required to protect public and private property as well as public health and safety, (ii) intended to improve water quality, (iii) intended for waterway restoration, and (iv) for projects that facilitate emergency response activities related to existing public utility infrastructures. It also recognizes the minimum stream size above which an individual commission permit is required for activities not covered by this general permit.

4VAC20-395-10. Purpose.

The purpose of this chapter is to provide an expedited process for the issuance of a general permit for activities in or on state-owned subaqueous beds whereby property owners, project sponsors under the EWP program, and agencies or organizations under the approval of a property owner adjacent to nontidal waterways are granted authority to install structures to stabilize watercourses and stream banks in emergency situations, or to construct facilities designed to or conduct activities resulting in waterway restoration, which are funded, designed or implemented by authorized agencies that improve water quality (including but not limited to restoration

of natural flows, habitat modifications and habitat improvements), or to conduct public utility emergency response activities related to existing public utility infrastructures located in or on subaqueous beds.

Qualification ~~for~~ under this general permit constitutes the commission authorization required in accordance with §§ 28.2-1204 and 28.2-1207 of the Code of Virginia. This general permit shall not conflict with any other federal, state, or local permitting requirements or authorization governing the proposed activity.

4VAC20-395-20. Definitions.

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

"Bioengineered" means an applied science that combines structural, biological, and ecological concepts to construct living structures for erosion, sediment, and flood control.

"Commission" means the Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

"Emergency" means a situation in which a structure, facility or property is in imminent or potential danger following a flood event or natural disaster and by definition includes those situations which qualify for assistance as part of the Department of Agriculture's Natural Resources Conservation Service (NRCS) Emergency Watershed Protection Program.

"Emergency Watershed Protection Program" or "EWP Program" means the program administered by NRCS ~~to assist in relieving imminent hazards to life and property from floods and products of erosion created by natural disasters; and the FS to assist sponsors, landowners, and operators in implementing emergency recovery measures to relieve imminent hazards to life and property created by a natural disaster that causes a sudden impairment of a watershed.~~ The authority for the EWP Program is given to NRCS in § 216, P. L. 81-516, and § 403 of Title IV of the Agriculture Credit Act of 1978, P. L. 95-334. Codified rules are set forth in 7 CFR Part 624. The FS is designated to administer the EWP Program on National Forest System Lands.

~~"Exigency" means a situation which presents an immediate threat of damage to life or property. An exigency situation continues to exist as long as the probability of damage continues at such a high level those situations that demand immediate action to avoid potential loss of life or property, including situations where a second event may occur shortly thereafter that could compound the impairment, cause new damage or the potential loss of life if action to remedy the situation is not taken immediately.~~

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"FS" means the USDA Forest Service that is authorized to administer the EWP Program on National Forest Service System Lands.

"NRCS" means the Natural Resources Conservation Service, which is the federal agency under the U.S. Department of Agriculture delegated to administer the Emergency Watershed Protection (EWP) Program.

"Public utility emergency response activities" means activities to address the integrity of a utility structure or necessary repairs thereto in the event of imminent danger or risk of failure.

"Waterway or stream restoration" means those activities normally associated with natural channel design concepts including, but not limited to, in-stream rock and log grade structures, current deflecting structures, dam removal, channel realignment, filling of scour holes, and bank plantings that are also intended to improve water quality.

4VAC20-395-30. Authority and applicability.

A. Prior to the enactment of § 28.2-1207 C, the Code of Virginia ~~provides~~ provided no mechanism for the emergency authorization of projects requiring permits from the Marine Resources Commission that are designed to protect public or private property or safeguard public health and safety involving encroachments in, on, or over state-owned submerged beds. While the commission has entered into a an interagency Memorandum of Understanding (MOU) with the Department of Agriculture's Natural Resources Conservation Service (NRCS) to expedite permit issuance for exigency projects under the Emergency Watershed Protection Program, the process does not eliminate the need for the commission's required public interest review and comment period. Furthermore, there was no expedited mechanism to authorize projects that are designed to improve water quality, restore waterways or streams for water quality improvement, or facilitate emergency response activities related to existing public utility infrastructures in nontidal waterways with drainage areas greater than five square miles or with flow rates greater than five cubic feet per second where project impacts are minimal. The commission, as stipulated in its Subaqueous Guidelines, does not assume regulatory jurisdiction in nontidal waterways with drainage areas less than five square miles or with flow rates less than five cubic feet per second.

B. This general permit provides ~~a streamlined public interest review process~~ authorization for projects that are deemed necessary in an emergency ~~or which that~~ will result in improved water quality ~~with only minor impacts~~ in waterways with drainage areas greater than five square miles or flow rates greater than five cubic feet per second, ~~or that are public utility emergency response activities.~~

C. Experience has shown that the types of projects covered by this general permit (i) are necessary in emergency

situations or (ii) would improve water quality while improving habitat and result in only minor impact. In addition, these types or classes of projects would normally be expected to receive an individual commission permit following the ~~normal~~ standard public interest review.

D. This general permit is valid only for projects which result in encroachments over state-owned submerged lands in nontidal waterways.

4VAC20-395-40. Conditions and procedures for issuing general permits.

A. The commissioner or his designee, Chief, Habitat Management Division, will oversee administration of the provisions of the general permit.

B. To qualify for this general permit the permittee must notify the commissioner or his designee and provide the following information in such notification:

1. Name, address and telephone number of the prospective permittee;
2. Location of the proposed project, including vicinity map;
3. Brief description of the proposed project or emergency repairs, including methods of work, and the project purpose;
4. A plan view and cross section view of the proposed project or emergency repairs, including dimensions;
5. Location, and design, if applicable, of the disposal area for any excavated material; and
6. A description of the location, extent, and type of wetlands and/or waters to be impacted by the proposed work.

C. An approved Local, State, Federal Joint Permit Application (Joint Permit Application) may be used for this notification. Otherwise, ~~or an~~ abbreviated General Permit No. 5-Application 6 Notification Form must be completed and filed in accordance with the instructions contained therein. The notification for EWP projects shall include the damage survey report for each project site prepared by NRCS or the FS. Multiple sites in a county or city may be included in a single notification from the project sponsor for EWP projects in response to an emergency following a flood event or natural disaster. The ~~application~~ notification shall be submitted to the ~~Marine Resources Commission~~ commission. The commission will assign a processing number and forward copies to the U.S. Army Corps of Engineers and the Department of Environmental Quality for concurrent ~~processing~~ review. Copies will also be forwarded to the ~~Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, and the Department of Historic Resources~~ ~~for review and comment. If an agency does not respond within 10~~

~~working days, the commission will presume the agency has no comment on the proposed activity.~~

~~C. D.~~ If the proposed project does not satisfy the conditions of this general permit, or should the commissioner determine that the environmental impacts and the natural resource issues are estimated to be more than minimal, or there are unresolved objections by other state agencies, the permittee will be notified and the proposed project will be processed for an individual commission permit.

~~D. E.~~ If the project qualifies for the general permit, the commissioner will so notify the permittee within 30 days of receipt of all necessary information. In addition, the commission's public notice requirement shall be waived and no other fees shall be required.

~~E. F.~~ The commissioner is empowered to issue the general permit under will apply for any of the following conditions:

~~1. a.~~ The project is part of the Emergency Watershed Protection (EWP) Program and is being conducted in accordance with all applicable Emergency Watershed Protection Program standards for exigency projects in response to an emergency following a flood event or natural disaster; and has met the conditions of the interagency Memorandum of Understanding (MOU) regarding EWP Program activities in Virginia in effect at the time. b. The project is covered qualifies under the U.S. Army Corps of Engineers Nationwide Permit No. 37 Program (33 CFR Part 230) or a Norfolk District Corps of Engineers Regional permit, and qualifies for Department of Environmental Quality (DEQ) 401 Certification. Projects that address exigency situations under the EWP Program may be initiated immediately upon submittal of notification to the commission provided the damage survey report prepared by NRCS, and included with such notification, specifies the situation qualities as an exigency. Only those actions reasonably necessary to address the exigency situation shall be conducted prior to receipt of notification from the commissioner that the project qualifies for this general permit.

2. The project is for an activity conducted in response to a Declaration of Emergency by the Governor of Virginia due to the effects of natural disasters that is necessary to address immediate health and safety needs when such activity can be authorized by the commission pursuant to an Executive Order issued in response to a natural disaster.

3. The project is a for stream bank restoration, generally including bioengineered approaches and livestock crossings or for waterway or stream restorations that meets the following requirements:

a. The project has been designed, funded, or approved implemented by one or more of the following agencies: Natural Resources Conservation Service, Department of Conservation and Recreation, Soil and Water

Conservation District, Department of Game and Inland Fisheries, Department of Forestry, or U.S. Fish and Wildlife Service, or U.S. Forest Service.

b. The project is conducted in accordance with the terms and conditions of a the binding agreement, if applicable, between the landowner and the oversight agency indicated in subdivision 4 3 a of this subsection with such agreement including provisions for maintenance of the project; and

c. The project is covered qualifies under the U.S. Army Corps of Engineers Nationwide Permit Program (33 CFR Part 230) or qualifies for a Regional Permit No. 40 authorized by the Norfolk District of the U.S. Army Corps of Engineers, and qualifies for Department of Environmental Quality (DEQ) 401 Certification.

4. The project is necessary to conduct public utility emergency response activities related to existing public utility infrastructures. Such projects may be initiated immediately upon submittal of notification to the commission provided such notification contains a certification from the owner/operator responsible for the utility infrastructure that the integrity of the utility structure is in imminent danger or risk of failure. Only those actions reasonably necessary to address the imminent danger or risk of failure shall be conducted prior to receipt of notification from the commissioner that the project qualifies for this general permit.

~~3. 5.~~ The project is for the replacement of a previously existing and previously serviceable structure or facility located on state-owned submerged land that has been damaged or lost due to a flood event or natural disaster.

~~F. Any general permit authorized by this regulation is valid for one year from the date of issuance. If the project has not been commenced within that time, a reapplication and evaluation will be required.~~

G. Upon a determination that a proposed project could significantly impact water quality, aquatic resources or other properties, the commissioner may determine that this general permit does not apply and require that an individual Marine Resources Commission permit be processed.

H. This general permit does not authorize any rechannelization; channel widening, deepening, or straightening channelization; levee construction; or water withdrawal. This general permit does not authorize any projects that will impede the migration or other movements of aquatic life.

I. This general permit will be reevaluated by the commission two years following July 1, 1998.

J. All proposals in nontidal waterways that (i) are necessary in an emergency, (ii) will result in improved water quality, (iii) are for waterway or stream restoration activities, or (iv)

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will facilitate emergency response activities related to existing public utility infrastructures that encroach in, on or over state-owned subaqueous land and that meet the criteria in subdivisions F 1 through F 5 are hereby approved subject to the following conditions:

1. This permit grants no authority to the permittee to encroach upon property rights, including riparian rights, of others.

2. The duly authorized agents of the commission shall have the right to enter upon the premises at reasonable times, for the purposes of inspecting the work being done pursuant to this permit.

3. The permittee shall comply with the water quality standards established by the Department of Environmental Quality and all other applicable laws, ordinances, rules and regulations affecting the conduct of this project. The granting of this permit shall not relieve the permittee of the responsibility of obtaining any and all other permits or authorizations required for this project.

4. The permit shall not affect or interfere with the right vouchsafed to the people of Virginia concerning fishing, and fowling in and from the waters not included within the terms of this permit.

5. The permittee shall, to the greatest extent practicable, minimize adverse impacts of the project on adjacent properties and wetlands and upon the natural resources of the Commonwealth.

6. This permit may be revoked at any time by the commission upon the failure of the permittee to comply with the terms and conditions hereof or at the will of the General Assembly of Virginia.

7. The issuance of this permit does not confer upon the permittee any interest or title to the beds of the nontidal waters impacted.

8. All structures authorized by this permit that are not maintained in good repair shall be completely removed from state-owned bottom within 30 days after receiving notification by the commission or its designated representatives.

9. The permittee, excepting local governments and federal agencies, agrees to indemnify and save harmless the Commonwealth of Virginia from any liability arising from the establishment, operation, or maintenance of said project. Applicable federal law shall apply to federal agencies. Applicable Virginia law shall apply to localities.

10. This permit authorizes no claim to archaeological artifacts that may be encountered during the construction or operation of the project. If, however, archaeological remains are encountered, the permittee agrees to notify the commission, who will, in turn, notify the Virginia

Department of Historic Resources. The permittee further agrees to cooperate with agencies in the recovery of archaeological remains if deemed necessary.

11. This general permit and commission notification shall be retained by the permittee for the life of the project as evidence of authorization.

12. Projects authorized under this general permit shall be completed within one year from the date of notification. Upon proper request by the permittee, the permit may be extended to allow completion of the work authorized.

VA.R. Doc. No. R09-1924; Filed May 4, 2009, 4:55 p.m.

Emergency Regulation

Title of Regulation: 4VAC20-560. Pertaining to Shellfish Management Areas (amending 4VAC20-560-40).

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: May 1, 2009, through May 30, 2009.

Agency Contact: Jane Warren, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Preamble:

The regulation changes the open season for the harvest of clams by patent tong from the Newport News Shellfish Management Area from December 1 through April 30 to December 1 through May 30.

4VAC20-560-40. Patent tong season.

A. The lawful season for the harvest of clams by patent tong from the York River Shellfish Management Area shall be August 15 through November 30.

B. The lawful season for the harvest of clams by patent tong from the Poquoson River Shellfish Management Area shall be March 15 through May 1.

C. The lawful season for the harvest of clams by patent tong from the Back River Shellfish Management Area shall be January 1 through March 31.

D. It shall be unlawful for any person to harvest clams by patent tong from either the York River, Poquoson River, or Back River Shellfish Management Area except as provided in subsections A, B, and C of this section.

E. The lawful season for the harvest of clams by patent tong from the Newport News Shellfish Management Area shall be December 1 through ~~April 30~~ May 30, except that if the catch of clams per tong-hour for the previous season is less than 174 clams per tong-hour, the lawful season shall be December 1 through March 31.

F. It shall be unlawful for any person to harvest clams by patent tong from the Newport News Shellfish Management Area from ~~May 1~~ May 31 through November 30, except that if the catch of clams per tong-hour for the previous season is less than 174 clams per tong-hour, it shall be unlawful for any person to harvest clams by patent tong from the Newport News Shellfish Management Area from April 1 through November 30.

VA.R. Doc. No. R09-1949; Filed April 29, 2009, 10:59 a.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4VAC20-1210. Pertaining to a Blue Crab Sanctuary (adding 4VAC20-1210-10, 4VAC20-1210-20, 4VAC20-1210-30).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 30, 2009.

Agency Contact: Jane Warren, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

This chapter establishes a closed season for the harvest of crabs in the area described and defined in § 28.2-709 of the Code of Virginia as the blue crab sanctuary. This chapter makes it unlawful for any person to take or catch crabs for commercial purpose from the defined blue crab sanctuary area from May 1 through September 15.

CHAPTER 1210

PERTAINING TO A BLUE CRAB SANCTUARY

4VAC20-1210-10. Purpose.

The purpose of this chapter is to establish open seasons in that area described by § 28.2-709 of the Code of Virginia as a blue crab sanctuary and as described in 4VAC20-1210-20 A for the harvest of crabs for commercial purposes during the lawful crabbing season described in 4VAC20-1040 that pertains to the licensed use of crab pot, peeler pot, crab scrape, crab trap, ordinary trot line, patent trot line, and dip net. Section 28.2-709 of the Code of Virginia authorizes the commission to establish periods of time for the harvest of crabs in this sanctuary.

4VAC20-1210-20. Open seasons and description of blue crab sanctuary.

A. The limits of the blue crab sanctuary area are defined as follows: beginning at the point of origin of the center line of the Hampton Roads Bridge Tunnel facility where such facility commences in the City of Norfolk, Virginia, and following the shoreline in a general easterly direction, and also extending 200' out from the mean low-water mark of such shoreline into the Chesapeake Bay, to Harrison's fishing pier, Ocean View, and thence in a general northerly direction to Thimble Shoal Lighthouse; thence running in approximately a northeasterly direction to Cape Charles Lighthouse, located on Smiths Island; and thence in approximately a southwestern direction to Cape Henry Lighthouse, and bounded by the shoreline; and thence following the shoreline in a general westerly direction back to the point of beginning.

B. It shall be unlawful for any person to take or catch crabs for commercial purposes from the area described in subsection A of this section, except from March 17 through April 30 and September 16 through November 30 of the lawful crabbing season described in 4VAC20-1040 that pertains to the licensed use of crab pot, peeler pot, crab scrape, crab trap, ordinary trot line, patent trot line, and dip net.

4VAC20-1210-30. Penalty.

As set forth in § 28.2-709 of the Code of Virginia, a violation of this chapter is a Class 3 misdemeanor.

VA.R. Doc. No. R09-1940; Filed April 29, 2009, 10:54 a.m.



TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Fast-Track Regulation

Title of Regulation: 8VAC20-521. Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Teaching Hours (amending 8VAC20-521-60).

Statutory Authority: §§ 22.1-16 and 22.1-98 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 June 29, 2009.

Effective Date: July 15, 2009.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy and Communications, Department of Education, Post Office

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Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, or email margaret.roberts@doe.virginia.gov.

Basis: Section 22.1-16 of the Code of Virginia provides that "The Board of Education may adopt bylaws for its own governance and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title." Additionally, § 22.1-98 of the Code of Virginia prescribes the legal requirements that are the basis for this regulation.

Purpose: The regulation requires local school division superintendents to certify by April 15 of each school year that they have read and complied with the provisions of the regulations and are implementing a plan for making up any missed time that has not been waived in accordance with the regulations.

Currently, the Virginia Department of Education requires local school boards and superintendents to submit several reports and certifications throughout the school year. In an effort to make the system of reporting and certifying more effective and efficient, many of the reports and certifications are available online and may be completed and sent to the department via electronic mail. In a further effort to assist both the school superintendents and department staff, some of these reports and certifications are being combined. This proposal will permit the certification required by this regulation to be added to the Collection of Data Relative to Compliance with the Standards of Quality and Other Certifications, which is due by the end of May each year.

Rationale for Using Fast-Track Process: This revision is noncontroversial in nature. It does not require any additional reporting and, in fact, permits local school divisions to combine the certification already required by this regulation with another certification that is required by the end of May each year. It should, therefore, have a positive administrative impact on local school divisions.

Substance: This regulation requires local school divisions to certify by April 15 of each year that they have read and complied with the provisions of the regulation and are implementing a plan for making up any missed time that has not been waived in accordance with the regulations. The proposed amendment to these regulations is to revise the language of 8VAC20-521-60 that states "shall certify by April 15 of each school year" to "shall certify annually, at a time and in a form prescribed by the Virginia Department of Education." This revision will permit this certification to be added to the Collection of Data Relative to Compliance with the Standards of Quality and Other Certifications, which is due by the end of May each year.

Issues: There are no disadvantages to the public or the Commonwealth. The primary advantage of this regulatory action is that school divisions will be able to combine this

certification requirement with another certification requirement by answering one additional question. It should have a positive administrative impact on local school divisions. It will also have a positive impact at the state level because of the increased efficiency in determining compliance with this certification at the same time compliance with the other certification requirements is determined.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The current Regulations Governing Reduction of State Aid When Length of School Terms Below 180 Teaching Days or 990 Teaching Hours require local school division superintendents to certify by April 15 of each school year that they have read and complied with the provisions of the regulations and are implementing a plan for making up any missed time that has not been waived in accordance with the regulations. The Virginia Department of Education (Department) requires local school boards and superintendents to submit several reports and certifications throughout the school year. In an effort to make the system of reporting and certifying more effective and efficient, many of the reports and certifications are available online and may be completed and sent to the department via electronic mail. In a further effort to assist both the school superintendents and department staff, some of these reports and certifications are being combined. The Board of Education (Board) proposes to revise the language of 8 VAC 20-521-60 that states "shall certify by April 15 of each school year" to "shall certify annually, at a time and in a form prescribed by the Virginia Department of Education." This revision will permit this certification to be added to the Collection of Data Relative to Compliance with the Standards of Quality and Other Certifications, which is due by the end of May each year.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. As stated above, the Board proposes to amend the current requirement that local school division superintendents certify by April 15 of each school year that they have read and complied with the provisions of the regulations and are implementing a plan for making up any missed time that has not been waived to state that the superintendants must certify annually, at a time and in a form prescribed by the Virginia Department of Education that they have read and complied with the provisions of the regulations and are implementing a plan for making up any missed time that has not been waived. According to the Department in practice once this revision is made the local school divisions will be given additional time (the end of May rather than April 15) to make the certification. Thus, local divisions benefit and the Department still receives the information

when needed. Therefore the proposed amendment creates benefit without cost.

Businesses and Entities Affected. The proposed amendments affect the 132 school divisions in the Commonwealth, as well their students and staff.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendment will not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendment will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendment will not significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendment does not create adverse impact for small businesses.

Real Estate Development Costs. The proposed amendment does not significantly affect real estate development costs.

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, § 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.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the economic impact analysis done by the Department of Planning and Budget. The agency will continue to examine the economic and administrative impact of the regulations as

they progress through the Administrative Process Act process.

Summary:

The amendment changes the annual certification requirement imposed on local school divisions from April 15 to annually, at a time prescribed by the Department of Education.

8VAC20-521-60. Administration.

A. The Virginia Department of Education shall annually notify local school divisions of the provisions of these regulations and the Code of Virginia regarding reductions in the length of the school term.

B. Local school division superintendents shall certify ~~by April 15 of each school year~~ annually, at a time and in a form prescribed by the Virginia Department of Education, that they have read and complied with these provisions and are implementing a plan for making up any missed time that has not been waived in accordance with these regulations.

VA.R. Doc. No. R09-1659; Filed May 6, 2009, 10:48 a.m.

Fast-Track Regulation

Title of Regulation: 8VAC20-650. Regulations Governing the Determination of Critical Teacher Shortage Areas (amending 8VAC20-650-30).

Statutory Authority: §§ 22.1-16 and 22.1-290.01 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 June 29, 2009.

Effective Date: July 15, 2009.

Agency Contact: Dr. Pat Burgess, Teacher Education Program Specialist, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2096, or email pat.burgess@doe.virginia.gov.

Basis: Section 22.1-290.01 of the Code of Virginia establishes the Virginia Teaching Scholarship Loan Program and stipulates that the board may promulgate such regulations as may be necessary for the implementation of the program. The Board of Education administers the Virginia Teaching Scholarship Loan Program (VTSLP) to support teacher candidates in the critical teaching shortage areas.

The Virginia Teaching Scholarship Loan Program is authorized in Chapter 879, 2008-2010 Appropriation Act of the General Assembly.

Purpose: The proposed amendments to the existing Regulations Governing the Virginia Teaching Scholarship Loan Program Requirements and Selection Procedures

Regulations

(8VAC20-650-30) include expanding the eligibility criteria to include students in an approved teacher education program leading to an endorsement in career and technical education. The purpose of the proposed amendment is to align the Board of Education regulation with the requirements of the Code of Virginia, as amended by the 2008 General Assembly.

The proposed action has no impact on the health, safety, or welfare of citizens.

Pursuant to § 22.1-290.01 of the Code of Virginia, the program shall consist of scholarships awarded annually to teacher candidates, including graduate students and paraprofessionals from Virginia school divisions at an accredited public or private four-year institution of higher education in the Commonwealth. The goal of the proposed action is to enable students in an approved teacher education program leading to an endorsement in career and technical education to receive the teaching scholarship loan.

Rationale for Using Fast-Track Process: The Administrative Process Act (APA) provides for expedited rulemaking for regulatory actions that are expected to be noncontroversial. The regulation as proposed is expected to be noncontroversial since there is minimal to no fiscal or administrative impact on the local school divisions or on the Department of Education.

Substance: The proposed amendments to the existing regulation expand 8VAC20-650-30 (entitled Virginia Teaching Scholarship Loan Program Requirements and Selection Procedures) to enable students in an approved teacher education program leading to an endorsement in career and technical education to receive the teaching scholarship loan.

Issues: The purpose of the regulation amendment is to align with the amendments to the Code of Virginia. There are no known disadvantages to the public, the regulated entities, business entities, or the Commonwealth. The advantage will be the authorization to award such teaching scholarships to an expanded base of eligible students.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Teaching Scholarship Loan Program consists of scholarships awarded annually to teacher candidates, including graduate students and paraprofessionals from Virginia school divisions at a regionally accredited public or private four-year institution of higher education in the Commonwealth, who (i) are enrolled full time or part time in an approved teacher education program or are participants in another approved teacher education program; (ii) have maintained a cumulative grade point average of at least 2.7 on a 4.0 scale or its equivalent; and (iii) are nominated for such scholarship by the institution where they are enrolled. Under the current regulations candidates must meet one or more of the following criteria: (a) be enrolled in a program leading to

an endorsement in a critical shortage area as established by the Board of Education; (b) be a male teacher candidate in an elementary or middle school education program; or (c) be a minority teacher candidate enrolled in any teacher endorsement area. Pursuant to Chapters 48 and 141 of the 2008 Virginia Acts of Assembly, the Board of Education proposes to add "be a student in an approved teacher education program leading to an endorsement in career and technical education" as a fourth criterion under which candidates can qualify.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. According to the Department of Education, career and technical education has been designated a critical shortage area since 2003. Thus in practice the proposal to add "be a student in an approved teacher education program leading to an endorsement in career and technical education" as a fourth criterion under which candidates can qualify for the Virginia Teaching Scholarship Loan Program will initially have no impact. If at some point in the future career and technical education were to no longer be designated a critical shortage area, then the proposed fourth criterion would enable students in such endorsement programs to continue to be eligible.

Businesses and Entities Affected. The proposed amendment potentially affects teacher candidates, teacher education programs, and the 132 school divisions in the Commonwealth.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposal amendment is unlikely to significantly effect employment.

Effects on the Use and Value of Private Property. The proposed amendment is unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendment is unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendment is unlikely to significantly affect small businesses.

Real Estate Development Costs. The proposed amendment is unlikely to significantly affect real estate development costs.

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, § 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.

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

Summary:

The amendments expand the eligibility criteria for the Virginia Teaching Scholarship Loan Program to enable students in an approved teacher education program leading to an endorsement in career and technical education to receive the teaching scholarship loan.

8VAC20-650-30. Virginia Teaching Scholarship Loan Program requirements and selection procedures.

A. Annually, the teacher preparation institutions in Virginia that have approved teacher preparation programs shall be invited to nominate individuals to receive loans through the Virginia Teaching Scholarship Loan Program subject to available appropriations.

B. The Virginia Teaching Scholarship Loan Program shall consist of scholarships awarded annually to teacher candidates, including graduate students and paraprofessionals from Virginia school divisions at a regionally accredited public or private four-year institution of higher education in the Commonwealth, who (i) are enrolled full time or part time in an approved teacher education program or are participants in another approved teacher education program; (ii) have maintained a cumulative grade point average of at least 2.7 on a 4.0 scale or its equivalent; and (iii) are nominated for such scholarship by the institution where they are enrolled. In addition, the candidates must meet one or more of the following criteria: (a) be enrolled in a program leading to an

endorsement in a critical shortage area as established by the Board of Education; (b) be a male teacher candidate in an elementary or middle school education program; ~~or~~ (c) be a minority teacher candidate enrolled in any teacher endorsement area; or (d) be a student in an approved teacher education program leading to an endorsement in career and technical education.

C. A selection panel appointed by the Superintendent of Public Instruction may be convened if the number of Teacher Education Program recommendations for scholarships exceed the appropriations. The panel shall select recipients for the teaching scholarship loan from the eligible applicants. Efforts should be made to have an appropriate distribution of scholarships among the identified critical teacher shortage areas.

VA.R. Doc. No. R09-1731; Filed May 6, 2009, 10:47 a.m.



TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming an exemption 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 Air Pollution Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC5-20. General Provisions (amending 9VAC5-20-21).**

9VAC5-30. Ambient Air Quality Standards (amending 9VAC5-30-15, 9VAC5-30-80).

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 108, 109 and 302 of the Clean Air Act; 40 CFR Parts 50, 53 and 58.

Effective Date: June 24, 2009.

Agency Contact: Karen G. Sabasteanski, Policy Analyst, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Summary:

9VAC5-30 contains the national ambient air quality standards (NAAQS) for the specific criteria pollutants set out in 40 CFR Part 50. Incorporation of the NAAQS into

Regulations

the state regulations is necessary to provide a legally enforceable means by which the state prepares attainment and maintenance plans, and determines whether a new source will affect the NAAQS. The standard for lead was revised to add a new standard of 0.15 parts per million (ppm).

9VAC5-20-21. Documents incorporated by reference.

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR (2008) in effect July 1, 2008. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the central office of the Department of Environmental Quality, Eighth Floor, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.
 - a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.
 - (1) 40 CFR Part 50-National Primary and Secondary Ambient Air Quality Standards.

(a) Appendix A -- Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

(b) Appendix B -- Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(c) Appendix C -- Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(d) Appendix D -- Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(e) Appendix E -- Reserved.

(f) Appendix F -- Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(g) Appendix G -- Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(h) Appendix H -- Interpretation of the National Ambient Air Quality Standards for Ozone.

(i) Appendix I -- Interpretation of the 8-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.

(j) Appendix J -- Reference Method for the Determination of Particulate Matter as PM₁₀ in the Atmosphere.

(k) Appendix K -- Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(l) Appendix L - Reference Method for the Determination of Fine Particulate Matter as PM_{2.5} in the Atmosphere.

(m) Appendix M - Reserved.

(n) Appendix N - Interpretation of the National Ambient Air Quality Standards for PM_{2.5}.

(o) Appendix O - Reference Method for the Determination of Coarse Particulate Matter as PM in the Atmosphere.

(p) Appendix P - Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

(q) Appendix Q - Reference Method for the Determination of Lead in Suspended Particulate Matter as PM₁₀ Collected from Ambient Air.

(r) Appendix R - Interpretation of the National Ambient Air Quality Standards for Lead.

(2) 40 CFR Part 51 -- Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Appendix M -- Recommended Test Methods for State Implementation Plans.

(a) Appendix S -- Emission Offset Interpretive Ruling.

(b) Appendix W -- Guideline on Air Quality Models (Revised).

(c) Appendix Y - Guidelines for BART Determinations Under the Regional Haze Rule.

(3) 40 CFR Part 58 -- Ambient Air Quality Surveillance.

Appendix A - Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring.

(4) 40 CFR Part 60 -- Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Sources).

(5) 40 CFR Part 61 -- National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9VAC5-60-60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(6) 40 CFR Part 63 -- National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(7) 40 CFR Part 59, Subpart D-National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A -- "Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings."

(8) 40 CFR Part 64, Compliance Assurance Monitoring.

(9) 40 CFR Part 72, Permits Regulation.

(10) 40 CFR Part 73, Sulfur Dioxide Allowance System.

(11) 40 CFR Part 74, Sulfur Dioxide Opt-Ins.

(12) 40 CFR Part 75, Continuous Emission Monitoring.

(13) 40 CFR Part 76, Acid Rain Nitrogen Oxides Emission Reduction Program.

(14) 40 CFR Part 77, Excess Emissions.

(15) 40 CFR Part 78, Appeal Procedures for Acid Rain Program.

(16) 40 CFR Part 59 Subpart C, National Volatile Organic Compound Emission Standards for Consumer Products.

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 783-3238.

2. U.S. Environmental Protection Agency.

a. The following documents from the U.S. Environmental Protection Agency are incorporated herein by reference:

(1) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

(2) Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, stock number 055-000-00500-1, 1995; Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number 055-000-00565, 1997; Supplement C, stock number 055-000-00587-7, 1997; Supplement D, 1998; Supplement E, 1999.

b. Copies of the document identified in subdivision E 2 a (1) of this subdivision, and Volume I and Supplements A through C of the document identified in subdivision E 2 a (2) of this subdivision, may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; phone 1-800-553-6847. Copies of Supplements D and E of the document identified in subdivision E 2 a (2) may be obtained online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/chief/ap42/index.html> <http://www.epa.gov/ttn/index.html>.

3. U.S. government.

a. The following document from the U.S. government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 512-1800.

4. American Society for Testing and Materials (ASTM).

a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

(1) D323-99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."

(2) D97-96a, "Standard Test Method for Pour Point of Petroleum Products."

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- (3) D129-00, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)."
- (4) D388-99, "Standard Classification of Coals by Rank."
- (5) D396-98, "Standard Specification for Fuel Oils."
- (6) D975-98b, "Standard Specification for Diesel Fuel Oils."
- (7) D1072-90(1999), "Standard Test Method for Total Sulfur in Fuel Gases."
- (8) D1265-97, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)."
- (9) D2622-98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry."
- (10) D4057-95(2000), "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."
- (11) D4294-98, "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy."
- (12) D523-89, "Standard Test Method for Specular Gloss" (1999).
- (13) D1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products" (2002).
- (14) D1640-95, "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature" (1999).
- (15) E119-00a, "Standard Test Methods for Fire Tests of Building Construction Materials" (2000).
- (16) E84-01, "Standard Test Method for Surface Burning Characteristics of Building Construction Materials" (2001).
- (17) D4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films" (1998).
- (18) D86-01, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (2001).
- (19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).
- (20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).
- (21) D3912-95, "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants" (reapproved 2001).
- (22) D4082-02, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants."

b. Copies may be obtained from: American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; phone (610) 832-9585.

5. American Petroleum Institute (API).

a. The following document from the American Petroleum Institute is incorporated herein by reference: Evaporative Loss from Floating Roof Tanks, API MPMS Chapter 19, April 1, 1997.

b. Copies may be obtained from: American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005; phone (202) 682-8000.

6. American Conference of Governmental Industrial Hygienists (ACGIH).

a. The following document from the ACGIH is incorporated herein by reference: 1991-1992 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (ACGIH Handbook).

b. Copies may be obtained from: ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, Ohio 45240; phone (513) 742-2020.

7. National Fire Prevention Association (NFPA).

a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

(1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition.

(2) NFPA 30, Flammable and Combustible Liquids Code, 2000 Edition.

(3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.

b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101; phone (617) 770-3000.

8. American Society of Mechanical Engineers (ASME).

a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.

(1) ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1-1964 (R1991).

(2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).

- (3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.
- b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016; phone (800) 843-2763.
9. American Hospital Association (AHA).
- a. The following document from the American Hospital Association is incorporated herein by reference: An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, 1993.
- b. Copies may be obtained from: American Hospital Association, One North Franklin, Chicago, IL 60606; phone (800) 242-2626.
10. Bay Area Air Quality Management District (BAAQMD).
- a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:
- (1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).
- (2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).
- b. Copies may be obtained from: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, phone (415) 771-6000.
11. South Coast Air Quality Management District (SCAQMD).
- a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:
- (1) Method 303-91, "Determination of Exempt Compounds," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (3) Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).
- b. Copies may be obtained from: South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, phone (909) 396-2000.
12. California Air Resources Board (CARB).
- a. The following documents from the California Air Resources Board are incorporated herein by reference:
- (1) Test Method 510, "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).
- (2) Test Method 511, "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).
- (3) Test Method 512, "Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).
- (4) Test Method 513, "Determination of Permeation Rate for Spill-Proof Systems" (July 6, 2000).
- (5) Test Method 310 (including Appendices A and B), "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products" (July 18, 2001).
- (6) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, § 94503.5 (2003).
- (7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2, §§ 94509 and 94511 (2003).
- (8) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 4, §§ 94540-94555 (2003).
- b. Copies may be obtained from: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, phone (906) 322-3260 or (906) 322-2990.
13. American Architectural Manufacturers Association.
- a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:
- (1) Voluntary Specification 2604-02, "Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels" (2002).
- (2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).
- b. Copies may be obtained from: American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, phone (847) 303-5664.
14. American Furniture Manufacturers Association.

Regulations

VA.R. Doc. No. R09-1759; Filed May 4, 2009, 1:06 p.m.

a. The following document from the American Furniture Manufacturers Association is incorporated herein by reference: Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (January 2001).

b. Copies may be obtained from: American Furniture Manufacturers Association, P.O. Box HP-7, High Point, NC 27261; phone (336) 884-5000.

9VAC5-30-15. Reference conditions.

All measurements of air quality that are expressed as mass per unit volume (e.g., micrograms per cubic meter) other than for the particulate matter (PM_{2.5}) standards contained in 9VAC5-30-65 and 9VAC5-30-66 and lead standards contained in 9VAC5-30-80 shall be corrected to a reference temperature of 25°C and a reference pressure of 760 millimeters of mercury (1,013.2 millibars). Measurements of PM_{2.5} for purposes of comparison to the standards contained in 9VAC5-30-65 and 9VAC5-30-66 and of lead for purposes of comparison to the standards contained in 9VAC5-30-80 shall be reported based on actual ambient air volume measured at the actual ambient temperature and pressure at the monitoring site during the measurement period.

9VAC5-30-80. Lead.

A. The primary and secondary ambient air quality standard for lead and its compounds is 1.5 micrograms per cubic meter, maximum arithmetic mean averaged over a calendar quarter, measured as elemental lead by a reference method based on Appendix G of 40 CFR Part 50, or by an equivalent method.

~~B. Lead and its compounds shall be measured as elemental lead by the reference method based on Appendix G of 40 CFR Part 50, or other method designated as such, or by an equivalent method. The standards set forth in subsection A of this section shall remain applicable to all areas notwithstanding the ambient air quality standard in subsection C of this section. The lead standard set forth in subsection A of this section shall no longer apply to an area one year after the effective date of the designation of that area, pursuant to § 107 of the federal Clean Air Act, for the lead ambient air quality standard set forth in subsection C of this section.~~

C. The primary and secondary ambient air quality standard for lead and its compounds is 0.15 micrograms per cubic meter, maximum arithmetic mean averaged over a three-month period, measured as lead either by (i) a reference method based on Appendix G of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53; or (ii) an equivalent method designated in accordance with 40 CFR Part 53. The primary and secondary ambient air quality standards for lead are met when the maximum arithmetic three-month mean concentration for a three-year period, as determined in accordance with Appendix R of 40 CFR Part 50, is less than or equal to 0.15 micrograms per cubic meter.

Final Regulation

<p>REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Air Pollution Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.</p>
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Title of Regulation: **9VAC5-80. Permits for Stationary Sources (amending 9VAC5-80-1170).**

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

Effective Date: June 24, 2009.

Agency Contact: Karen G. Sabasteanski, Policy Analyst, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Summary:

The regulation has been revised to indicate that, for permits subject to § 10.1-1307.01 of the Code of Virginia, comments will be accepted by the board for at least 15 days after any hearing, unless the board votes to shorten the period.

9VAC5-80-1170. Public participation.

A. No later than 15 days after receiving the initial determination notification required under 9VAC5-80-1160 A, the applicant for a permit for a major stationary source or a major modification shall notify the public of the proposed major stationary source or major modification in accordance with subsection B of this section.

B. The public notice required by subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the following:

1. The source name, location, and type;
2. The pollutants and the total quantity of each which the applicant estimates will be emitted, and a brief statement of the air quality impact of such pollutants;
3. The control technology proposed to be used at the time of the publication of the notice; and
4. The name and telephone number of a contact person, employed by the applicant, who can answer questions about the proposed source.

C. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public to that required in subsections A and B of this section.

D. Prior to the decision of the board, permit applications as specified below shall be subject to a public comment period of at least 30 days. At the end of the public comment period, a public hearing shall be held in accordance with subsection E of this section.

1. Applications for stationary sources of hazardous air pollutants requiring a case-by-case maximum achievable control technology determination under Article 3 (9VAC5-60-120 et seq.) of 9VAC5 Chapter 60.

2. Applications for major stationary sources and major modifications.

3. Applications for stationary sources which have the potential for public interest concerning air quality issues, as determined by the board in its discretion. The identification of such sources may be made using the following nonexclusive criteria:

- a. Whether the project is opposed by any person;
- b. Whether the project has resulted in adverse media;
- c. Whether the project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and
- d. Whether the project has generated adverse comment by a local official, governing body or advisory board.

4. Applications for stationary sources for which any provision of the permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by subdivisions 1 and 2 of the GEP definition. The demonstration specified in subdivision 3 of the GEP definition must be available during the public comment period.

E. When a public comment period and public hearing are required, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing. Written For permits subject to § 10.1-1307.01 of the Code of Virginia, written comments will be accepted by the board for at least 15 days after any hearing, unless the board votes to shorten the period.

1. Information on the permit application (exclusive of confidential information under 9VAC5-170-60), as well as the preliminary review and analysis and preliminary

determination of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

F. Following the initial publication of the notice required under subsection E of this section, the board will receive written requests for direct consideration of the application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:

1. The name, mailing address, and telephone number of the requester.
2. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person).
3. The reason why direct consideration by the board is requested.
4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial or revision of the permit in question.
5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

G. The board will review any request made under subsection F of this section, and will take final action on the request as provided in 9VAC5-80-1160 C.

H. In order to facilitate the efficient issuance of permits under Articles 1 (9VAC5-80-50 et seq.) and 3 (9VAC5-80-360 et seq.) of this part, upon request of the applicant the board shall process the permit application under this article using public participation procedures meeting the

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requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.

VA.R. Doc. No. R09-1813; Filed May 4, 2009, 1:07 p.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 9 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-151. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity (amending 9VAC25-151-10, 9VAC25-151-40 through 9VAC25-151-290, 9VAC25-151-310 through 9VAC25-151-370).**

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

Effective Date: June 24, 2009.

Agency Contact: Burton R. Tuxford, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4086, FAX (804) 698-4032, or email brtuxford@deq.virginia.gov.

Summary:

This regulation will reissue the existing general permit for industrial activity storm water discharges that will expire on June 30, 2009. The proposed permit was based generally on EPA's proposed 2006 Multi-Sector General Permit (MSGP). Changes have been made based upon EPA's final 2008 MSGP, comments received from the general public, EPA, and department staff. The substantive changes between the proposed and final regulation can be found in 9VAC25-151-10, 9VAC25-151-50, 9VAC25-151-60, and 9VAC25-151-70 and are as follows:

1. 9VAC25-151-10 (Definitions). Added definitions for "existing discharger," "impaired water," and "total maximum daily load," and restored the definitions for "large and medium MS4" and "small MS4."

2. 9VAC25-151-50 B (Authorization to Discharge - Limitations on Coverage).

a. Restored the "water quality standards" (subdivision 3 b) and the TMDL subdivision 3 d, in response to public comments.

b. Added a new subdivision e for new dischargers (i.e., those without VPDES permit coverage for their storm water discharges) discharging to impaired waters without an established and approved TMDL, and explaining what those facilities had to do to be allowed to be covered under the general permit.

c. Added a sentence to subdivision f clarifying how the department will address proposed discharges to high quality waters (Tier II) and exceptional waters (Tier III).

3. 9VAC25-151-60 (Registration Statement and SWPPP).

a. Subsection A. Changed the requirement that existing permittees who intend to continue coverage under this general permit need to review and update their SWPPP to meet any new permit requirements prior to submitting their registration statement. Since the general permit reissuance process is taking longer than anticipated, existing permittees will not have time to update their SWPPP prior to the June 30 deadline to submit registration statements. Changed the requirement to allow existing permittees until October 1 to review and update their SWPPP. New facilities will still have to have their SWPPP developed and implemented prior to submitting their registration statement.

b. Subsection B. Restored subdivision 5, which requires additional notification by the applicant for discharges to MS4s.

c. Subsection C. Changed the requirement that existing permitted facilities submit the site map from the permit SWPPP (as revised by this issuance) with the registration statement. Since the general permit reissuance process is taking longer than anticipated, existing permittees must now submit the site map as soon as possible, but not later than October 1, 2009.

d. Added a new subsection F stating that the department will post all registration statements received to the agency's public website for 30 days prior to the department granting coverage under the general permit.

4. 9VAC25-151-70 (General Permit).

a. Part I A 1 c (Compliance Monitoring For Discharges Subject To Numerical Effluent Limitations or Discharges to Impaired Waters).

(1) Added subdivision (d) to section I A 1 c (3) (Facilities Discharging to Impaired Waters With an Established and Approved TMDL), which allows facilities to discontinue the TMDL monitoring after the first four monitoring periods (subject to department approval) if the pollutant subject to the TMDL is not detected in any of the samples.

(2) Added subdivision (4) (Facilities Discharging to Impaired Waters Without an Established and Approved TMDL) to section I A 1 c, which outlines the monitoring requirements for facilities discharging to these waters. Facilities must monitor once during the monitoring period (essentially annually) for all the pollutants that are causing the impairment. Facilities may be waived from further monitoring if the pollutant is not present in their discharge, or the presence is due solely to natural background conditions. Monitoring must be submitted annually on a DMR to the Department.

b. Part I A 4 (Reporting Monitoring Results).

(1) Changed the monitoring due dates from January 30 or July 30 to January 10 or July 10 to be consistent with the agency's standard requirement.

(2) Restored subdivision (b) related to additional reporting for facilities that discharge through an MS4.

c. Part I A 5 (Corrective Actions).

(1) Added a sentence to Part I A 5 a (1) (Data Exceeding Benchmark Concentration Values) that allows a facility extra time if construction is necessary to implement BMPs that are added in response to the required SWPPP evaluation. Also added this provision into the Part I A 5 b (3) (Corrective Actions) subsection.

(2) Added Part I A 5 a (2), which allows a facility to forgo corrective action for benchmark exceedances where the exceedance is due to natural background conditions.

d. Part I B 6 (Salt storage piles). Deleted the 24-hour 25-year storm event requirement for sizing the basin required to contain salt contaminated runoff, and added that the facility may also use above ground or below ground storage tanks to contain the waste, or may dispose of the runoff through a sanitary sewer.

e. Part I B 8 (Water Quality Protection). Added several sentences from EPA's final 2008 Multi-Sector General Permit (MSGP) requiring the permittee to control discharges as necessary to meet applicable water quality standards, and indicating that it is expected that compliance with the conditions of this permit will control discharges as necessary to meet applicable water quality standards.

f. Part I B 10 (Antidegradation Requirements for New or Increased Discharges to High Quality Waters). Added this special condition to discuss how new or expanded discharges from a facility may be subject to additional SWPPP control measures, or may require that the facility apply for an individual permit in order to meet the applicable antidegradation requirements.

g. Part II B 2 (Retention of Records). Modified the records retention requirement to require that records be kept for three years following the date that coverage under this permit expires or is terminated to be consistent with EPA's final 2008 MSGP.

h. Part III A 1 (Deadlines for Plan Preparation and Compliance - Facilities That Were Covered Under the 2004 General Permit). Changed the requirement that existing permittees who are continuing coverage under this permit need to review and update their SWPPP to meet any new permit requirements prior to submitting their registration statement. Since the general permit reissuance process is taking longer than anticipated, the existing permittees will not have time to update their SWPPP prior to the June 30 deadline to submit registration statements. Changed the requirement to allow existing permittees until October 1, 2009, to review and update their SWPPP.

i. Part III B 6 (Contents of the Plan - Storm Water Controls).

(1) Added a title to Part III B 6 b ("Control Measures (Non-numeric Technology-based Effluent Limits)") to be consistent with EPA's final 2008 MSGP.

(2) Added a requirement to Part III B 6 b (5) (Routine Facility Inspections) that at least once each calendar year the routine facility inspection shall be conducted during a period when a storm discharge is occurring.

j. Part III C (Maintenance). Changed the documentation requirements for maintenance activities to be consistent with EPA's final 2008 MSGP.

k. Part III D (Nonstorm Water Discharges). Deleted Part III D 3 that required all nonstorm water discharges to be subject to all the provisions of this permit, to be consistent with changes EPA made for their final 2008 MSGP.

l. Part III E (Comprehensive Site Compliance Evaluation).

(1) Deleted the requirement that at least one member of the pollution prevention team participate in the comprehensive site compliance evaluation, and added a statement that the personnel conducting the evaluations may be either facility employees or outside constituents hired by the facility.

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(2) *Changed Part III E 1 h (Certification of Outfall Evaluation for Unauthorized Discharges) from a certification to an annual evaluation. Deleted the Part III E 1 h (2) notification requirement and replaced it with an allowance for the permittee to request approval from the department to be able to evaluate 20% of their outfalls annually on a rotating basis such that all outfalls are evaluated over the permit term.*

(3) *Restored Part III E 4 that allows the facility to use the annual site compliance evaluation to serve as one of the facility's routine inspections where the two schedules overlap.*

m. Part III F (Signature and Plan Review). Modified Part III F 1 (Signature/Location) to be consistent with the changes EPA made for their final 2008 MSGP.

n. Part IV - Sector Specific Permit Requirements. Deleted the additional benchmark monitoring that was added based upon changes EPA was proposing in their draft 2006 MSGP. EPA dropped the additional monitoring for their final 2008 MSGP, so the department also deleted the additional EPA-based monitoring. However, the benchmark monitoring that was added based on recommendations from the Technical Advisory Committee that assisted the department with the drafting of this permit was retained (that monitoring is in Sectors N, P, R, S, U, and AD).

9VAC25-151-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the VPDES Permit Regulation (9VAC25-31) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

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

"Coal pile runoff" means the rainfall runoff from or through any coal storage pile.

"Colocated industrial activity" means when a facility has industrial activities being conducted on-site that are described under more than one of the industrial sectors of 9VAC25-151-90 through [~~9VAC25-151-380~~ 9VAC25-151-370].

"Commercial treatment and disposal facilities" means facilities that receive, on a commercial basis, any produced hazardous waste (not their own) and treat or dispose of those wastes as a service to the generators. Such facilities treating

or disposing exclusively residential hazardous wastes are not included in this definition.

"Control measure" means any best management practice or other method (including effluent limitations) used to prevent or reduce the discharge of pollutants to surface waters.

["Existing discharger" means an operator applying for coverage under this permit for discharges authorized previously under a VPDES general or individual permit.

"Impaired water" means a water is impaired for purposes of this chapter if it has been identified by Virginia pursuant to § 303(d) of the Clean Water Act as not meeting applicable water quality standards (these waters are called "water quality limited segments" under 40 CFR 30.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.]

"Inactive landfill" means a landfill that, on a permanent basis, will no longer receive waste and has completed closure in accordance with any applicable federal, state, or local requirements.

"Industrial activity" - the following categories of facilities are considered to be engaging in "industrial activity":

(1) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (~~2002~~) (2007) (except facilities with toxic pollutant effluent standards which are exempted under category (10) of this definition);

(2) Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget (OMB) SIC Manual, 1987);

(3) Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) (~~2002~~) (2007) because the performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not

being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

(4) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.);

(5) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this ~~definition~~ definition, and debris/wastes from Department of Conservation and Recreation Virginia Stormwater Management Program (VSMP) regulated construction activities/sites) including those that are subject to regulation under Subtitle D of RCRA;

(6) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification Codes 5015 and 5093 (OMB SIC Manual, 1987);

(7) Steam electric power generating facilities, including coal handling sites;

(8) Transportation facilities classified as SIC Codes 40, 41, 42 (except 4221-4225), 43, 44, 45, and 5171 (OMB SIC Manual, 1987) which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operation, airport deicing operation, or which are otherwise identified under categories 1 through 7 or 9 and 10 of this definition are associated with industrial activity;

(9) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that is located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved POTW pretreatment program under 9VAC25-31. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 9VAC25-31-420 through 9VAC25-31-720;

(10) Facilities under SIC Codes 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225 (OMB SIC Manual, 1987).

"Industrial storm water" means storm water runoff associated with the definition of "storm water discharge associated with industrial activity."

"Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

["Large and medium municipal separate storm sewer system" means all municipal separate storm sewers that are located in the following municipalities: the City of Norfolk; the City of Virginia Beach; Fairfax County; the City of Chesapeake; the City of Hampton; Prince William County; Arlington County; Chesterfield County; Henrico County; the City of Newport News; and the City of Portsmouth.]

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters of the state; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW).

"No exposure" means all industrial materials or activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Section 313 water priority chemicals" means a chemical or chemical categories which: (i) are listed at 40 CFR 372.65 ~~(2002)~~ (2007) pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986) (42 USC § 11001 et seq.); (ii) are present at or above threshold levels at a facility subject to EPCRA § 313 reporting requirements; and (iii) that

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meet at least one of the following criteria: (a) are listed in Appendix D of 40 CFR Part 122 (~~2002~~) (2007) on either Table II (Organic priority pollutants), Table III (Certain metals, cyanides and phenols) or Table V (Certain toxic pollutants and hazardous substances); (b) are listed as a hazardous substance pursuant to § 311(b)(2)(A) of the Clean Water Act at 40 CFR 116.4 (~~2002~~) (2007); or (c) are pollutants for which EPA has published acute or chronic water quality criteria.

"Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.); any chemical the facility is required to report pursuant to EPCRA § 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Significant spills" includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 (~~2002~~) (2007) and 40 CFR 117.21 (~~2002~~) (2007)) or § 102 of CERCLA (see 40 CFR 302.4 (~~2002~~) (2007)).

["Small municipal separate storm sewer system" or "Small MS4" means all separate storm sewers that are: (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under subsection 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems, or designated under 9VAC25-31-120 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.]

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of

industries identified in the "industrial activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

["Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations.]

"Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

9VAC25-151-40. Effective date of the permit.

This general permit will become effective on July 1, 2004 2009. This general permit will expire on June 30, 2009 2014.

9VAC25-151-50. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge storm water associated with industrial activity (as defined in this [~~regulation~~] to regulation) to surface waters of the Commonwealth of Virginia provided that the owner files the registration statement of 9VAC25-151-60, pays any fees required by 9VAC25-20, receives a copy of the general permit, and complies with the requirements of 9VAC25-151-70 et seq. and provided that:

1. Facilities with colocated industrial activities on-site shall comply with all applicable effluent limitations, monitoring and pollution prevention plan requirements of each section of 9VAC25-151-70 et seq. in which a colocated industrial activity is described;

2. Storm water discharges associated with industrial activity that are mixed with other discharges (both storm water and nonstorm water) requiring a VPDES permit are authorized by this permit, provided that the owner obtains coverage under this VPDES general permit for the industrial activity discharges, and a VPDES general or individual permit for the other discharges. The owner shall comply with the terms and requirements of each permit obtained that authorizes any component of the discharge;

3. The storm water discharges authorized by this permit may be combined with other sources of storm water which are not required to be covered under a VPDES permit, so long as the combined discharge is in compliance with this permit; and

4. Authorized nonstorm water discharges. The following ~~nonstorm~~ "nonstorm water" discharges are authorized by this permit, ~~provided the nonstorm water component of the facility's discharge is in compliance with 9VAC25-151-70, Part III D 2:~~

- a. Discharges from fire fighting activities;
- b. Fire hydrant flushings;
- c. Potable water including water line flushings;
- d. Uncontaminated air conditioning or compressor condensate (excluding air compressors);
- e. Irrigation drainage;
- f. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with manufacturer's instructions;
- g. Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed);
- h. Routine external building wash down that does not use detergents;
- i. Uncontaminated ground water or spring water;
- j. Foundation or footing drains where flows are not contaminated with process materials ~~such as solvents;~~ and
- k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

B. Limitations on coverage.

1. The owner shall not be authorized to discharge under this general permit if the owner has been required to obtain an individual permit pursuant to 9VAC25-31-170 B;

2. The owner shall not be authorized by this general permit to discharge to state waters specifically named in other board regulations or policies which prohibit such discharges;

3. The following storm water discharges associated with industrial activity are not authorized by this permit:

a. Discharges that are located at a facility where a VPDES permit has been terminated (other than at the request of the permittee) or denied;

[b. Discharges that the director determines cause, or may reasonably be expected to cause, or be contributing to a violation of a water quality standard;

c. ~~b.] Discharges subject to storm water effluent limitation guidelines, not described under 9VAC25-151-90 et seq. 9VAC25-151-70, Table 70-2; [and~~

d.] ~~Discharges to waters for which a "total maximum daily load" (TMDL) allocation has been established by the board and approved by EPA unless the storm water pollution prevention plan (SWPPP) developed by the owner incorporates measures and controls that are consistent with the assumptions and requirements of such TMDL. The SWPPP must incorporate any conditions applicable to discharges from the facility that are necessary for consistency with the assumptions and requirements of the TMDL. If a specific numeric wasteload allocation has been established that would apply to discharges from the facility, the owner must incorporate that allocation into the SWPPP and implement necessary steps to meet that allocation; and [Discharges to waters for which a "total maximum daily load" (TMDL) allocation has been established by the board and approved by EPA prior to the term of this permit, unless the owner develops, implements, and maintains a storm water pollution prevention plan (SWPPP) that is consistent with the assumptions and requirements of the TMDL. This only applies where the facility is a source of the TMDL pollutant of concern. The SWPPP shall specifically address any conditions or requirements included in the TMDL that are applicable to discharges from the facility. If the TMDL establishes a specific numeric wasteload allocation that applies to discharges from the facility, the owner shall implement BMPs designed to meet that allocation;~~

e. New dischargers that discharge to impaired waters for which a TMDL has not been established by the board and approved by EPA unless:

(1) The discharger prevents all exposure to stormwater of the pollutant(s) for which the waterbody is impaired, and retains documentation of the procedures taken to prevent exposure onsite with the SWPPP required by 9VAC25-151-70;

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(2) The discharger documents that the pollutant(s) for which the waterbody is impaired is not present at the site, and retains documentation of this finding with the SWPPP required by 9VAC25-151-70; or

(3) Prior to submitting a registration statement, the discharger provides to the appropriate DEQ regional office data to support a showing that the discharge is not expected to cause or contribute to an exceedance of a water quality standard. The discharger shall provide data and other technical information to the regional office sufficient to demonstrate that the discharge of the pollutant for which the water is impaired will meet in-stream water quality criteria at the point of discharge to the waterbody. The discharges from the facility are authorized under this permit if the discharger receives an affirmative determination from the regional office that the discharges will not contribute to the existing impairment. The discharger shall maintain the supporting data and the regional office determination onsite with the SWPPP required by 9VAC25-151-70; and]

e. [e, f.] Discharges that do not comply with Virginia's antidegradation policy for water quality standards under 9VAC25-260-5 et seq. are not authorized by this permit 9VAC25-260-30. [If authorization to discharge under this general permit will not comply with the antidegradation requirements, an individual permit application may be required to allow a discharge that meets the requirements for high quality waters in 9VAC25-260-30 A 2, or permits may be denied to meet the requirements for exceptional waters in 9VAC25-260-30 A 3.]

4. Facilities covered. Permit eligibility is limited to discharges from facilities in the "sectors" of industrial activity based on Standard Industrial Classification (SIC) codes and Industrial Activity codes summarized in Table 50-1. References to "sectors" in this permit refer to these sectors.

5. Storm water discharges associated with construction activity that are regulated under the Department of Conservation and Recreation VSMP permit program are not authorized by this permit.

TABLE 50-1.
SECTORS OF INDUSTRIAL ACTIVITY COVERED BY
THIS PERMIT.

SIC Code or Activity Code	Activity Represented
Sector A: Timber Products	
2411	Log Storage and Handling (Wet deck storage areas are only authorized if no chemical additives are used in the spray water or

	applied to the logs).
2421	General Sawmills and Planning Mills.
2426	Hardwood Dimension and Flooring Mills.
2429	Special Product Sawmills, Not Elsewhere Classified.
2431-2439 (except 2434 - see Sector W)	Millwork, Veneer, Plywood, and Structural Wood.
2441, 2448, 2449	Wood Containers.
2451, 2452	Wood Buildings and Mobile Homes.
2491	Wood Preserving.
2493	Reconstituted Wood Products.
2499	Wood Products, Not Elsewhere Classified.
Sector B: Paper and Allied Products	
2611	Pulp Mills.
2621	Paper Mills.
2631	Paperboard Mills.
2652-2657	Paperboard Containers and Boxes.
2671-2679	Converted Paper and Paperboard Products, Except Containers and Boxes.
Sector C: Chemical and Allied Products	
2812-2819	Industrial Inorganic Chemicals.
2821-2824	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Manmade Fibers Except Glass.
2833-2836	Medicinal Chemicals and Botanical Products; Pharmaceutical Preparations; In Vitro and In Vivo Diagnostic Substances; Biological Products, Except Diagnostic Substances.
2841-2844	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations.
2851	Paints, Varnishes, Lacquers,

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	Enamels, and Allied Products.	3341	Secondary Smelting and Refining of Nonferrous Metals.
2861-2869	Industrial Organic Chemicals.	3351-3357	Rolling, Drawing, and Extruding of Nonferrous Metals.
2873-2879	Agricultural Chemicals.	3363-3369	Nonferrous Foundries (Castings).
2891-2899	Miscellaneous Chemical Products.	3398, 3399	Miscellaneous Primary Metal Products.
3952 (limited to list)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints and Artist's Watercolors.	Sector G: Metal Mining (Ore Mining and Dressing)	
Sector D: Asphalt Paving and Roofing Materials and Lubricants		1011	Iron Ores.
2951, 2952	Asphalt Paving and Roofing Materials.	1021	Copper Ores.
2992, 2999	Miscellaneous Products of Petroleum and Coal.	1031	Lead and Zinc Ores.
Sector E: Glass Clay, Cement, Concrete, and Gypsum Products		1041, 1044	Gold and Silver Ores.
3211	Flat Glass.	1061	Ferroalloy Ores, Except Vanadium.
3221, 3229	Glass and Glassware, Pressed or Blown.	1081	Metal Mining Services.
3231	Glass Products Made of Purchased Glass.	1094, 1099	Miscellaneous Metal Ores.
3241	Hydraulic Cement.	Sector H: Coal Mines and Coal Mining Related Facilities	
3251-3259	Structural Clay Products.	1221-1241	Coal Mines and Coal Mining-Related Facilities.
3261-3269	Pottery and Related Products.	Sector I: Oil and Gas Extraction and Refining	
3271-3275 (except 3273) 3274, 3275	Concrete, Gypsum and Plaster Products, Except: <u>Concrete Block and Brick</u> ; <u>Concrete Products, Except Block and Brick</u> ; and <u>Ready-mixed Concrete Facilities (SIC 3271-3273)</u> .	1311	Crude Petroleum and Natural Gas.
3281	Cut Stone and Stone Products	1321	Natural Gas Liquids.
3291-3299	Abrasive, Asbestos, and Miscellaneous Non-metallic Mineral Products.	1381-1389	Oil and Gas Field Services.
Sector F: Primary Metals		2911	Petroleum Refineries.
3312-3317	Steel Works, Blast Furnaces, and Rolling and Finishing Mills.	<u>Sector J: Mineral Mining and Dressing Facilities (SIC 1411-1499) are not authorized under this permit.</u>	
3321-3325	Iron and Steel Foundries.	Sector K: Hazardous Waste Treatment, Storage, or Disposal Facilities	
3331-3339	Primary Smelting and Refining of Nonferrous Metals.	HZ	Hazardous Waste Treatment Storage or Disposal.
Sector G: Metal Mining (Ore Mining and Dressing)		Sector L: Landfills and Land Application Sites	
1011	Iron Ores.	LF	Landfills, Land Application Sites, and Open Dumps.
1021	Copper Ores.	Sector M: Automobile Salvage Yards	
1031	Lead and Zinc Ores.	5015	Automobile Salvage Yards.
1041, 1044	Gold and Silver Ores.	Sector N: Scrap Recycling Facilities	
1061	Ferroalloy Ores, Except Vanadium.	5093	Scrap Recycling Facilities.
1081	Metal Mining Services.	4499 (limited to list)	Dismantling Ships, Marine Salvaging, and Marine Wrecking - Ships For Scrap
1094, 1099	Miscellaneous Metal Ores.		

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Sector O: Steam Electric Generating Facilities		Sector V: Textile Mills, Apparel, and Other Fabric Product Manufacturing, Leather and Leather Products	
SE	Steam Electric Generating Facilities.	2211-2299	Textile Mill Products.
Sector P: Land Transportation and Warehousing		2311-2399	Apparel and Other Finished Products Made From Fabrics and Similar Materials.
4011, 4013	Railroad Transportation.	3131-3199 (except 3111 - see Sector Z)	Leather and Leather Products, except Leather Tanning and Finishing.
4111-4173	Local and Highway Passenger Transportation.	Sector W: Furniture and Fixtures	
4212-4231	Motor Freight Transportation and Warehousing.	2434	Wood Kitchen Cabinets.
4311	United States Postal Service.	2511-2599	Furniture and Fixtures.
5171	Petroleum Bulk Stations and Terminals.	Sector X: Printing and Publishing	
Sector Q: Water Transportation		2711-2796	Printing, Publishing, and Allied Industries.
4412-4499 (except 4499 facilities as specified in Sector N)	Water Transportation.	Sector Y: Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries.	
Sector R: Ship and Boat Building or Repairing Yards		3011	Tires and Inner Tubes.
3731, 3732	Ship and Boat Building or Repairing Yards.	3021	Rubber and Plastics Footwear.
Sector S: Air Transportation		3052, 3053	Gaskets, Packing, and Sealing Devices and Rubber and Plastics Hose and Belting.
4512-4581	Air Transportation Facilities.	3061, 3069	Fabricated Rubber Products, Not Elsewhere Classified.
Sector T: Treatment Works		3081-3089	Miscellaneous Plastics Products.
TW	Treatment Works.	3931	Musical Instruments.
Sector U: Food and Kindred Products		3942-3949	Dolls, Toys, Games and Sporting and Athletic Goods.
2011-2015	Meat Products.	3951-3955 (except 3952 facilities as specified in Sector C)	Pens, Pencils, and Other Artists' Materials.
2021-2026	Dairy Products.	3961, 3965	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal.
2032-2038	Canned, Frozen and Preserved Fruits, Vegetables and Food Specialties.	3991-3999	Miscellaneous Manufacturing Industries.
2041-2048	Grain Mill Products.	Sector Z: Leather Tanning and Finishing	
2051-2053	Bakery Products.	3111	Leather Tanning, Currying and Finishing.
2061-2068	Sugar and Confectionery Products.		
2074-2079	Fats and Oils.		
2082-2087	Beverages.		
2091-2099	Miscellaneous Food Preparations and Kindred Products.		
2111-2141	Tobacco Products.		

Sector AA: Fabricated Metal Products	
3411-3499	Fabricated Metal Products, Except Machinery and Transportation Equipment.
3911-3915	Jewelry, Silverware, and Plated Ware
Sector AB: Transportation Equipment, Industrial or Commercial Machinery	
3511-3599 (except 3571-3579 - see Sector AC)	Industrial and Commercial Machinery (Except Computer and Office Equipment).
3711-3799 (except 3731, 3732 - see Sector R)	Transportation Equipment (Except Ship and Boat Building and Repairing).
Sector AC: Electronic, Electrical, Photographic, and Optical Goods	
3571-3579	Computer and Office Equipment.
3612-3699	Electronic, Electrical Equipment and Components, Except Computer Equipment.
3812-3873	Measuring, Analyzing and Controlling Instrument; Photographic and Optical Goods.
Sector AD: Nonclassified Facilities/Storm Water Discharges Designated By the Board As Requiring Permits	
N/A	Other Storm Water Discharges Designated By the Board As Needing a Permit [(see 9VAC 25-31-120 A 1 e) (see 9VAC25-31-120 A 1 c)] or Any Facility Discharging Storm Water Associated With Industrial Activity Not Described By Any of Sectors A-AC.
	Note: Facilities may not elect to be covered under Sector AD. Only the Director may assign a facility to Sector AD.

C. Conditional exclusion for no exposure. If an owner is covered by this permit, but later is able to file a no exposure certification to be excluded from permitting under 9VAC25-31-120 [F E], the owner is no longer authorized by nor required to comply with this permit. If the owner is no longer required to have permit coverage due to a no exposure exclusion, the owner is not required to submit a notice of termination.

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

9VAC25-151-60. Registration statement and Storm Water Pollution Prevention Plan (SWPPP).

A. ~~Deadlines for submitting registration statement.~~ The owner of a facility with storm water discharges associated with industrial activity who is proposing to be covered by this general permit shall ~~file submit~~ a ~~complete and accurate~~ VPDES general permit registration statement in accordance with this chapter. [~~The owner shall prepare and implement a written SWPPP for the facility in accordance with the general permit (9VAC25-151-70 et seq.) prior to submitting the registration statement.~~] Owners of facilities that were covered under the 2004 Industrial Storm Water General Permit who intend to continue coverage under this general permit shall review and update the SWPPP to meet all provisions of the general permit (9VAC25-151-70 et seq.) [~~prior to submitting the registration statement by October 1, 2009.~~ Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit who wish to obtain coverage under this general permit shall prepare and implement a written SWPPP for the facility in accordance with the general permit (9VAC25-151-70 et seq.) prior to submitting the registration statement].

B. Deadlines for submitting registration statement.

1. Existing facilities.

a. Owners of facilities that were covered under the ~~1999~~ 2004 Industrial Storm Water General Permit who intend to continue coverage under this general permit shall submit a complete registration statement [~~during the 90-day period~~] prior to July 1, ~~2004~~ 2009.

b. Owners of facilities previously covered by an expiring individual permit for storm water discharges associated with industrial activity may elect to be covered under this general permit by [~~notifying the department at least 180 days prior to the expiration date of the individual permit, and~~] submitting a complete registration statement ~~during the 90-day period~~ at least 30 days prior to the expiration date of the individual permit [~~, but not before April 2, 2004 [2009]~~].

c. Owners of existing facilities, not currently covered by a VPDES permit, who intend to obtain coverage under this general permit for storm water discharges associated with industrial activity shall submit a complete registration statement [~~by July 1, 2004 [2009]~~].

2. New facilities. Owners of new facilities who wish to obtain coverage under this general permit shall submit a complete registration statement at least ~~two~~ 30 days prior

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to the commencement of the industrial activity at the facility.

3. New owners of existing facilities. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility ~~must~~ shall submit a complete registration statement or a "Change of Ownership" form within 30 days of the ownership change.

4. Late notifications. An owner of a storm water discharge associated with industrial activity is not precluded from submitting a registration statement after the applicable dates provided in ~~9VAC25-151-60~~ A subdivisions 1 through 3 of this subsection. If a late registration statement is submitted, the owner is only authorized for discharges that occur after permit coverage is granted. The department reserves the right to take appropriate enforcement actions for any unpermitted discharges.

[5. Additional notification for discharges to municipal separate storm sewer systems. Where the discharge of storm water associated with industrial activity is through a municipal separate storm sewer system (MS4), the owner shall notify the operator of the municipal system receiving the discharge and submit a copy of their registration statement to the municipal system operator.]

~~B.~~ C. Registration statement contents. The registration statement shall contain the following information:

1. Name, mailing address, email address (where available), and telephone number of the ~~owner applying for permit coverage~~;

a. Property owner of the site;

b. Operator applying for permit coverage (if different than subdivision 1 a of this subsection);

c. Responsible party requesting permit coverage, and who will be legally responsible for compliance with this permit;

2. Name (or other identifier), address, county, contact name, email address (where available), and phone number for the facility for which the registration statement is submitted;

3. Facility ownership status: federal, state, public or private;

4. ~~Name~~ Name(s) of the receiving water(s) that storm water is discharged into;

5. A statement indicating if storm water runoff is discharged to a municipal separate storm sewer system (MS4). Provide the name of the MS4 operator if applicable;

6. VPDES permit numbers for all permits assigned to the facility (including coverage under the ~~1999~~ 2004 Industrial Storm Water General Permit);

7. An indication as to whether this facility discharges storm water runoff from coal storage piles;

~~8. An indication as to whether a storm water pollution prevention plan has been prepared in accordance with the requirements of 9VAC25-151-80 et seq.;~~

~~9. A topographic map or other map that indicates the location of the facility, the location of all storm water discharges, the water body receiving discharge(s) and other surface water bodies within a 1/2 mile radius of the facility~~ 8. A copy of the SWPPP general location map and the SWPPP site map prepared in accordance with 9VAC25-151-80 B 2 b and c (general permit Part III B 2 b and c) and any applicable sector-specific site map requirements. Owners covered under the 2004 Industrial Storm Water General Permit shall update their site map to meet all requirements listed in 9VAC25-151-80 B 2 c (general permit Part III B 2 c) and any applicable sector-specific site map requirements [, and shall submit the map to the department as soon as practicable, but not later than October 1, 2009];

~~10.~~ 9. Identification of up to four 4-digit Standard Industrial Classification (SIC) Codes or 2-letter Industrial Activity Codes that best represent the principal products or services rendered by the facility and major colocated activities (2-letter Industrial Activity Codes are: HZ – hazardous waste treatment, storage, or disposal facilities; LF – landfills/disposal facilities that receive or have received any industrial wastes; SE – steam electric power generating facilities; or, TW – treatment works treating domestic sewage);

~~11.~~ 10. Identification of all applicable sectors in this permit (as designated in Table 50-1) that cover the discharges associated with industrial activity from the facility and major colocated activities to be covered under this permit, and the storm water outfalls associated with each industrial sector; ~~and~~.

a. If the facility is a landfill (sector L), indicate the type of landfill (MSWLF (municipal solid waste landfill), CDD (construction debris/demolition), or other), and which outfalls (if any) receive contaminated storm water runoff.

b. If the facility is a timber products operation (sector A), indicate which outfalls receive discharges from wet decking areas;

~~12.~~ 11. The following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to

the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

[~~E.~~ D.] The registration statement shall be signed in accordance with 9VAC25-151-70, Part II K.

[~~D.~~ E.] Where to submit. The registration statement shall be submitted to the DEQ regional office serving the area where the industrial facility is located.

[F. A facility's registration statement will be posted to the department's public website for 30 days prior to the department granting the facility general permit coverage.]

9VAC25-151-65. Termination of permit coverage.

A. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination ~~shall~~ may be filed ~~within 30 days~~ after one or more of the following conditions have been met:

1. Operations have ceased at the facility and there are no longer discharges of storm water associated with industrial activity from the facility.
2. A new owner has assumed responsibility for the facility (NOTE: A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement form has been submitted); or
3. All storm water discharges associated with industrial activity have been covered by an individual VPDES permit.

B. The notice of termination shall contain the following information:

1. Owner's name, mailing address and telephone number;
2. Facility name and location;
3. VPDES Industrial storm water general permit number;
4. The basis for submitting the notice of termination, including:
 - a. A statement indicating that a new owner has assumed responsibility for the facility;
 - b. A statement indicating that operations have ceased at the facility and there are no longer discharges of storm water associated with industrial activity from the facility;
 - c. A statement indicating that all storm water discharges associated with industrial activity have been covered by an individual VPDES permit; or
 - d. A statement indicating that termination of coverage is being requested for another reason (state the reason).
5. The following certification: "I certify under penalty of law that all storm water discharges associated with

industrial activity from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual permit, or that I am no longer the owner of the industrial activity, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity in accordance with the general permit, and that discharging pollutants in storm water associated with industrial activity to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

C. The notice of termination shall be signed in accordance with 9VAC25-151-70, Part II K.

D. Where to submit. The notice of termination shall be submitted to the DEQ regional office serving the area where the industrial facility is located.

9VAC25-151-70. General permit.

Any owner whose registration statement is accepted by the director will receive the following general permit and shall comply with the requirements therein and be subject to the VPDES Permit Regulation, 9VAC25-31. Facilities with colocated industrial activities shall comply with all applicable monitoring and pollution prevention plan requirements of each industrial activity sector of this chapter in which a colocated industrial activity is described. All pages of 9VAC25-151-70 and 9VAC25-151-80 apply to all storm water discharges associated with industrial activity covered under this general permit. Not all pages of 9VAC25-151-90 et seq. will apply to every permittee. The determination of which pages apply will be based on an evaluation of the regulated activities located at the facility.

General Permit No.: VAR05
 Effective Date: July 1, ~~2004~~ 2009
 Expiration Date: June 30, ~~2009~~ 2014

GENERAL PERMIT FOR STORM WATER DISCHARGES
 ASSOCIATED WITH INDUSTRIAL ACTIVITY
 AUTHORIZATION TO DISCHARGE UNDER THE
 VIRGINIA POLLUTANT DISCHARGE ELIMINATION
 SYSTEM AND THE VIRGINIA STATE WATER
 CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of facilities with storm water discharges associated with industrial activity are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those

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waters specifically named in board regulation or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I-Effluent Limitations, Monitoring Requirements and Special Conditions, Part II-Conditions Applicable to All VPDES Permits, Part III-Storm Water Pollution Prevention Plan, and Part IV-Sector-Specific Permit Requirements, as set forth herein.

Part I

Effluent Limitations, Monitoring Requirements and Special Conditions

A. Effluent limitations and monitoring requirements.

There are ~~four~~ three individual and separate categories of monitoring requirements ~~and numeric effluent limitations~~ that a facility may be subject to under this permit: (i) quarterly visual monitoring; (ii) benchmark monitoring of discharges associated with specific industrial activities; and (iii) compliance monitoring for discharges subject to numerical effluent limitations. The monitoring requirements and numeric effluent limitations applicable to a facility depend on the types of industrial activities generating storm water runoff from the facility, and for TMDL monitoring, the location of the facility. Part IV of the permit (9VAC25-151-90 et seq.) identifies monitoring requirements applicable to specific sectors of industrial activity. The permittee must shall review Part I A 1 and Part IV of the permit to determine which monitoring requirements and numeric limitations apply to his facility. Unless otherwise specified, limitations and monitoring requirements under Part I A 1 and Part IV are additive.

Sector-specific monitoring requirements and limitations are applied discharge by discharge at facilities with colocated activities. Where storm water from the colocated activities are commingled, the monitoring requirements and limitations are additive. Where more than one numeric limitation for a specific parameter applies to a discharge, compliance with the more restrictive limitation is required. Where monitoring requirements for a monitoring period overlap (e.g., need to monitor TSS one/year for a limit and also one/year for benchmark monitoring), the permittee may use a single sample to satisfy both monitoring requirements.

1. Types of monitoring requirements and limitations.

a. Quarterly visual monitoring. The requirements and procedures for quarterly visual monitoring are applicable to all facilities covered under this permit, regardless of the facility's sector of industrial activity.

(1) The permittee must shall perform and document a quarterly visual examination of a storm water discharge associated with industrial activity from each outfall, except discharges exempted below (Part I A 1 a (2) and (4), and Part I A 3). ~~Unless another schedule is~~

~~established in applicable sectors of Part IV (sections of 9VAC25-151-90 et seq.), the examination(s) must~~ The examination(s) shall be made at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December. The visual examination must shall be made during daylight hours (e.g., normal working hours). If no storm event resulted in runoff from the facility during a monitoring quarter, the permittee is excused from visual monitoring for that quarter provided that documentation is included with the monitoring records indicating that no runoff occurred. The documentation must shall be signed and certified in accordance with Part II K of this permit.

(2) Visual examinations must shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging from the facility. The examination must shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The examination must shall be conducted in a well-lit area. No analytical tests are required to be performed on the samples. All samples (except snowmelt samples) must shall be collected from the discharge resulting from a storm event that [~~is greater than 0.1 inches in magnitude~~ results in an actual discharge from the site (defined as a "measurable storm event"),] and that occurs at least 72 hours from the previously measurable [~~(greater than 0.1 inch rainfall)~~] storm event. The 72-hour storm interval is waived [~~when the preceding measurable storm did not yield a measurable discharge, or~~] if the permittee is able to document that less than a 72-hour interval is representative for local storm events during the sampling period. Where practicable, the same individual ~~should~~ shall carry out the collection and examination of discharges for the entire permit term. If no qualifying storm event resulted in runoff during daylight hours from the facility during a monitoring quarter, the permittee is excused from visual monitoring for that quarter provided that documentation is included with the monitoring records indicating that no qualifying storm event occurred during daylight hours that resulted in storm water runoff during that quarter. The documentation must shall be signed and certified in accordance with Part II K.

(3) The visual examination reports must shall be maintained on-site with the Storm Water Pollution Prevention Plan (SWPPP). The report must shall include the outfall location, the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil

sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(4) Inactive and unstaffed sites: When the permittee is unable to conduct visual storm water examinations at an inactive and unstaffed site, a waiver of the monitoring requirement may be exercised as long as the facility remains inactive and unstaffed, and there are no industrial materials or activities exposed to storm water. If this waiver is exercised, the permittee must shall maintain a certification with the SWPPP stating that the site is inactive and unstaffed, there are no industrial materials or activities exposed to storm water, and that performing visual examinations during a qualifying event is not feasible. The waiver must shall be signed and certified in accordance with Part II K.

(5) Representative outfalls - essentially identical discharges. If the facility has two or more outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, and storm water management practices occurring within the drainage areas of the outfalls, the permittee may conduct visual monitoring on the effluent of just one of the outfalls and report that the [quantitative data observations] also [applies apply] to the substantially identical outfall(s). The permittee shall include the following information in the SWPPP:

- (a) The locations of the outfalls;
- (b) Why the outfalls are expected to discharge substantially identical effluents, including evaluation of monitoring data, where available;
- (c) Estimates of the size of the drainage area (in square feet) for each of the outfalls; and
- (d) An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%).
- (6) If a facility's permit coverage is effective less than one month from the end of a quarterly monitoring period, the first quarterly period starts with the next respective quarterly monitoring period (e.g., if permit coverage begins March 5, the permittee will not need to start quarterly visual monitoring until the April-June quarter).

b. Benchmark monitoring of discharges associated with specific industrial activities.

Table 70-1 identifies the specific industrial sectors subject to the benchmark monitoring requirements of this permit and the industry-specific pollutants of concern. The permittee must shall refer to the tables found in the individual sectors in Part IV (9VAC25-151-90 et seq.) for benchmark monitoring cut-off concentrations

concentration values. Colocated industrial activities at the facility that are described in more than one sector in Part IV must shall comply with all applicable benchmark monitoring requirements from each sector.

The results of benchmark monitoring are primarily for the permittee to use to determine the overall effectiveness of the SWPPP in controlling the discharge of pollutants to receiving waters. Benchmark concentration values, included in Part IV of this permit, are not viewed as effluent limitations. An exceedance Exceedance of a benchmark value concentration does not, in and of itself, constitute a violation of this permit. While exceedance of a benchmark value and does not automatically indicate that violation of a water quality standard has occurred; however, it does signal that modifications to the SWPPP may be are necessary, unless justification is provided in the comprehensive site compliance evaluation (Part III E). In addition, exceedance of benchmark values concentrations may identify facilities that would be more appropriately covered under an individual, or alternative general permit where more specific pollution prevention controls could be required.

TABLE 70-1.
INDUSTRIAL SECTORS SUBJECT TO BENCHMARK MONITORING.

Industry Sector ¹	Industry Sub-sector	Benchmark Monitoring Parameters
A	General Sawmills and Planing Mills	TSS [5 <u>Zinc</u>].
	Wood Preserving Facilities	Arsenic, Chromium, Copper [Phenols, TSS].
	Log Storage and Handling	TSS.
	Hardwood Dimension and Flooring Mills	TSS.
B	Paperboard Mills	BOD [TSS].
C	Industrial Inorganic Chemicals	Aluminum, Iron, [Zinc, TSS,] Total N.
	Plastics, Synthetic Resins, etc.	Zinc [TSS].
	Soaps, Detergents, Cosmetics, Perfumes	Total N, Zinc [TSS].
	Agricultural Chemicals	Total N, Iron, Zinc, Phosphorus [TSS].

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D	Asphalt Paving and Roofing Materials	TSS.	P	<u>Land Transportation and Warehousing</u>	<u>TPH, TSS.</u>
E	Clay Products	Aluminum [<u>z</u> <u>TSS</u>].	Q	Water Transportation Facilities	Aluminum, Iron, Zinc [<u>z</u> <u>TSS</u>].
	Concrete <u>Lime and Gypsum</u> Products	TSS, pH, Iron.	R	<u>Ship and Boat Building or Repairing Yards</u>	<u>TSS.</u>
F	Steel Works, Blast Furnaces, and Rolling and Finishing Mills	Aluminum, Zinc [<u>z</u> <u>TSS</u>].	S	Airports with deicing activities ³	BOD, TKN, pH ₂ , COD, TSS.
	Iron and Steel Foundries	Aluminum, TSS, Copper, Iron, Zinc.	U	<u>Dairy Products.</u>	<u>BOD, TSS.</u>
	Nonferrous Rolling and Drawing	Copper, Zinc [<u>z</u> <u>TSS</u>].		Grain Mill Products	TSS, TKN.
	Nonferrous Foundries (Castings)	Copper, Zinc [<u>z</u> <u>TSS</u>].		Fats and Oils	BOD, Total N, TSS.
G ²	Copper Ore Mining and Dressing	TSS	Y	Rubber Products	Zinc [<u>z</u> <u>Lead</u> , <u>TSS</u>].
H	Coal Mines and Coal-Mining Related Facilities	TSS, Aluminum, Iron	Z	Leather Tanning and Finishing	TKN [<u>z</u> <u>TSS</u>].
[<u>I</u>]	[<u>Oil Refining</u>]	[<u>Lead, Nickel, Zinc, TKN, Total N, TSS</u>]	AA	Fabricated Metal Products Except Coating	Iron, Aluminum, Zinc [<u>z</u> <u>TSS</u>].
K	Hazardous Waste Treatment, Storage or Disposal	TKN, TSS, TOC, Arsenic, Cadmium, Cyanide, Lead, Mercury, Selenium, Silver.		Fabricated Metal Coating and Engraving	Zinc [<u>z</u> <u>TSS</u>].
L	Landfills, Land Application Sites, and Open Dumps	Iron, TSS.	[<u>AC</u>]	[<u>Electronic and Electrical Equipment and Components, except Computers</u>]	[<u>Copper, Lead, TSS</u>].
M	Automobile Salvage Yards	TSS, Aluminum, Iron, Lead.	AD	<u>Nonclassified Facilities/Storm Water Discharges Designated By the Board As Requiring Permits</u>	<u>TSS.</u>
N	Scrap Recycling and Waste Recycling Facilities	Copper, Aluminum, Iron, Lead, Zinc, TSS, Cadmium, Chromium.			
	Ship Dismantling, Marine Salvaging and Marine Wrecking	<u>Aluminum, Cadmium, Chromium, Copper, Iron, Lead, Zinc, TSS.</u>			
O	Steam Electric Generating Facilities	Iron [<u>z</u> <u>TSS</u>].			

¹Table does not include parameters for compliance monitoring under effluent limitations guidelines.

²See Sector G (Part IV G) for additional monitoring discharges from waste rock and overburden piles from active ore mining or dressing facilities, inactive ore mining or dressing facilities, and sites undergoing reclamation.

³Monitoring requirement is for airports with deicing activities that utilize more than 100 tons of urea or more than 100,000 gallons of glycol per year.

(1) (a) If a facility falls within a sector(s) required to conduct benchmark monitoring, monitoring shall be performed at least once during each of the first two, and potentially all, monitoring periods after the facility is granted coverage under the permit. Depending on the

results of two consecutive monitoring periods, benchmark monitoring may not be required to be conducted in subsequent monitoring periods (see Part I A 1 b (2)).

(b) Monitoring periods for benchmark monitoring. Unless otherwise specified in Part IV, the benchmark monitoring period is July 1 to June 30 each year of the permit. If a facility falls within a sector(s) required to conduct benchmark monitoring, monitoring must be performed annually (once per year) during at least the first two, and potentially all, monitoring periods, unless otherwise specified in the sector specific requirements of Part IV. Depending on the results of two consecutive monitoring years, benchmark monitoring may not be required to be conducted in subsequent monitoring years (see subsection (2) below) periods are as follows: (i) July 1, 2009, to December 31, 2009; (ii) January 1, 2010, to December 31, 2010; (iii) January 1, 2011, to December 31, 2011; (iv) January 1, 2012, to December 31, 2012; and, (v) January 1, 2013, to December 31, 2013.

(c) If a facility's permit coverage is effective less than one month from the end of a monitoring period, the facility's first monitoring period starts with the next respective monitoring period (e.g., if permit coverage begins December 5, the permittee will not need to start sampling until the next January-December monitoring period).

(2) Benchmark monitoring waivers for facilities testing below benchmark concentration values. All of the provisions of this subpart are available to permittees except as noted in Part IV. Waivers from benchmark monitoring are available to facilities whose discharges are below benchmark concentration values, thus there is an incentive for facilities to improve the effectiveness of their SWPPPs in eliminating discharges of pollutants and avoid the cost of monitoring. On both a parameter by parameter and on an outfall by outfall basis, sector-specific, Sector-specific benchmark monitoring is not required to be conducted in subsequent monitoring years periods during the term of this permit provided:

(a) Samples were collected in two consecutive monitoring years periods, and all the parameter concentrations were below the applicable benchmark value concentration values in Part IV; and

(b) The facility is not subject to a numeric limitation for that parameter established in Part I A 1 c (~~Coal Pile Runoff~~) (Storm Water Effluent Limitations, Coal Pile Runoff, and TMDL Wasteload Allocations) or Part IV (Sector Specific Permit Requirements); and

(c) A waiver request is submitted to and approved by the department. The waiver request ~~should~~ shall be sent to

the appropriate regional office, along with the supporting monitoring data for two consecutive years monitoring periods, and a certification that, based on current potential pollutant sources and BMPs used, discharges from the facility are reasonably expected to be essentially the same (or cleaner) compared to when the benchmark monitoring for the two consecutive monitoring years periods was done.

Waiver requests will be evaluated by the department based upon: (i) benchmark monitoring results below the benchmark concentration values; (ii) a favorable compliance history (including inspection results); and (iii) no outstanding enforcement actions.

The monitoring waiver may be revoked by the department for just cause. The permittee will be notified in writing that the monitoring waiver is revoked, and that the benchmark monitoring requirements are again in force and will remain in effect until the permit's expiration date.

(3) Samples ~~must~~ shall be collected and analyzed in accordance with Part I A 2 b. For each outfall, one signed Discharge Monitoring Report (DMR) form ~~must~~ shall be maintained on site with the SWPPP submitted to the department for each storm event sampled. Monitoring results ~~must~~ shall be retained in accordance with Part II B.

(4) Inactive and unstaffed sites. If the permittee is unable to conduct benchmark monitoring at an inactive and unstaffed site, a waiver of the monitoring requirement may be exercised as long as the facility remains inactive and unstaffed, and there are no industrial materials or activities exposed to storm water. If the permittee exercises this waiver, a certification ~~must~~ shall be submitted to the department and maintained with the SWPPP stating that the site is inactive and unstaffed, there are no industrial materials or activities exposed to storm water, and that performing benchmark monitoring during a qualifying storm event is not feasible. The waiver ~~must~~ shall be signed and certified in accordance with Part II K.

(5) Representative outfalls - essentially identical discharges. If the facility has two or more outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, and storm water management practices occurring within the drainage areas of the outfalls, the permittee may perform benchmark monitoring on the effluent of just one of the outfalls and report that the quantitative data also applies to the substantially identical outfall(s). The permittee shall include the following information in the SWPPP, and in any DMRs that are required to be submitted to the department:

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- (a) The locations of the outfalls;
- (b) Why the outfalls are expected to discharge substantially identical effluents, including evaluation of monitoring data, where available;
- (c) Estimates of the size of the drainage area (in square feet) for each of the outfalls; and
- (d) An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%).

e. Coal pile runoff.

- (1) Facilities with discharges of storm water from coal storage piles must comply with the limitations and monitoring requirements of Table 70-2 for all discharges containing the coal pile runoff, regardless of the facility's sector of industrial activity. Permittees shall monitor such storm water discharges at least annually (once per year).
- (2) The coal pile runoff must not be diluted with storm water or other flows in order to meet this limitation.
- (3) If a facility is designed, constructed and operated to treat the volume of coal pile runoff that is associated with a 10-year, 24-hour rainfall event, any untreated overflow of coal pile runoff from the treatment unit is not subject to the 50 mg/L limitation for total suspended solids.
- (4) Samples must be collected and analyzed in accordance with Part I A 2 b. Monitoring results must be reported in accordance with Part I A 4 and Part II C, and retained in accordance with Part II B.

TABLE 70-2.
NUMERIC LIMITATIONS FOR COAL PILE RUNOFF.

Parameter	Limit	Monitoring Frequency	Sample Type
Total Suspended Solids (TSS)	50 mg/L, max	1/year	Grab
pH	6.0-9.0 min. and max	1/year	Grab

~~d. c.~~ Compliance monitoring for discharges subject to numerical effluent limitation guidelines [or discharges to impaired waters].

(1) Facilities subject to storm water effluent limitation guidelines.

(a) Facilities subject to storm water effluent limitation guidelines (see Table 70-2) are required to monitor such discharges to evaluate compliance with numerical effluent limitations. Industry-specific numerical limitations and compliance monitoring requirements are described in Part IV of the permit (9VAC25-151-90 et

seq.). Colocated industrial activities at the facility that are described in more than one sector in Part IV ~~must~~ shall comply on a discharge-by-discharge basis with all applicable effluent limitations from each sector.

(b) Permittees shall monitor the discharges for the presence of the pollutant subject to the effluent limitation at least ~~annually (once per year)~~ once during each of the monitoring periods after the facility is granted coverage under the permit. If a facility's permit coverage is effective less than one month from the end of a monitoring period, the facility's first monitoring period starts with the next respective monitoring period (e.g., if permit coverage begins December 5, the permittee will not need to start the effluent limitation monitoring until the next January-December monitoring period).

(c) The monitoring periods for effluent limitation monitoring are as follows: (i) July 1, 2009, to December 31, 2009; (ii) January 1, 2010, to December 31, 2010; (iii) January 1, 2011, to December 31, 2011; (iv) January 1, 2012, to December 31, 2012; and (v) January 1, 2013, to December 31, 2013.

(2) (d) Samples ~~must~~ shall be collected and analyzed in accordance with Part I A 2 b. The representative outfalls provision of Part I A 2 d, the alternative certification provision of Part I A 3 b, and the low concentration waiver of Part I A 1 b(2) are not applicable to storm water discharge monitoring for compliance with effluent limitations. Results of all compliance monitoring ~~must~~ Monitoring results shall be reported in accordance with Part I A 4 and Part II C, and retained in accordance with Part II B.

TABLE 70-3 70-2.
STORM WATER-SPECIFIC EFFLUENT LIMITATION GUIDELINES APPLICABLE TO DISCHARGES THAT MAY BE ELIGIBLE FOR PERMIT COVERAGE.

Effluent Limitation Guideline	Sectors with Affected Facilities
Runoff from material storage piles at cement manufacturing facilities (40 CFR Part 411 Subpart C (2002) (2006) (established February 23, 1977))	E
Contaminated runoff from phosphate fertilizer manufacturing facilities (40 CFR Part 418 Subpart A (2002) (2006) (established April 8, 1974))	C
Coal pile runoff at steam electric generating facilities (40 CFR Part 423 (2002) (2006) (established November 19, 1982))	O

Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas (40 CFR Part 429, Subpart I (2002) (2007) (established January 26, 1981))	A
Runoff from asphalt emulsion facilities (40 CFR Part 443 Subpart A (2002) (2007) (established July 24, 1975))	D
Runoff from landfills, (40 CFR Part 445, Subpart A and B (2002) (2007) (established February 2, 2000))	K & L

TABLE 70-3.
NUMERIC LIMITATIONS FOR COAL PILE RUNOFF.

Parameter	Limit	Monitoring Frequency	Sample Type
Total Suspended Solids (TSS)	50 mg/l. max.	1/year	Grab
pH	6.0 min. - 9.0 max.	1/year	Grab

(2) Facilities subject to coal pile runoff monitoring.

(a) Facilities with discharges of storm water from coal storage piles shall comply with the limitations and monitoring requirements of Table 70-3 for all discharges containing the coal pile runoff, regardless of the facility's sector of industrial activity.

(b) Permittees shall monitor such storm water discharges at least once during each of the monitoring periods after the facility is granted coverage under the permit. If a facility's permit coverage is effective less than one month from the end of a monitoring period, the facility's first monitoring period starts with the next respective monitoring period (e.g., if permit coverage begins December 5, the permittee will not need to start the coal pile runoff monitoring until the next January-December monitoring period).

(c) Coal pile runoff monitoring periods are as follows: (i) July 1, 2009, to December 31, 2009; (ii) January 1, 2010, to December 31, 2010; (iii) January 1, 2011, to December 31, 2011; (iv) January 1, 2012, to December 31, 2012; and (v) January 1, 2013, to December 31, 2013.

(d) The coal pile runoff shall not be diluted with other storm water or other flows in order to meet this limitation.

(e) If a facility is designed, constructed and operated to treat the volume of coal pile runoff that is associated with a 10-year, 24-hour rainfall event, any untreated overflow of coal pile runoff from the treatment unit is not subject to the 50 mg/L limitation for total suspended solids.

(f) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 4 and Part II C, and retained in accordance with Part II B.

(3) Facilities [~~subject to Total Maximum Daily Load~~ (discharging to an impaired water with a board-established and EPA-approved) TMDL [}] ~~wasteload~~ [~~allocations~~ allocation].

(a) Upon written notification from the department, facilities subject to TMDL wasteload allocations will be required to monitor such discharges to evaluate compliance with the TMDL requirements.

(b) Permittees shall monitor the discharges for the pollutant subject to the TMDL wasteload allocation at least semiannually (twice per year). The TMDL semiannual monitoring periods are from July 1 to December 31, and January 1 to June 30. If a facility's notification that they are subject to the TMDL monitoring requirements is effective less than one month from the end of a semiannual monitoring period, the facility's first monitoring period starts with the next respective monitoring period (e.g., if notification is given on December 5, the permittee will not need to start semiannual monitoring until the next January 1 to June 30 monitoring period).

(c) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 4 and Part II C, and retained in accordance with Part II B.

[(d) If the pollutant subject to the TMDL waste load allocation is not detected in any of the samples from the first four monitoring periods (i.e., the first two years of coverage under the permit), the permittee may request to the department in writing that further sampling be discontinued, unless the TMDL has specific instructions to the contrary (in which case those instructions shall be followed). If approved, documentation of this shall be kept with the SWPPP.

If the pollutant subject to the TMDL waste load allocation is detected in any of the samples from the first four monitoring periods, the permittee shall continue the scheduled TMDL monitoring throughout the term of the permit.

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(4) Facilities discharging to an impaired water without a board established and EPA-approved TMDL wasteload allocation.

(a) Upon written notification from the department, facilities discharging to an impaired water without a board established and EPA-approved TMDL wasteload allocation will be required to monitor such discharges for the pollutant(s) that caused the impairment.

(b) Permittees shall monitor the discharges for all pollutants for which the waterbody is impaired, and for which a standard analytical method exists, at least once during each of the monitoring periods after the facility is granted coverage under the permit. If a facility's permit coverage is effective less than one month from the end of a monitoring period, the facility's first monitoring period starts with the next respective monitoring period (e.g., if permit coverage begins December 5, the permittee will not need to start the impaired water monitoring until the next January-December monitoring period).

(c) The impaired water monitoring periods are as follows: (i) July 1, 2009, to December 31, 2009; (ii) January 1, 2010, to December 31, 2010; (iii) January 1, 2011, to December 31, 2011; (iv) January 1, 2012, to December 31, 2012; and (v) January 1, 2013, to December 31, 2013.

(d) If the pollutant for which the waterbody is impaired is suspended solids, turbidity or sediment/sedimentation, monitor for Total Suspended Solids (TSS). If the pollutant for which the waterbody is impaired is expressed in the form of an indicator or surrogate pollutant, monitor for that indicator or surrogate pollutant. No monitoring is required when a waterbody's biological communities are impaired but no pollutant, including indicator or surrogate pollutants, is specified as causing the impairment, or when a waterbody's impairment is related to hydrologic modifications, impaired hydrology, or temperature.

Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 4 and Part II C, and retained in accordance with Part II B.

(e) If the pollutant for which the water is impaired is not present in the discharges from the facility, or it is present but its presence is caused solely by natural background sources, a notification to this effect shall be included in the first discharge monitoring report submitted by the facility, after which the impaired water monitoring may be discontinued. To support a determination that the pollutant's presence is caused solely by natural background sources, the following documentation shall be kept with the SWPPP: (i) an explanation of why it is believed that the presence of the impairment pollutant in

the facility's discharge is not related to the activities at the facility; and (ii) data or studies that tie the presence of the impairment pollutant in the facility's discharge to natural background sources in the watershed. Natural background pollutants include those substances that are naturally occurring in soils or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity at the facility's site, or pollutants in run-on from neighboring sources that are not naturally occurring.]

2. Monitoring instructions.

~~a. Monitoring periods. Permittees that are required to conduct monitoring on an annual or quarterly basis must collect samples within the following time periods (unless otherwise specified in Part IV):~~

~~(1) The monitoring year is from July 1 to June 30.~~

~~(2) If a facility's permit coverage was effective less than one month from the end of a quarterly or yearly monitoring period, the first monitoring period starts with the next respective monitoring period (e.g., if permit coverage begins March 5, the permittee would not need to start quarterly sampling until the April-June quarter, but the permittee would only have from March 5 to June 30 to complete that year's annual monitoring).~~

~~b. a. Collection and analysis of samples. Sampling requirements ~~must~~ shall be assessed on an outfall by outfall basis. Samples ~~must~~ shall be collected and analyzed in accordance with the requirements of Part II A.~~

~~b. When and [How how] to [Sample sample]. A minimum of one grab sample ~~must~~ shall be taken from the discharge associated with industrial activity resulting from a storm event with at least [that is greater than 0.1 inch] of precipitation [in magnitude that results in an actual discharge from the site] (defined as a "measurable ["event" storm event"]), providing the interval from the preceding measurable storm [event] is at least 72 hours. The 72-hour storm interval is waived [when the preceding measurable storm did not yield a measurable discharge, or] if the permittee is able to document that less than a 72-hour interval is representative for local storm events during the sampling period. [In the case of snowmelt, the monitoring must be performed at a time when a measurable discharge occurs at the site.]~~

~~The grab sample ~~must~~ shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first hour of discharge provided that the permittee explains why a grab sample during the first 30 minutes was impracticable. This information ~~must~~ shall be submitted on or with the Discharge Monitoring Report (DMR), or maintained with the SWPPP if reports~~

are not required to be submitted. If the sampled discharge commingles with process or nonprocess water, the permittee ~~must~~ shall attempt to sample the storm water discharge before it mixes with the nonstorm water.

c. Storm event data. ~~[Along For each monitoring event (except snowmelt monitoring), along]~~ with the monitoring results, the permittee ~~must shall~~ [provide identify] the date and duration (in hours) of the storm event(s) sampled; rainfall ~~[measurements or estimates total]~~ (in inches) of the storm event that generated the sampled runoff; ~~[and]~~ the duration between the storm event sampled and the end of the previous measurable ~~[(greater than 0.1 inch rainfall)]~~ storm event ~~[; and an estimate of the total volume (in gallons) of the discharge sampled. For snowmelt monitoring, the permittee shall identify the date of the sampling event]~~.

d. ~~Representative outfalls essentially identical discharges. If a facility has two or more outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials or storm water management practices occurring within the drainage areas of the outfalls, the permittee may test the effluent of just one of the outfalls and report that the quantitative data also applies to the substantially identical outfall(s). This outfall monitoring waiver for substantially identical discharges applies to quarterly visual monitoring as well, but does not apply to compliance monitoring for discharges subject to numerical effluent limitation guidelines (see Part I A 1 d (2)). The permittee must include the following information in the SWPPP, and in any DMRs that are required to be submitted to the department:~~

- ~~(1) The locations of the outfalls;~~
- ~~(2) Why the outfalls are expected to discharge substantially identical effluents;~~
- ~~(3) Estimates of the size of the drainage area (in square feet) for each of the outfalls; and~~
- ~~(4) An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%).~~

d. Documentation explaining a facility's inability to obtain a sample (including dates/times the outfalls were viewed and/or sampling was attempted), of no rain event, or of no "measurable" storm event shall be maintained with the SWPPP. Acceptable documentation includes, but is not limited to, NCDC weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.

3. ~~Monitoring waivers. Unless specifically stated otherwise, the following waivers may be applied to any monitoring required under this permit.~~

a. ~~3. Adverse climatic conditions waiver. When adverse weather conditions prevent the collection of samples, a substitute sample may be taken during a qualifying storm event in the next monitoring period. Adverse weather conditions are those that are dangerous or create inaccessibility for personnel, and may include such things as local flooding, high winds, electrical storms, or situations that otherwise make sampling impracticable, such as drought or extended frozen conditions. Unless specifically stated otherwise, this waiver may be applied to any monitoring required under this permit.~~

~~b. Alternative certification of "Not Present" or "No Exposure."~~

~~The permittee is not subject to the benchmark monitoring requirements of Part I A 1 b provided:~~

- ~~(1) A certification is made for a given outfall, or on a pollutant by pollutant basis in lieu of monitoring required under Part I A 1 b, that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period; and~~
- ~~(2) The certification is signed in accordance with Part II K, submitted to the department, and a copy retained with the SWPPP; and~~
- ~~(3) If certification cannot be made for an entire period, the permittee must document the date exposure was eliminated and must perform any monitoring required up until that date; and~~
- ~~(4) No numeric limitation for that parameter is established in Part IV.~~

4. Reporting monitoring results.

a. Reporting to the department. Depending on the types of monitoring required at a permitted facility, monitoring results may have to be submitted to the department, or they may only have to be kept with the SWPPP. The permittee ~~must shall~~ follow the reporting requirements and deadlines below for the types of monitoring that apply to the facility:

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TABLE 70-4.
MONITORING REPORTING REQUIREMENTS.

<p>Monitoring for Numeric Limitation Effluent Limitations (other than TMDL Wasteload Allocations)</p>	<p>[Submit For monitoring results that do not exceed the effluent limitations, submit the] results on a DMR by the 10th day of the month after monitoring takes place January [30 10].</p> <p>[For monitoring results that exceed the effluent limitations, submit the results on a DMR by <u>January 10, or no later than 30 days after the results are received by the facility, whichever date is earlier.</u>]</p>
<p>Semiannual Monitoring for TMDL Wasteload Allocations</p>	<p>[Submit For monitoring results that do not exceed the TMDL wasteload allocation, submit the] results on a DMR by January [30 10] and by July [30 10].</p> <p>[For monitoring results that exceed the TMDL wasteload allocation, submit the results on a DMR by <u>January 10 or July 10, or no later than 30 days after the results are received by the facility, whichever date is earlier.</u>]</p>
<p>[<u>Monitoring for Facilities Discharging to an Impaired Water Without an Approved TMDL Wasteload Allocation.</u>]</p>	<p>[<u>Submit results on a DMR by January 10.</u>]</p>
<p>Benchmark Monitoring</p>	<p>Retain results with SWPPP – do not submit unless requested to do so by the department. Submit results on a DMR by January [30 10].</p>
<p>Biannual Annual Monitoring for Metal Mining Facilities (see Part IV, Sector G)</p>	<p>[Retain results with SWPPP – do not submit unless requested to do so by the department. Submit results to the department by January 10.]</p>
<p>Quarterly Visual Monitoring</p>	<p>Retain results with SWPPP - do not submit unless requested to do so by the department.</p>
<p>Follow-up Monitoring (see subsection A 5 c below).</p>	<p>Submit results on a DMR <u>no later than 30 days after the results are received.</u></p>

Permittees that are required to submit monitoring shall submit results for each outfall associated with industrial

activity according to the requirements of Part II C. For each outfall, one signed discharge monitoring report (DMR) form ~~must~~ shall be submitted to the department per storm event sampled.

b. [Additional reporting. In addition to filing copies of discharge monitoring reports in accordance with Part II C, permittees with at least one storm water discharge associated with industrial activity through a municipal separate storm sewer system (MS4), or a municipal system designated by the director, must submit signed copies of DMRs to the MS4 operator at the same time. Permittees not required to report monitoring data and permittees that are not otherwise required to monitor their discharges need not comply with this provision.]

c. Significant digits. The permittee shall report at least the same number of significant digits as a numeric effluent limitation or TMDL wasteload allocation for a given parameter; otherwise, at least two significant digits shall be reported for a given parameter. Regardless of the rounding convention used by the permittee (i.e., five always rounding up or to the nearest even number), the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

5. Corrective actions.

a. Data exceeding benchmarks concentration values.

[(1)] If the benchmark monitoring result exceeds the benchmark concentration value for that parameter, the permittee must review the SWPPP and modify it as necessary to address any deficiencies that caused the exceedance. Revisions to the SWPPP must be completed within 30 days after an exceedance is discovered. When BMPs need to be modified or added (distinct from regular preventive maintenance of existing BMPs described in Part III C), implementation must be completed before the next anticipated storm event if possible, but no later than 60 days after the exceedance is discovered, or as otherwise provided or approved by the department. [In cases where construction is necessary to implement BMPs, the permittee shall include a schedule in the SWPPP that provides for the completion of the BMPs as expeditiously as practicable, but no later than three years after the exceedance is discovered. Where a construction compliance schedule is included in the SWPPP, the plan shall include appropriate nonstructural and/or temporary controls to be implemented in the affected portion(s) of the facility prior to completion of the permanent BMP.] Any BMP modifications must be documented and dated, and retained with the SWPPP, along with the amount of time taken to modify the applicable BMPs or implement additional BMPs.

[(2) Natural background pollutant levels. If the concentration of a pollutant exceeds a benchmark concentration value, and the permittee determines that exceedance of the benchmark is attributable solely to the presence of that pollutant in the natural background, corrective action is not required provided that:

(a) The concentration of the benchmark monitoring result is less than or equal to the concentration of that pollutant in the natural background;

(b) The permittee documents and maintains with the SWPPP the supporting rationale for concluding that benchmark exceedances are in fact attributable solely to natural background pollutant levels. The supporting rationale shall include any data previously collected by the facility or others (including literature studies) that describe the levels of natural background pollutants in the facility's storm water discharges; and

(c) The permittee notifies the department on the benchmark monitoring DMR that the benchmark exceedances are attributable solely to natural background pollutant levels.

Natural background pollutants include those substances that are naturally occurring in soils or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity on the facility's site, or pollutants in run-on from neighboring sources that are not naturally occurring.]

b. Corrective actions. The permittee must take corrective action whenever:

(1) Routine facility inspections, comprehensive site compliance evaluations, inspections by local, state or federal officials, or any other process, observation or event result in [~~discovery of any deficiency~~ a determination that modifications to the storm water control measures are necessary to meet the permit requirements]; or

(2) There is any exceedance of an effluent limitation (including coal pile runoff), [or] TMDL wasteload allocation [~~or water quality standard~~;

(3) The department determines, or the permittee becomes aware, that the storm water control measures are not stringent enough for the discharge to meet applicable water quality standards].

The permittee must review the SWPPP and modify it as necessary to address any deficiencies. Revisions to the SWPPP must be completed within 30 days following the discovery of the deficiency. When BMPs need to be modified or added (distinct from regular preventive maintenance of existing BMPs described in Part III C), implementation must be completed before the next anticipated storm event if possible, but no later than 60

days after the deficiency is discovered, or as otherwise provided or approved by the department. [In cases where construction is necessary to implement BMPs, the permittee shall include a schedule in the SWPPP that provides for the completion of the BMPs as expeditiously as practicable, but no later than three years after the deficiency is discovered. Where a construction compliance schedule is included in the SWPPP, the plan shall include appropriate nonstructural and/or temporary controls to be implemented in the affected portion(s) of the facility prior to completion of the permanent BMP.] The amount of time taken to modify a BMP or implement additional BMPs must be documented in the SWPPP.

Any corrective actions taken must be documented and retained with the SWPPP. Reports of corrective actions must be signed in accordance with Part II K.

c. Follow-up monitoring and reporting. If at any time monitoring results indicate that discharges from the facility exceed an effluent limitation or a TMDL wasteload allocation, or [the department determines] that discharges from the facility are causing or contributing to an exceedance of a water quality standard, immediate steps must be taken to eliminate the exceedances in accordance with the above Part I A 5 b (Corrective actions). Within 30 calendar days of implementing the relevant corrective action(s) (or during the next qualifying runoff event, should none occur within 30 calendar days) follow-up monitoring must be undertaken to verify that the BMPs that were modified are effectively protecting water quality. Follow-up monitoring need only be conducted for pollutant(s) with prior exceedances unless there are reasons to believe that facility modifications may have reduced pollutant prevention or removal capacity for other pollutants of concern.

The follow-up monitoring data must be submitted to the department no later than 30 days after the results are received. If the follow-up monitoring value does not exceed the effluent limitation or other relevant standard, no additional follow-up monitoring is required for this [~~monitoring event~~ corrective action].

Should the follow-up monitoring indicate that the effluent limitation, TMDL wasteload allocation, water quality standard or other relevant standard is still being exceeded, an exceedance report must be submitted to the department no later than 30 days after the follow-up monitoring results are received. The following information must be included in the report: permit number; facility name, address and location; receiving water; monitoring data from this and the preceding monitoring event(s); an explanation of the situation; description of what has been done and the intended

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actions (should the corrective actions not yet be complete) to further reduce pollutants in the discharge; and an appropriate contact name and phone number. Additional follow-up monitoring must be continued at an appropriate frequency, but no less often than quarterly, until the discharge no longer exceeds the standard.

B. Special conditions.

1. Allowable nonstorm water discharges. Except as provided in this section or in Part IV (9VAC25-151-90 et seq.), all discharges covered by this permit shall be composed entirely of storm water. The following nonstorm water discharges are authorized by this permit ~~provided the nonstorm water component of the discharge is in compliance with Part III D 2 (Nonstorm water discharges) of this general permit:~~

- a. Discharges from fire fighting activities;
- b. Fire hydrant flushings;
- c. Potable water including water line flushings;
- d. Uncontaminated air conditioning or compressor condensate (excluding air compressors);
- e. Irrigation drainage;
- f. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with manufacturer's instructions;
- g. Routine external building wash down that does not use detergents;
- h. Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed);
- i. Uncontaminated ground water or spring water;
- j. Foundation or footing drains where flows are not contaminated with process materials ~~such as solvents~~; and
- k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

All other nonstorm water discharges ~~must~~ shall be in compliance with a VPDES permit (other than this permit) issued for the discharge.

The following nonstorm water discharges are specifically not authorized by this permit:

Sector A - Timber products. Discharges of storm water from areas where there may be contact with chemical formulations sprayed to provide surface protection.

Sector C - Chemical and allied products manufacturing. Inks, paints, or substances (hazardous, nonhazardous, etc.) resulting from an on-site spill, including materials collected in drip pans; washwaters from material handling and processing areas; or washwaters from drum, tank, or container rinsing and cleaning.

Sector G - Metal mining (ore mining and dressing). Adit drainage or contaminated springs or seeps; and contaminated seeps and springs discharging from waste rock dumps that do not directly result from precipitation events.

Sector H - Coal mines and coal mining-related facilities. Discharges from pollutant seeps or underground drainage from inactive coal mines and refuse disposal areas that do not result from precipitation events; and discharges from floor drains in maintenance buildings and other similar drains in mining and preparation plant areas.

Sector I - Oil and gas extraction and refining. Discharges of vehicle and equipment washwater, including tank cleaning operations.

Sector K - Hazardous waste treatment, storage, or disposal facilities. Leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory-derived wastewater and contact washwater from washing truck and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

Sector L - Landfills, land application sites and open dumps. Leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory wastewater, and contact washwater from washing truck and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

Sector N - Scrap recycling and waste recycling facilities. Discharges from turnings containment areas in the absence of a storm event.

Sector O - Steam electric generating facilities. Nonstorm water discharges subject to effluent limitation guidelines.

Sector P - Land transportation and warehousing. Vehicle/equipment/surface washwater, including tank cleaning operations.

Sector Q - Water transportation. Bilge and ballast water, sanitary wastes, pressure wash water, and cooling water originating from vessels.

Sector R - Ship and boat building or repair yards. Bilge and ballast water, pressure wash water, sanitary wastes, and cooling water originating from vessels.

Sector S - Air transportation. Aircraft, ground vehicle, runway and equipment washwaters; and dry weather discharges of deicing/anti-icing chemicals.

Sector T - Treatment works. Sanitary and industrial wastewater; and equipment/vehicle washwaters.

Sector U - Food and kindred products. Boiler blowdown, cooling tower overflow and blowdown, ammonia refrigeration purging, and vehicle washing/clean-out operations.

Sector V - Textile mills, apparel, and other fabric products. Discharges of wastewater (e.g., wastewater as a result of wet processing or from any processes relating to the production process); reused/recycled water; and waters used in cooling towers.

2. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the storm water discharge(s) from the facility shall be prevented or minimized in accordance with the storm water pollution prevention plan for the facility. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110 ~~(2002)~~ (2007), 40 CFR Part 117 ~~(2002)~~ (2007) and 40 CFR Part 302 ~~(2002)~~ (2007) or § 62.1-44.34:19 of the Code of Virginia.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 ~~(2002)~~ (2007), 40 CFR Part 117 ~~(2002)~~ (2007) or 40 CFR Part 302 ~~(2002)~~ (2007) occurs during a 24-hour period:

- a. The permittee is required to notify the department in accordance with the requirements of Part II G as soon as he has knowledge of the discharge;
- b. Where a release enters a municipal separate storm sewer system (MS4), the permittee shall also notify the owner of the MS4; and
- c. The storm water pollution prevention plan required under Part III ~~must~~ shall be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan ~~must~~ shall be modified where appropriate.

3. Colocated industrial activity. If the facility has industrial activities occurring on-site which are described by any of the activities in Part IV of the permit (9VAC25-151-90 et seq.), those industrial activities are considered to be colocated industrial activities. Storm water discharges from colocated industrial activities are authorized by this permit, provided that the permittee complies with any and all additional pollution prevention plan and monitoring requirements from Part IV applicable to that particular colocated industrial activity. The permittee shall determine which additional pollution prevention plan and monitoring requirements are applicable to the colocated industrial

activity by examining the narrative descriptions of each coverage section (Discharges covered under this section).

4. The storm water discharges authorized by this permit may be combined with other sources of storm water which are not required to be covered under a VPDES permit, so long as the combined discharge is in compliance with this permit.

5. There shall be no discharge of floating solids or visible foam in other than trace amounts.

~~6. Additional requirements for salt~~ Salt storage piles or piles containing salt. Storage piles of salt or piles containing salt used for deicing or other commercial or industrial purposes ~~must~~ shall be enclosed or covered to prevent exposure to precipitation ~~(except for exposure resulting from adding or removing materials from the pile).~~ Piles do not need to be enclosed or covered where storm water from the pile is not discharged to state waters or the discharges from the piles are authorized under another permit. The permittee shall implement appropriate measures (e.g., good housekeeping, diversions, containment) to minimize exposure resulting from adding to or removing materials from the pile. All salt storage piles shall be located on an impervious surface. All runoff from the pile, and/or runoff that comes in contact with salt, including under drain systems, shall be collected and contained within a [bermed] basin lined with concrete or other impermeable materials [~~This lined basin shall be bermed and shall be sized to contain runoff resulting from a 24 hour 25 year storm event,~~ or within an underground storage tank(s), or within an above ground storage tank(s), or disposed of through a sanitary sewer (with the permission of the treatment facility). A combination of any or all of these methods may be used]. In no case shall salt contaminated [~~stormwater~~ storm water] be allowed to discharge directly to the ground or to state waters.

7. Discharges to waters subject to TMDL wasteload allocations. Facilities that are [~~an identified a~~] source of the specified pollutant of concern to waters for which a "total maximum daily load" (TMDL) wasteload allocation has been established by the board and approved by EPA prior to the term of this permit shall incorporate measures and controls into the SWPPP required by Part III that are consistent with the assumptions and requirements of the TMDL. The department will provide written notification to the owner that a facility is subject to the TMDL requirements. The facility's SWPPP shall specifically address any conditions or requirements included in the TMDL that are applicable to discharges from the facility. If the TMDL establishes a specific numeric wasteload allocation that applies to discharges from the facility, the owner shall [~~incorporate that allocation into the facility's SWPPP,~~] perform any required monitoring in accordance

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with Part I A 1 c (3), and implement [~~measures necessary~~ BMPs designed] to meet that allocation.

7. 8. Water quality protection. [The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards.] The permittee ~~must~~ shall [~~employ an iterative, BMP-based program to~~] select, install, implement and maintain best management practices (BMPs) at the facility [~~that designed to~~] minimize pollutants in the storm water discharges [~~as necessary to meet applicable water quality standards, and to address any exceedance of any applicable water quality standard, effluent limitation, or TMDL waste load allocation. The board expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards~~]. If there is evidence indicating that the storm water discharges authorized by this permit are causing, have the reasonable potential to cause, or are contributing to an excursion above an applicable water quality standard, an excursion above a TMDL wasteload allocation, or are causing downstream pollution (as defined in § 62.1-44.3 of the Code of Virginia), the board may [~~take appropriate enforcement action, may~~] require the permittee to [take corrective action in accordance with Part I A 5 b and c, and] include and implement appropriate controls in the SWPPP to correct the problem, [~~and/or or~~] may require the permittee to obtain an individual permit in accordance with 9VAC25-31-170 B 3.

9. Adding/deleting storm water outfalls. The permittee may add new and/or delete existing storm water outfalls at the facility as necessary/appropriate. The permittee shall update the SWPPP and notify the department of all outfall changes within 30 days of the change. The permittee shall submit a copy of the updated SWPPP site map with their notification.

[10. Antidegradation requirements for new or increased discharges to high quality waters. Facilities that add new outfalls, or increase their discharges from existing outfalls that discharge directly to high quality waters designated under Virginia's water quality standards antidegradation policy under 9VAC25-260-30 A 2 may be notified by the department that additional control measures, or other permit conditions are necessary to comply with the applicable antidegradation requirements, or may be notified that an individual permit is required in accordance with 9VAC25-31-170 B 3.]

Part II

Conditions Applicable to All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 ~~(2002)~~ (2007) or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:

- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) and time(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

2. [~~Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the~~ The] permittee shall retain [copies of the SWPPP, including any modifications made during the term of this permit,] records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date [~~of the sample, measurement, report or request for that~~] coverage [under this permit expires or is terminated]. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 (~~2002~~) (2007) or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:
 - a. Any unanticipated bypass; and
 - b. Any upset which causes a discharge to surface waters.
2. A written report shall be submitted within five days and shall contain:

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- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Part II G, H and I may be made to the department's regional office. Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
 - (1) After promulgation of standards of performance under § 306 of Clean Water Act which are applicable to such source; or
 - (2) After proposal of standards of performance in accordance with § 306 of Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;
 - b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or
 - c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices,

and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

- a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

- c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification:

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

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of

this permit, the permittee shall submit a new registration statement at least ~~180~~ 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part II U), and "upset" (Part II V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

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

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted

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activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly

signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other

requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:

- a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Part III
Storm Water Pollution Prevention Plan

9VAC25-151-80. Storm Water Pollution Prevention Plans.

A Storm Water Pollution Prevention Plan (SWPPP) ~~must~~ shall be developed and implemented for the facility covered by this permit. ~~The SWPPP shall be prepared in accordance include Best Management Practices (BMPs) that are reasonable [, economically practicable,] and appropriate in light of current industry practices. The BMPs shall be selected, designed, installed, implemented and maintained in accordance with good engineering practices and shall identify potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges from the facility. In addition, the plan shall describe and ensure the implementation of practices that will be used to eliminate or reduce the pollutants in all storm water discharges from the facility, and shall assure compliance with the terms and conditions of this permit. Permittees must implement the provisions of the SWPPP as a condition of this permit. The SWPPP shall also include any [more stringent control] measures necessary for the storm water discharges to meet applicable water quality standards.~~

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents such as ~~an erosion and sediment control (ESC) plan~~, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act, or best management practices (BMP) programs otherwise required for the facility, provided that the

incorporated plan meets or exceeds the plan requirements of Part III B (Contents of the Plan). ~~If an ESC plan is being incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate plan approving authority authorized under the Erosion and Sediment Control Regulations, 4VAC50-30-10 et seq.~~ All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Part III B, the permittee shall develop the missing SWPPP elements and include them in the required plan.

A. Deadlines for plan preparation and compliance.

1. Facilities that were covered under the ~~1999~~ 2004 Industrial Storm Water General Permit. Owners of facilities that were covered under the ~~1999~~ 2004 Industrial Storm Water General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP ~~not later than August 30, 2004 [prior to submitting the registration statement not later than October 1, 2009]~~.

2. New facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit who elect to be covered under this general permit ~~must~~ shall prepare and implement the SWPPP prior to submitting the registration statement.

3. New owners of existing facilities. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility ~~must~~ shall update and implement any revisions to the SWPPP within 60 days of the ownership change.

4. Extensions. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.

B. Contents of the plan. The contents of the SWPPP shall comply with the requirements listed below and those in the appropriate sectors of Part IV (9VAC25-151-90 et seq.) These requirements are cumulative. If a facility has collocated activities that are covered in more than one sector of Part IV, that facility's pollution prevention plan ~~must~~ shall comply with the requirements listed in all applicable sectors. The following requirements are applicable to all SWPPPs developed under this general permit. The plan shall include, at a minimum, the following items:

1. Pollution prevention team. The plan shall identify the staff individuals by name or title that comprise the facility's storm water pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining,

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~~and~~ revising ~~and~~ ensuring compliance with the facility's SWPPP. ~~Responsibilities~~ Specific responsibilities of each staff individual on the team ~~must shall~~ be identified and listed.

2. Site description. The SWPPP shall include the following:

a. Activities at the facility. A description of the nature of the industrial ~~activity(ies)~~ activities at the facility.

b. General location map. A general location map (e.g., USGS quadrangle or other map) with enough detail to identify the location of the facility and the receiving waters within one mile of the facility.

c. Site map. A site Map identifying the following:

(1) ~~Directions~~ The size of the property (in acres);

(2) The location and extent of significant structures and impervious surfaces (roofs, paved areas and other impervious areas);

(3) Locations of all storm water conveyances including ditches, pipes, swales, and inlets, and the directions of storm water flow (e.g., use arrows to show which ways storm water will flow) (use arrows to show which ways storm water will flow);

(2) (4) Locations of all existing structural and source control BMPs;

(3) (5) Locations of all surface water bodies, including wetlands;

(4) (6) Locations of potential pollutant sources identified under Part III B 3 and where significant materials are exposed to precipitation;

(5) (7) Locations where major significant spills or leaks identified under Part III B 4 have occurred;

(6) (8) Locations of the following activities where such activities are exposed to precipitation: fueling stations; vehicle and equipment maintenance and/or cleaning areas; loading/unloading areas; locations used for the treatment, storage or disposal of wastes; and liquid storage tanks; processing and storage areas; access roads, rail cars and tracks; transfer areas for substances in bulk; and machinery;

(7) (9) Locations of storm water outfalls and an approximate outline of the area draining to each outfall, and location of municipal storm sewer systems, if the storm water from the facility discharges to them;

(8) (10) Location and description of all nonstorm water discharges;

(9) (11) Locations of the following activities where such activities are exposed to precipitation: processing and storage areas; access roads, rail cars and tracks; the

location of transfer of substance in bulk; and machinery Location of any storage piles containing salt used for deicing or other commercial or industrial purposes; and

(10) (12) Location and source of runoff Locations and sources of runoff to the site from adjacent property containing, where the runoff contains significant quantities of pollutants of concern to the facility (the permittee may include an evaluation of how the quality of the storm water running onto the facility impacts the facility's storm water discharges). The permittee shall include an evaluation with the SWPPP of how the quality of the storm water running onto the facility impacts the facility's storm water discharges.

d. Receiving waters and wetlands. The name of ~~the nearest~~ all surface waters receiving water(s) discharges from the site, including intermittent streams, dry sloughs, and arroyos ~~and the areal extent~~. Provide [~~the size and a~~] description of wetland sites that may receive discharges from the facility. If the facility discharges through a municipal separate storm sewer system (MS4), identify the MS4 operator, and the receiving water to which the MS4 discharges.

3. Summary of potential pollutant sources. The plan shall identify each separate area at the facility where industrial materials or activities are exposed to storm water. Industrial materials or activities include, but are not limited to: material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, ~~or and~~ waste products. Material handling activities include, but are not limited to: the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product or waste product. For each separate area identified, the description ~~must shall~~ include:

a. Activities in area. A list of the activities (e.g., material storage, equipment fueling and cleaning, cutting steel beams); and

b. Pollutants. A list of the associated pollutant(s) or pollutant parameter(s) constituents (e.g., ~~crankcase oil, iron, biochemical oxygen demand, pH, etc.)~~ (e.g., crankcase oil, zinc, sulfuric acid, cleaning solvents, etc.) for each activity. The pollutant list ~~must shall~~ include all significant materials ~~that have been handled, treated, stored or disposed in a manner to allow exposure that have been exposed~~ to storm water between the time of in the three years before being covered under this permit and the present prior to the date this SWPPP was prepared or amended. The list shall include any hazardous substances or oil at the facility.

4. Spills and leaks. The SWPPP ~~must shall~~ clearly identify areas where potential spills and leaks that can contribute

pollutants to storm water discharges can occur and their accompanying drainage points corresponding outfalls. For areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility to be covered under this permit, the ~~The plan must shall~~ include a list of significant spills and leaks of toxic or hazardous pollutants that actually occurred at exposed areas, or that drained to a storm water conveyance during the three-year period prior to the date of the submission of a registration statement this SWPPP was prepared or amended. The list ~~must shall~~ be updated if significant spills or leaks occur in exposed areas of the facility during the term of the permit. Significant spills and leaks include releases of oil or hazardous substances in excess of reportable quantities, and may also include releases of oil or hazardous substances that are not in excess of reporting requirements.

5. Sampling data. The plan ~~must shall~~ include a summary of existing storm water discharge sampling data taken at the facility, ~~and must also include a~~. The summary of sampling shall include, at a minimum, any data collected during the term of this previous permit term.

6. Storm water controls. The SWPPP ~~shall include a description of storm water management controls appropriate for the facility. The description of controls shall address the following minimum components:~~

a. Description of existing and planned BMPs. The plan ~~shall describe the type and location of existing nonstructural and structural best management practices (BMPs) selected for each of the areas where industrial materials or activities are exposed to storm water. All shall be implemented for all the areas identified in Part III B 3 (summary of potential pollutant sources) should have a BMP(s) identified for the area's discharges. For areas where BMPs are not currently in place, include a description of appropriate BMPs that will be used to control pollutants in storm water discharges to prevent or control pollutants in storm water discharges from the facility. All reasonable steps shall be taken to control or address the quality of discharges from the site that may not originate at the facility. The SWPPP shall describe the type, location and implementation of all BMPs for each area where industrial materials or activities are exposed to storm water.~~

Selection of BMPs ~~should shall~~ take into consideration:

- (1) ~~The quantity and nature of the pollutants, and their potential to impact the water quality of receiving waters;~~
- (2) ~~Opportunities to combine the dual purposes of water quality protection and local flood control benefits, including physical impacts of high flows on streams (e.g., bank erosion, impairment of aquatic habitat, etc.);~~
- (3) ~~Opportunities to offset the impact of impervious areas of the facility on ground water recharge and base flows in~~

~~local streams, taking into account the potential for ground water contamination:~~

(1) ~~That preventing storm water from coming into contact with polluting materials is [much generally] more effective [, and less costly,] than trying to remove pollutants from storm water;~~

(2) ~~BMPs generally shall be used in combination with each other for most effective water quality protection;~~

(3) ~~[The Assessing the] type and quantity of pollutants, including their potential to impact receiving water quality [, is critical to designing effective control measures];~~

(4) ~~That minimizing impervious areas at the facility [will can] reduce runoff and improve groundwater recharge and stream base flows in local streams ([taking into account the potential for however, care must be taken to avoid] ground water contamination);~~

(5) ~~Flow attenuation by use of open vegetated swales and natural depressions [can reduce in-stream impacts of erosive flows];~~

~~[(6) Diverting flow from areas of materials handling, storage or use;~~

~~(7) Conservation or restoration of riparian buffers;~~

~~(8) Infiltration of runoff onsite, (including bioretention cells, green roofs, and pervious pavement);~~

~~(9) (6) Conservation or restoration of riparian buffers will help protect streams from storm water runoff and improve water quality; and~~

~~(7)] Treatment interceptors (e.g., swirl separators and sand filters) [; and (10) The selection of BMPs shall optimize the quantity and quality of storm water discharges from the site may be appropriate in some instances to minimize the discharge of pollutants].~~

b. ~~BMP types to be considered. [Control measures (Nonnumeric technology-based effluent limits)] The permittee must consider shall implement the following types of structural, nonstructural and other BMPs for implementation at to prevent and control pollutants in the storm water discharges from the facility, unless it can be demonstrated and documented that such controls are not relevant to the discharges (e.g., there are no storage piles containing salt). The SWPPP shall describe how each BMP is, or will be, implemented. If this requirement was fulfilled with the area-specific BMPs identified under Part III B 6 a, then the previous description is sufficient. However, many of the following BMPs may be more generalized or non-site-specific and therefore not previously considered. If the permittee determines that any of these BMPs are not appropriate for the facility, an explanation of why they are not appropriate shall be included in the plan. The BMP examples listed below are~~

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not intended to be an exclusive list of BMPs that may be used. [The] permittee is encouraged to keep abreast of [SWPPP shall incorporate, as appropriate, new BMPs or new applications of existing BMPs] to find [for the most] cost [effective means of] permit compliance for the facility [achieving water quality protection.] If BMPs are being used or planned at the facility that are not listed here (e.g., replacing a chemical with a less toxic alternative, adopting a new or innovative BMP, etc.), descriptions of them shall be included in this section of the SWPPP.

(1) Nonstructural BMPs:

(a) (1) Good housekeeping. The permittee ~~must~~ shall keep clean all exposed areas of the facility ~~in a clean, orderly manner where such exposed areas could contribute~~ that are potential sources of pollutants to storm water discharges. ~~Common~~ Typical problem areas include areas around trash containers, storage areas ~~and~~, loading docks, and vehicle fueling and maintenance areas. ~~Measures must also~~ The plan shall include a schedule for regular pickup and disposal of ~~garbage and waste materials;~~ along with routine inspections for leaks and conditions of drums, tanks and containers. The introduction of raw, final or waste materials to exposed areas of the facility shall be minimized to the maximum extent practicable. The generation of dust, along with off-site vehicle tracking of raw, final or waste materials, or sediments, shall be minimized to the maximum extent practicable.

(b) ~~Minimizing~~ (2) Eliminating and minimizing exposure. ~~Where~~ To the extent practicable, industrial materials and activities ~~should~~ shall be located inside, or protected by a storm-resistant ~~shelter~~ covering to prevent exposure to rain, snow, snowmelt, ~~or~~ and runoff. Note: Eliminating exposure at all industrial areas may make the facility eligible for the "Conditional Exclusion for No Exposure" provision of 9VAC25-31-120 [~~F E~~], thereby eliminating the need to have a permit.

(c) (3) Preventive maintenance. The permittee ~~must~~ shall have a preventive maintenance program that includes ~~timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins), as well as~~ regular inspection, testing, maintenance and repairing of ~~facility~~ all industrial equipment and systems to avoid breakdowns or failures that could result in ~~discharges of pollutants to surface waters~~ leaks, spill and other releases. This program is in addition to the specific BMP maintenance required under Part III C (Maintenance of BMPs).

(d) (4) Spill prevention and response procedures. The plan ~~must~~ shall describe the procedures that will be followed for ~~cleaning up~~ preventing and responding to spills ~~or~~ and leaks. ~~The procedures and necessary spill~~

~~response equipment must be made available to those employees who may cause or detect a spill or leak. Where appropriate, the plan must include an explanation of existing or planned material handling procedures, storage requirements, secondary containment, and equipment (e.g., diversion valves), that are intended to minimize spills or leaks at the facility.~~

(a) Preventive measures include barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling.

(b) Response procedures shall include notification of appropriate facility personnel, emergency agencies, and regulatory agencies, and procedures for stopping, containing and cleaning up spills. Measures for cleaning up hazardous material spills or leaks ~~must~~ shall be consistent with applicable RCRA regulations at 40 CFR Part 264 ~~(2002)~~ (2007) and 40 CFR Part 265 ~~(2002)~~ (2007). Employees who may cause, detect or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals shall be a member of the Pollution Prevention Team.

(c) Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP, and in other locations where it will be readily available.

(e) (5) Routine facility inspections. Facility personnel ~~who are familiar with the industrial activity, the BMPs and the storm water pollution prevention plan possess the~~ knowledge and skills to assess conditions and activities that could impact storm water quality at the facility, and who can also evaluate the effectiveness of BMPs shall be identified to regularly inspect all areas of the facility where industrial materials or activities are exposed to storm water. These inspections are in addition to, or as part of, the comprehensive site evaluation required under Part III E [~~,~~ and must shall include an evaluation assessment of how well the existing storm water BMPs are operating]. At least one member of the Pollution Prevention Team shall participate in the routine facility inspections.

The inspection frequency shall be specified in the plan based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit or written approval is received from the department for less frequent intervals. The requirement for routine facility inspections is waived for facilities that have maintained an active E3/E4 status. [At least once each calendar year, the routine facility inspection must be conducted during a period when a storm water discharge is occurring.]

Any deficiencies in the implementation of the SWPPP that are found ~~must~~ shall be corrected as soon as practicable, but not later than within ~~14~~ 30 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections ~~must shall~~ be documented in the SWPPP, along with the date(s) and description(s) of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.

~~(f)~~ (6) Employee training. The SWPPP must describe the permittee shall implement a storm water employee training program for the facility. The description should include the topics to be covered, such as spill response, good housekeeping, and material management practices, and must identify periodic dates for such training (e.g., every six months during the months of July and January). The SWPPP shall include a schedule for all types of necessary training, and shall document all training sessions and the employees who received the training. Employee training must Training shall be provided for all employees who work in areas where industrial materials or activities are exposed to storm water, [and] for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance people) (e.g., inspectors, maintenance personnel, etc.) [, and for all members of the Pollution Prevention Team]. The training should inform employees of The training shall cover the components and goals of the SWPPP, and include such topics as spill response, good housekeeping, material management practices, BMP operation and maintenance, etc. The SWPPP shall include a summary of any training performed.

(2) Structural BMPs:

~~(a)~~ (7) Sediment and erosion control. The plan shall identify areas at the facility that, due to topography, land disturbance (e.g., construction) (e.g., construction, landscaping, site grading), or other factors, have a potential for significant soil erosion. The plan must permittee shall identify and implement structural, vegetative, and/or stabilization BMPs that will be implemented to limit prevent or control on-site and off-site erosion and sedimentation. Flow velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel if the flows would otherwise create erosive conditions.

~~(b)~~ (8) Management of runoff. The plan shall describe the traditional storm water runoff management practices (permanent structural BMPs other than those that control the generation or source(s) of pollutants) that currently exist or that are planned (i.e., permanent structural BMPs) for the facility. These types of BMPs are typically used to divert, infiltrate, reuse, or otherwise reduce

~~pollutants in storm water discharges from the site. The plan shall provide that all measures that the permittee determines to be reasonable and appropriate, or are required by a state or local authority shall be implemented and maintained. Factors for the permittee to consider when selecting appropriate BMPs should include:~~

~~(i) The industrial materials and activities that are exposed to storm water, and the associated pollutant potential of those materials and activities; and~~

~~(ii) The beneficial and potential detrimental effects on surface water quality, ground water quality, receiving water base flow (dry weather stream flow), and physical integrity of receiving waters.~~

~~Structural measures should be placed on upland soils, avoiding wetlands and floodplains, if possible. Structural BMPs may require a separate permit under § 404 of the CWA and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.~~

~~(c) Example BMPs. BMPs that could be used include but are not limited to: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff on site; and sequential systems (which combine several practices).~~

~~(d) Other Controls. Off site vehicle tracking of raw, final, or waste materials or sediments, and the generation of dust must be minimized. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas must be minimized. Velocity dissipation devices (or equivalent measures) must be placed at discharge locations and along the length of any outfall channel if they are necessary to provide a nonerosive flow velocity from the structure to a water course.~~

C. Maintenance. All BMPs identified in the SWPPP must shall be maintained in effective operating condition. Storm water BMPs identified in the SWPPP shall be observed during active operation (i.e., during a storm water runoff event) to ensure that they are functioning correctly. Where discharge locations are inaccessible, nearby downstream locations shall be observed. The observations shall be documented in the SWPPP.

The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all BMPs, and shall include [the amount of time for maintenance and repair, and] a description of the back-up practices that are in place should a runoff event occur while a BMP is off-line. The effectiveness of nonstructural BMPs shall also be maintained by appropriate means (e.g., spill response supplies available and personnel trained, etc.).

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If site inspections required by Part III B 6 b (5) (Routine facility inspections) or Part III E (Comprehensive site compliance evaluation) identify BMPs that are not operating effectively, repairs or maintenance must shall be performed before the next anticipated storm event, or as necessary to maintain the continued effectiveness of storm water controls. If maintenance prior to the next anticipated storm event is impracticable not possible, maintenance must shall be scheduled and accomplished as soon as practicable [~~and documentation included in the SWPPP to justify the extended repair schedule~~]. In the interim, back-up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. In the case of nonstructural BMPs, the effectiveness of the BMP must be maintained by appropriate means (e.g., spill response supplies available and personnel trained, etc.): [All maintenance and repair activities and dates shall be documented in the SWPPP. For repairs, the date of deficiency discovery and the date on which the BMP was restored to full function shall also be documented in the SWPPP. Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the date(s) of regular maintenance, date(s) of discovery of areas in need of repair or replacement, and for repairs, date(s) that the BMP(s) returned to full function, and the justification for any extended maintenance or repair schedules].

D. Nonstorm water discharges.

1. Certification of nonstorm water discharges.

a. The SWPPP must include a certification that all discharges (i.e., outfalls) have been tested or evaluated for the presence of nonstorm water. The certification must be signed in accordance with Part II K of this permit, and include:

- (1) The date of any testing and/or evaluation;
- (2) Identification of potential significant sources of nonstorm water at the site;
- (3) A description of the results of any test and/or evaluation for the presence of nonstorm water discharges;
- (4) A description of the evaluation criteria or testing method used; and
- (5) A list of the outfalls or on site drainage points that were directly observed during the test.

b. A new certification does not need to be signed if one was completed for the 1999 Industrial Storm Water General Permit and the permittee has no reason to believe conditions at the facility have changed.

c. If the permittee is unable to provide the certification required (testing for nonstorm water discharges), the director must be notified 180 days after submitting a registration statement to be covered by this permit. If the

failure to certify is caused by the inability to perform adequate tests or evaluations, such notification must describe:

- (1) The reason(s) why certification was not possible;
- (2) The procedure of any test attempted;
- (3) The results of such test or other relevant observations; and
- (4) Potential sources of nonstorm water discharges to the storm sewer.

d. A copy of the notification must be included in the SWPPP at the facility. Nonstorm water discharges to state waters that are not authorized by a VPDES permit are unlawful, and must be terminated.

2. D. Allowable nonstorm water discharges.

a. The 1. Discharges of certain sources of nonstorm water listed in Part I B 1 (allowable nonstorm water discharges) are allowable discharges under this permit (see Part I B 1 - Allowable nonstorm water discharges) provided the permittee includes the following information in the SWPPP:

- (1) a. Identification of each allowable nonstorm water source, except for flows from fire fighting activities;
- (2) b. The location where the nonstorm water is likely to be discharged; and
- (3) c. Descriptions of any appropriate BMPs that are being used for each source.

b. 2. If mist blown from cooling towers is included as one of the allowable nonstorm water discharges from the facility, the permittee must shall specifically evaluate the potential for the discharges to be contaminated by discharge for the presence of chemicals used in the cooling tower and must select and implement BMPs to control such discharges so that the levels of cooling tower chemicals in the discharges would not cause or contribute to a violation of an applicable water quality standard. The evaluation shall be included in the SWPPP.

[3. Allowable nonstorm water discharges are subject to all of the provisions of this permit, including numeric effluent limitations, benchmarks and monitoring requirements.]

E. Comprehensive site compliance evaluation. The permittee shall conduct facility inspections (site compliance evaluations) comprehensive site compliance evaluations at least once a year. The inspections must evaluations shall be done by qualified personnel who may be either facility employees or outside constituents hired by the facility. The inspectors must be familiar with the industrial activity, the BMPs and the SWPPP, and must possess the skills to assess conditions at the facility that could impact storm water quality, and to assess the effectiveness of the BMPs that have

been chosen to control the quality of the storm water discharges. If more frequent inspections are conducted, the SWPPP must specify the frequency of inspections possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility, and who can also evaluate the effectiveness of BMPs. [At least one member of the Pollution Prevention Team shall participate in the comprehensive site compliance evaluations. The personnel conducting the evaluations may be either facility employees or outside constituents hired by the facility.]

1. Scope of the compliance evaluation. ~~Inspections must~~ Evaluations shall include all areas where industrial materials or activities are exposed to storm water, as identified in Part III B 3, ~~and areas where spills and leaks have occurred within the past three years. Inspectors should look for.~~ The personnel shall evaluate:

- a. Industrial materials, residue or trash ~~on the ground that may have or could contaminate or be washed away in come into contact with~~ storm water;
- b. Leaks or spills from industrial equipment, drums, barrels, tanks or ~~similar~~ other containers that have occurred within the past three years;
- c. Off-site tracking of industrial or waste materials or sediment where vehicles enter or exit the site;
- d. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas; ~~and~~
- e. Evidence of, or the potential for, pollutants entering the drainage system;
- f. Evidence of pollutants discharging to surface waters at all facility outfalls, and the condition of and around the outfall, including flow dissipation measures to prevent scouring;
- g. Review of training performed, inspections completed, maintenance performed, quarterly visual examinations, and effective operation of BMPs;
- h. [Certification of Annual] outfall evaluation for unauthorized discharges.

[(NOTE: this was called the "certification of nonstorm water discharges" in the 2004 Industrial Storm Water General Permit)]

(1) The SWPPP shall include [an annual certification documentation] that all [discharges (i.e., outfalls [] have been evaluated [annually] for the presence of unauthorized discharges (i.e., discharges other than: storm water; the authorized nonstorm water discharges described in Part I B 1; or discharges covered under a separate VPDES permit, other than this permit.) The [certification documentation] shall include:

- (a) The date of the evaluation;

(b) A description of the evaluation criteria used;

(c) A list of the outfalls or on-site drainage points that were directly observed during the evaluation;

(d) A description of the results of the evaluation for the presence of unauthorized discharges; and

(e) The actions taken to eliminate unauthorized discharges, if any were identified (i.e., a floor drain was sealed, a sink drain was rerouted to sanitary, or an VPDES permit application was submitted for a cooling water discharge.)

[~~(2) If the permittee is unable to provide the required certification, the director shall be notified no more than 14 days after the completion of the annual site compliance evaluation. The notification shall describe:~~

(a) ~~The reason(s) why certification was not possible;~~

(b) ~~The procedure that was followed in any evaluation attempted;~~

(c) ~~The results of such evaluation or other relevant observations; and~~

(d) ~~Any potential sources of unauthorized discharges that have not been eliminated.~~

~~(3) A copy of the notification shall be included in the SWPPP at the facility. (2) The permittee may request in writing to the department that the facility be allowed to conduct annual outfall evaluations at 20% of the outfalls. If approved, the permittee shall evaluate at least 20% of the facility outfalls each year on a rotating basis such that all facility outfalls will be evaluated during the period of coverage under this permit.]~~

i. Results of both visual and any analytical monitoring done during the past year ~~must~~ shall be taken into consideration during the evaluation. ~~Storm water BMPs identified in the SWPPP must be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they must be inspected to see whether BMPs are effective in preventing significant impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations must be inspected if possible.~~

2. Based on the results of the ~~inspection~~ evaluation, the SWPPP shall be modified as necessary (e.g., show additional controls on the map required by Part III B 2 c; revise the description of controls required by Part III B 6 to include additional or modified BMPs designed to correct problems identified). Revisions to the SWPPP shall be completed within ~~two weeks~~ 30 days following the inspection evaluation, unless permission for a later date is granted in writing by the director. If existing BMPs need to be modified or if additional BMPs are necessary, implementation ~~must~~ shall be completed before the next

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anticipated storm event, if practicable, but not more than ~~12 weeks~~ 60 days after completion of the comprehensive site evaluation, unless permission for a later date is granted in writing by the ~~director~~ department;

3. Compliance evaluation report. A report shall be written summarizing the scope of the ~~inspection~~ evaluation, name(s) of personnel making the ~~inspection~~ evaluation, the ~~date(s)~~ date of the ~~inspection~~ evaluation, and ~~major~~ all observations relating to the implementation of the SWPPP, and ~~actions taken in accordance with Part III E 2 shall be made and retained as part of the SWPPP for at least three years from the date of the inspection including elements stipulated in Part III E 1 (a) through (f) above. Major observations should~~ Observations shall include such things as: the location(s) of discharges of pollutants from the site; location(s) of previously unidentified sources of pollutants; location(s) of BMPs that need to be maintained or repaired; location(s) of failed BMPs that failed to operate as designed or proved inadequate for a particular location need replacement; and location(s) where additional BMPs are needed that did not exist at the time of inspection. The report shall identify any incidents of noncompliance that were observed. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part II K; and maintained with the SWPPP.

[4. Where compliance evaluation schedules overlap with routine inspections required under] ~~Part III B 6 b(1)(e),~~ [Part III B 6 b (5) the annual compliance evaluation may be used as one of the routine inspections.]

F. Signature and plan review.

1. Signature/location. The [~~plan~~ SWPPP, including revisions to the SWPPP to document any corrective actions taken as required by Part I A 5,] shall be signed in accordance with Part II K, dated, and retained on-site at the facility covered by this permit in accordance with Part II B 2. [A signature and date are required for both the initial plan preparation and for any revisions to the plan. All other changes to the SWPPP, and other permit compliance documentation, must be signed and dated by the person preparing the change or documentation.] For inactive facilities, the plan may be kept at the nearest office of the permittee.

2. Availability. The permittee shall make the SWPPP, annual site compliance ~~inspection~~ evaluation report, and other information available to the department upon request.

3. Required modifications. The director may notify the permittee at any time that the ~~plan~~ does SWPPP, BMPs, or other components of the facility's storm water program do not meet one or more of the ~~minimum~~ requirements of this

permit. The notification shall identify ~~those~~ specific provisions of the permit that are not being met, ~~as well as the~~ and may include required modifications to the storm water program, additional monitoring requirements, and special reporting requirements. The permittee shall make ~~the~~ any required changes to the SWPPP within 60 days of receipt of such notification, unless permission for a later date is granted in writing by the director, and shall submit a written certification to the director that the requested changes have been made.

G. Maintaining an updated SWPPP.

1. The permittee shall review and amend the SWPPP as appropriate whenever:

~~4-~~ a. There is construction or a change in design, construction, operation, or maintenance at the facility that has a significant effect on the discharge, or the potential for the discharge, of pollutants from the facility;

b. Routine inspections or compliance evaluations determine that there are deficiencies in the BMPs;

~~2. During inspections, monitoring, or investigations by facility personnel or~~ c. Inspections by local, state, or federal officials ~~it is determined~~ determine that modifications to the SWPPP is ineffective in eliminating or significantly minimizing pollutants from sources identified under Part III B 3, or is otherwise not achieving the general objectives of controlling pollutants in discharges from the facility are necessary;

d. There is a spill, leak or other release at the facility;

e. There is an unauthorized discharge from the facility; or

f. The department notifies the permittee that a TMDL has been developed and applies to the permitted facility.

2. SWPPP modifications shall be made within 30 calendar days after discovery, observation or event requiring a SWPPP modification. Implementation of new or modified BMPs (distinct from regular preventive maintenance of existing BMPs described in Part III C) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a BMP or implement additional BMPs shall be documented in the SWPPP.

3. If the SWPPP modification is based on a release or unauthorized discharge, include a description and date of the release, the circumstances leading to the release, actions taken in response to the release, and measures to prevent the recurrence of such releases. Unauthorized releases and discharges are subject to the reporting requirements of Part II G of this permit.

H. Special pollution prevention plan requirements.

~~1. Additional requirements for storm water discharges associated with industrial activity that discharge into or through municipal separate storm sewer systems.~~

~~a. In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under VPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the permittee has been notified of such conditions.~~

~~b. Permittees that discharge storm water associated with industrial activity through a municipal separate storm sewer system, or a municipal system designated by the director shall make plans available to the municipal operator of the system upon request.~~

~~2. Additional requirements for storm water discharges associated with industrial activity from facilities subject to EPCRA § 313 reporting requirements.~~

~~Any potential pollutant sources for which the facility has reporting requirements under EPCRA 313 must be identified in the SWPPP in Part III B 3 (Summary of Potential Pollutant Sources). Note: this additional requirement is only applicable if the facility is subject to reporting requirements under EPCRA 313.~~

Part IV

Sector Specific Permit Requirements

The permittee must only comply with the additional requirements of Part IV (9VAC25-151-90 et seq.) that apply to the sector(s) of industrial activity located at the facility. These sector specific requirements are in addition to the "basic" requirements specified in Parts I, II and III of this permit. All numeric effluent limitations and benchmark monitoring concentration values reflect two significant digits, unless otherwise noted.

9VAC25-151-90. Sector A - Timber products.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities generally classified under Standard Industrial Classification (SIC) Major Group 24 that are engaged in the following activities: cutting timber and pulpwood (those that have log storage or handling areas), mills, including merchant, lath, shingle, cooperage stock, planing, plywood and veneer, and producing lumber and wood materials; wood preserving, manufacturing wood buildings or mobile homes; and manufacturing finished articles made entirely of wood or related materials, except for wood kitchen cabinet manufacturers (SIC Code 2434), which are addressed under Sector W (9VAC25-151-300).

B. Special conditions.

1. Prohibition of nonstorm water discharges. Discharges of storm water from areas where there may be contact with chemical formulations sprayed to provide surface protection are not authorized by this permit. These discharges must be covered under a separate VPDES permit.

2. Authorized nonstorm water discharges. In addition to the discharges described in Part I B 1, the following nonstorm water discharges may be authorized by this permit provided the nonstorm water component of the discharge is in compliance with 9VAC25-151-90 C and the effluent limitations described in 9VAC25-151-90 D: discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray down waters and no chemicals are applied to the wood during storage.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: processing areas; treatment chemical storage areas; treated wood and residue storage areas; wet decking areas; dry decking areas; untreated wood and residue storage areas; and treatment equipment storage areas.

b. Summary of potential pollutant sources. Where information is available, facilities that have used chlorophenolic, creosote, or chromium-copper-arsenic formulations for wood surface protection or wood preserving activities on-site in the past ~~should~~ shall identify in the inventory the following: areas where contaminated soils, treatment equipment, and stored materials still remain, and the management practices employed to minimize the contact of these materials with storm water runoff.

2. Storm water controls. The description of storm water management controls shall address the following areas of the site: log, lumber and other wood product storage areas; residue storage areas; loading and unloading areas; material handling areas; chemical storage areas; and equipment/vehicle maintenance, storage and repair areas. Facilities that surface protect and/or preserve wood products ~~should~~ shall address specific BMPs for wood surface protection and preserving activities. The SWPPP ~~should~~ shall address the following minimum components:

a. Good housekeeping. Good housekeeping measures in storage areas, loading and unloading areas, and material handling areas ~~should~~ shall be designed to:

(1) Limit the discharge of wood debris;

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(2) Minimize the leachate generated from decaying wood materials; and

(3) Minimize the generation of dust.

b. Routine facility inspections. Inspections at processing areas, transport areas, and treated wood storage areas of facilities performing wood surface protection and preservation activities ~~should~~ shall be performed monthly to assess the usefulness of practices in minimizing the deposit of treatment chemicals on unprotected soils and in areas that will come in contact with storm water discharges.

D. Numeric effluent limitations.

1. In addition to the numeric effluent limitations described in Part I A 1 c ~~and d~~, the following limitations shall be met by existing and new facilities.

Wet deck storage area runoff. Nonstorm water discharges from areas used for the storage of logs where water, without chemical additives, is intentionally sprayed or deposited on logs to deter decay or infestation by insects are required to meet the following effluent limitations: pH shall be within the range of 6.0-9.0, and there will be no discharge of debris. Chemicals are not allowed to be applied to the stored logs. The term "debris" is defined as woody material such as bark, twigs, branches, heartwood or sapwood that will not pass through a 2.54 cm (1 in.) diameter round opening and is present in the discharge from a wet deck storage area. Permittees subject to these numeric limitations ~~must~~ shall be in compliance with these limitations through the duration of permit coverage.

Table 90-1.
Sector A - Numeric Effluent Limitations.

Parameter	Effluent Limitations
Wet Decking Discharges at Log Storage and Handling Areas (SIC 2411)	
pH	6.0 - 9.0 s.u.
Debris (woody material such as bark, twigs, branches, heartwood, or sapwood)	No discharge of debris that will not pass through a 2.54 cm (1") diameter round opening.

2. Compliance monitoring requirements. In addition to the parameters listed above, the permittee shall provide an estimate of the total volume (in gallons) of the discharge sampled.

E. Benchmark monitoring and reporting requirements. Timber product facilities are required to monitor their storm water discharges for the pollutants of concern listed in the appropriate section of Table 90-2.

Table 90-2.
Sector A - Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut Off Benchmark Concentration
General Sawmills and Planing Mills (SIC 2421)	
Total Suspended Solids (TSS)	100 mg/L
[Total Recoverable Zinc]	[120 µg/L]
Wood Preserving Facilities (SIC 2491)	
Total Recoverable Arsenic [¹]	50 µg/L
Total Recoverable Chromium [¹]	16 µg/L
Total Recoverable Copper [¹]	18 µg/L
[Phenols]	[16 µg/L]
[Total Suspended Solids (TSS)]	[100 mg/L]
Log Storage and Handling Facilities (SIC 2411)	
Total Suspended Solids (TSS)	100 mg/L
Hardwood Dimension and Flooring Mills; Special Products Sawmills, not elsewhere classified; Millwork, Veneer, Plywood and Structural Wood; Wood Containers; Wood Buildings and Mobile Homes; Reconstituted Wood Products; and Wood Products Facilities not elsewhere classified (SIC Codes 2426, 2429, 2431-2439 (except 2434), 2448, 2449, 2451, 2452, 2493, and 2499).	
Total Suspended Solids (TSS)	100 mg/L

[¹ - Monitoring for metals (arsenic, chromium and copper) is not required for wood preserving facilities using only oil-based preservatives.]

9VAC25-151-100. Sector B - Paper and allied products manufacturing.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities generally classified under SIC Major Group 26 that are engaged in the following activities: the manufacture of pulps from wood and other cellulose fibers and from rags; the manufacture of paper and paperboard into converted products, such as paper coated off the paper machine, paper bags, paper boxes and envelopes; and the manufacture of bags of plastic film and sheet.

B. Benchmark monitoring and reporting requirements. Paperboard mills are required to monitor their storm water

discharges for the ~~pollutant~~ pollutants of concern listed in Table 100.

Table 100.
Sector B – Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut-Off <u>Benchmark Concentration</u>
Paperboard Mills (SIC 2631)	
Biochemical Oxygen Demand (BOD ₅)	30 mg/L
[Total Suspended Solids (TSS)]	[100 mg/L]

9VAC25-151-110. Sector C - Chemical and allied products manufacturing.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities engaged in manufacturing the following products and generally described by the SIC code shown:

1. Basic industrial inorganic chemicals (including SIC Code 281);
2. Plastic materials and synthetic resins, synthetic rubbers, and cellulosic and other humanmade fibers, except glass (including SIC Code 282);
3. Medicinal chemicals and pharmaceutical products, including the grading, grinding and milling of botanicals (including SIC Code 283).
4. Soap and other detergents, including facilities producing glycerin from vegetable and animal fats and oils; specialty cleaning, polishing, and sanitation preparations; surface active preparations used as emulsifiers, wetting agents, and finishing agents, including sulfonated oils; and perfumes, cosmetics, and other toilet preparations (including SIC Code 284);
5. Paints (in paste and ready-mixed form); varnishes; lacquers; enamels and shellac; putties, wood fillers, and sealers; paint and varnish removers; paint brush cleaners; and allied paint products (including SIC Code 285);
6. Industrial organic chemicals (including SIC Code 286);
7. Nitrogenous and phosphatic basic fertilizers, mixed fertilizer, pesticides, and other agricultural chemicals (including SIC Code 287);
8. Industrial and household adhesives, glues, caulking compounds, sealants, and linoleum, tile, and rubber cements from vegetable, animal, or synthetic plastics materials; explosives; printing ink, including gravure ink, screen process and lithographic inks; miscellaneous chemical preparations, such as fatty acids, essential oils,

gelatin (except vegetable), sizes, bluing, laundry sours, and writing and stamp pad ink; industrial compounds, such as boiler and heat insulating compounds; and chemical supplies for foundries (including SIC Code 289); and

9. Ink and paints, including china painting enamels, India ink, drawing ink, platinum paints for burnt wood or leather work, paints for china painting, artists' paints and artists' water colors (SIC Code 3952, limited to those listed; for others in SIC Code 3952 not listed above, see Sector Y (9VAC25-151-320)).

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: inks, paints, or substances (hazardous, nonhazardous, etc.) resulting from an on-site spill, including materials collected in drip pans; washwaters from material handling and processing areas; or washwaters from drum, tank, or container rinsing and cleaning.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.

1. Site description.
 - a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: processing and storage areas; access roads, rail cars and tracks; areas where substances are transferred in bulk; and operating machinery.
 - b. Summary of potential pollutant sources. A description of the following sources and activities that have potential pollutants associated with them: loading, unloading and transfer of chemicals; outdoor storage of salt, pallets, coal, drums, containers, fuels, fueling stations; vehicle and equipment maintenance/cleaning areas; areas where the treatment, storage or disposal (on-site or off-site) of waste/wastewater occur; storage tanks and other containers; processing and storage areas; access roads, rail cars and tracks; areas where the transfer of substances in bulk occurs; and areas where machinery operates.
2. Storm water controls. ~~Nonstructural BMPs.~~ Good housekeeping. ~~At a minimum, the~~ The SWPPP shall include:
 - a. ~~Include a~~ A schedule for regular pickup and disposal of garbage and waste materials, or a description of other appropriate measures used to reduce the potential for the discharge of storm water that has come into contact with garbage or waste materials;
 - b. ~~Include routine~~ Routine inspections of the condition of drums, tanks and containers for potential leaks.

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D. Numeric effluent limitations. In addition to the numeric effluent limitations described in Part I A 1 c and d, the following effluent limitations shall be met by existing and new discharges with phosphate fertilizer manufacturing runoff. The provisions of this paragraph are applicable to storm water discharges from the phosphate subcategory of the fertilizer manufacturing point source category (~~40 CFR 418.10 (2002)~~) (40 CFR 418.10 (2006)). The term contaminated storm water runoff shall mean precipitation runoff, that during manufacturing or processing, comes into contact with any raw materials, intermediate product, finished product, by-products or waste product. The concentration of pollutants in storm water discharges shall not exceed the effluent limitations in Table 110-1.

Table 110-1.
Sector C – Numeric Effluent Limitations.

Parameter	Effluent Limitations	
	Daily Maximum	30-day Average
Phosphate Subcategory of the Fertilizer Manufacturing Point Source Category (40 CFR 418.10 (2002)) (40 CFR 418.10 (2006)) - applies to precipitation runoff that, during manufacturing or processing, comes into contact with any raw materials, intermediate product, finished product, by-products or waste product (SIC 2874)		
Total Phosphorus (as P)	105 mg/L	35 mg/L
Fluoride	75 mg/L	25 mg/L

E. Benchmark monitoring and reporting requirements. Agricultural chemical manufacturing facilities; industrial inorganic chemical facilities; soaps, detergents, cosmetics, and perfume manufacturing facilities; and plastics, synthetics, and resin manufacturing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 110-2 below.

Table 110-2.
Sector C – Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut-Off Benchmark Concentration
Agricultural Chemicals (SIC 2873-2879)	
Total Nitrogen	2.2 mg/L
Total Recoverable Iron	± 1.0 mg/L
Total Recoverable Zinc	120 µg/L
Phosphorus	± 2.0 mg/L
[Total Suspended Solids (TSS)]	[100 mg/L]

Industrial Inorganic Chemicals (SIC 2812-2819)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	± 1.0 mg/L
Total Nitrogen	2.2 mg/L
[Total Recoverable Zinc]	[120 µg/L]
[Total Suspended Solids (TSS)]	[100 mg/L]
Soaps, Detergents, Cosmetics, and Perfumes (SIC 2841-2844)	
Total Nitrogen	2.2 mg/L
Total Recoverable Zinc	120 µg/L
[Total Suspended Solids (TSS)]	[100 mg/L]
Plastics, Synthetics, and Resins (SIC 2821-2824)	
Total Recoverable Zinc	120 µg/L
[Total Suspended Solids (TSS)]	[100 mg/L]

9VAC25-151-120. Sector D - Asphalt paving and roofing materials and lubricant manufacturers.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities engaged in the following activities: manufacturing asphalt paving and roofing materials, including those facilities commonly identified by SIC Codes 2951 and 2952; portable asphalt plants (also commonly identified by SIC Code 2951); and manufacturing miscellaneous products of petroleum and coal, including those facilities classified as SIC Code 2992 and 2999.

B. Limitations on coverage. The following storm water discharges associated with industrial activity are not authorized by this section of the permit:

1. Storm water discharges from petroleum refining facilities, including those that manufacture asphalt or asphalt products that are classified as SIC Code 2911;
2. Storm water discharges from oil recycling facilities; and
3. Storm water discharges associated with fats and oils rendering.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following item: routine facility inspections. Material storage and handling areas, liquid storage tanks, hoppers or silos, vehicle and equipment maintenance, cleaning, and fueling areas, material handling vehicles, equipment and processing areas shall be inspected at least once per month, as part of the maintenance program. The permittee shall ensure that appropriate action is taken in

response to the inspection by implementing tracking or follow-up procedures.

D. Numeric effluent limitations. In addition to the numeric effluent limitations listed in Part I A c and d, discharges from areas where production of asphalt paving and roofing emulsions occurs may not exceed the limitations in Table 120-1.

Table 120-1.
Sector D – Numeric Effluent Limitations.

Parameter	Effluent Limitations	
	Daily Maximum	30-day Average
Discharges from areas where production of asphalt paving and roofing emulsions occurs (SIC 2951, 2952)		
Total Suspended Solids (TSS)	23 mg/L	15 mg/L
Oil and Grease	15 mg/L	10 mg/L
pH	6.0 - 9.0 s.u.	

E. Benchmark monitoring and reporting requirements. Asphalt paving and roofing materials manufacturing facilities are required to monitor their storm water discharges for the ~~pollutant~~ pollutants of concern listed in Table 120-2.

Table 120-2.
Sector D – Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut Off <u>Benchmark Concentration</u>
Asphalt Paving and Roofing Materials (SIC 2951, 2952)	
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-130. Sector E - Glass, clay, cement, concrete, and gypsum products.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities generally classified under SIC Major Group 32 that are engaged in either manufacturing the following products or performing the following activities: flat, pressed, or blown glass or glass containers; hydraulic cement; clay products including tile and brick; pottery and porcelain electrical supplies; ~~concrete products~~; gypsum products; nonclay refractories; minerals and earths, ground or otherwise treated; lime manufacturing; cut stone and stone products; asbestos products; and mineral wool and mineral wool insulation products.

Ready-mixed Concrete block and brick facilities (SIC Code 3271), concrete products facilities, except block and brick (SIC Code 3272), and ready-mixed concrete facilities (SIC Code 3273) are not covered by this permit.

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items:

1. Site description and site map. The site map shall identify the locations of the following, if applicable: bag house or other dust control device; recycle/sedimentation pond, clarifier or other device used for the treatment of process wastewater and the areas that drain to the treatment device.

2. Storm water controls.

a. Good housekeeping.

(1) Facilities shall prevent or minimize the discharge of: spilled cement; aggregate (including sand or gravel); kiln dust; fly ash; settled dust; and other significant materials in storm water from paved portions of the site that are exposed to storm water. Measures used to minimize the presence of these materials may include regular sweeping, or other equivalent measures. The plan shall indicate the frequency of sweeping or equivalent measures. The frequency shall be determined based upon consideration of the amount of industrial activity occurring in the area and frequency of precipitation, but shall not be less than once per week if cement, aggregate, kiln dust; fly ash, or settled dust are being handled or processed.

(2) Facilities shall prevent the exposure of fine granular solids (~~such as cement, kiln dust, etc.~~) (such as cement, fly ash, kiln dust, etc.) to storm water. Where practicable, these materials shall be stored in enclosed silos or hoppers, buildings, or under other covering.

b. Routine facility inspections. The inspection shall take place while the facility is in operation and shall include all of the following areas that are exposed to storm water: material handling areas, aboveground storage tanks, hoppers or silos, dust collection/containment systems, truck wash down/equipment cleaning areas.

c. Certification of ~~nonstorm water~~ outfall evaluation for unauthorized discharges. Facilities engaged in production of ready-mix concrete, concrete block, brick or similar products shall include in the certification a description of measures that ensure that process wastewater that results from washing of trucks, mixers, transport buckets, forms or other equipment are discharged in accordance with a separate VPDES permit or are recycled.

C. Numeric effluent limitations. In addition to the numeric effluent limitations described by Part I A 1 c and d, the following limitations shall be met by existing and new facilities: Cement manufacturing facility, material storage runoff. Any discharge composed of runoff that derives from the storage of materials including raw materials, intermediate products, finished products, and waste materials that are used in or derived from the manufacture of cement shall not

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exceed the limitations in Table 130-1. Runoff from the storage piles shall not be diluted with other storm water runoff or flows to meet these limitations. Any untreated overflow from facilities designed, constructed and operated to treat the volume of material storage pile runoff that is associated with a 10-year, 24-hour rainfall event shall not be subject to the TSS or pH limitations. Facilities subject to these numeric effluent limitations ~~must~~ shall be in compliance with these limits upon commencement of coverage and for the entire term of this permit.

Table 130-1.
Sector E – Numeric Effluent Limitations.

Parameter	Effluent Limitations	
	Daily Maximum	30-day Average
Cement Manufacturing Facility, Material Storage Runoff: Any discharge composed of runoff that derives from the storage of materials including raw materials, intermediate products, finished products, and waste materials that are used in or derived from the manufacture of cement.		
Total Suspended Solids (TSS)	50 mg/L	
pH	6.0 - 9.0 s.u.	

D. Benchmark monitoring and reporting requirements. Clay product manufacturers (~~SIC 3245-3259, SIC 3261-3269~~) (SIC 3251-3259, SIC 3261-3269) and ~~concrete lime~~ and gypsum product manufacturers (~~SIC 3271-3275~~) (SIC 3274, 3275) are required to monitor their storm water discharges for the pollutants of concern listed in Table 130-2.

Table 130-2.
Sector E – Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut-Off <u>Benchmark</u> Concentration
Clay Product Manufacturers (SIC 3245-3259, 3261-3269) (<u>SIC 3251-3259, 3261-3269</u>)	
Total Recoverable Aluminum	750 ug/L
[Total Suspended Solids (TSS)]	[100 mg/L]
Concrete Lime and Gypsum Product Manufacturers (SIC 3271-3275) (<u>SIC 3274, 3275</u>)	
Total Suspended Solids (TSS)	100 mg/L
pH	6.0 - 9.0 s.u.
Total Recoverable Iron	+ <u>1.0</u> mg/L

9VAC25-151-140. Sector F - Primary metals.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from the following types of facilities in the primary metal industry, and generally described by the SIC code shown:

1. Steel works, blast furnaces, and rolling and finishing mills, including: steel wire drawing and steel nails and spikes; cold-rolled steel sheet, strip, and bars; and steel pipes and tubes (SIC Code 331).
2. Iron and steel foundries, including: gray and ductile iron, malleable iron, steel investment, and steel foundries not elsewhere classified (SIC Code 332).
3. Primary smelting and refining of nonferrous metals, including: primary smelting and refining of copper, and primary production of aluminum (SIC Code 333).
4. Secondary smelting and refining of nonferrous metals (SIC Code 334).
5. Rolling, drawing, and extruding of nonferrous metals, including: rolling, drawing, and extruding of copper; rolling, drawing and extruding of nonferrous metals except copper and aluminum; and drawing and insulating of nonferrous wire (SIC Code 335).
6. Nonferrous foundries (castings), including: aluminum die-castings, nonferrous die-castings, except aluminum, aluminum foundries, copper foundries, and nonferrous foundries, except copper and aluminum (SIC Code 336).
7. Miscellaneous primary metal products, not elsewhere classified, including: metal heat treating, and primary metal products, not elsewhere classified (SIC Code 339).

Activities covered include, but are not limited to, storm water discharges associated with coking operations, sintering plants, blast furnaces, smelting operations, rolling mills, casting operations, heat treating, extruding, drawing, or forging of all types of ferrous and nonferrous metals, scrap, and ore.

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.

1. Site description.
 - a. Site map. The site map shall identify where any of the following activities may be exposed to precipitation/surface runoff: storage or disposal of wastes such as spent solvents/baths, sand, slag/dross; liquid storage tanks/drums; processing areas including pollution control equipment (e.g., baghouses); and storage areas of raw materials such as coal, coke, scrap, sand, fluxes, refractories, or metal in any form. In addition, indicate sources where an accumulation of significant amounts of

particulate matter could occur from such sources as furnace or oven emissions, losses from coal/coke handling operations, etc., and that could result in a discharge of pollutants to surface waters.

b. ~~Inventory of exposed materials~~ Summary of potential pollutant sources. The inventory of materials handled at the site that potentially may be exposed to precipitation/runoff ~~should~~ shall include areas where deposition of particulate matter from process air emissions or losses during material handling activities are possible.

2. Storm water controls.

a. Good housekeeping. The SWPPP ~~should~~ shall consider implementation of the following measures, or equivalent measures, where applicable.

(1) Establishment of a cleaning/maintenance program for all impervious areas of the facility where particulate matter, dust, or debris may accumulate, especially areas where material loading/unloading, storage, handling, and processing occur.

(2) The paving of areas where vehicle traffic or material storage occur, but where vegetative or other stabilization methods are not practicable. Sweeping programs shall be instituted in these areas as well.

(3) For unstabilized areas of the facility where sweeping is not practical, the permittee ~~should~~ shall consider using storm water management devices such as sediment traps, vegetative buffer strips, filter fabric fence, sediment filtering boom, gravel outlet protection, or other equivalent measures, that effectively trap or remove sediment.

b. Routine facility inspections. Inspections shall be conducted ~~at least quarterly~~ monthly, and shall address all potential sources of pollutants, including (if applicable):

(1) Air pollution control equipment (e.g., baghouses, electrostatic precipitators, scrubbers, and cyclones) ~~should~~ shall be inspected for any signs of degradation (e.g., leaks, corrosion, or improper operation) that could limit their efficiency and lead to excessive emissions. The permittee ~~should~~ shall consider monitoring air flow at inlets/outlets, or equivalent measures, to check for leaks (e.g., particulate deposition) or blockage in ducts;

(2) All process or material handling equipment (e.g., conveyors, cranes, and vehicles) ~~should~~ shall be inspected for leaks, drips, or the potential loss of materials; and

(3) Material storage areas (e.g., piles, bins or hoppers for storing coke, coal, scrap, or slag, as well as chemicals

stored in tanks/drums) ~~should~~ shall be examined for signs of material losses due to wind or storm water runoff.

C. Benchmark monitoring and reporting requirements. Primary metals facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 140 below.

Table 140.
Sector F – Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut-Off Benchmark Concentration
Steel Works, Blast Furnaces, and Rolling and Finishing Mills (SIC 3312-3317)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Zinc	120 µg/L
[Total Suspended Solids (TSS)]	[100 mg/L]
Iron and Steel Foundries (SIC 3321-3325)	
Total Recoverable Aluminum	750 µg/L
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	+ 1.0 mg/L
Total Recoverable Zinc	120 µg/L
Rolling, Drawing, and Extruding of Nonferrous Metals (SIC 3351-3357)	
Total Recoverable Copper	18 µg/L
Total Recoverable Zinc	120 µg/L
[Total Suspended Solids (TSS)]	[100 mg/L]
Nonferrous Foundries (SIC 3363-3369)	
Total Recoverable Copper	18 µg/L
Total Recoverable Zinc	120 µg/L
[Total Suspended Solids (TSS)]	[100 mg/L]

9VAC25-151-150. Sector G - Metal mining (ore mining and dressing).

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from active, temporarily inactive and inactive metal mining and ore dressing facilities including mines abandoned on federal lands, as classified

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under SIC Major Group 10. Coverage is required for facilities that discharge storm water that has come into contact with, or is contaminated by, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the operation. SIC Major Group 10 includes establishments primarily engaged in mining of ores, developing mines, or exploring for metallic minerals (ores) and also includes ore dressing and beneficiating operations, whether performed at colocated, dedicated mills or at separate mills, such as custom mills. For the purposes of this section, the term "metal mining" includes any of the separate activities listed above. Covered discharges include:

1. All storm water discharges from inactive ~~metal mining~~ facilities; ~~and~~

2. Storm water discharges from the following areas of active and temporarily inactive metal mining facilities: waste rock/overburden piles if composed entirely of storm water and not combining with mine drainage; topsoil piles; off-site haul/access roads; on-site haul/access roads constructed of waste rock/overburden if composed entirely of storm water and not combining with mine drainage; on-site haul/access roads not constructed of waste rock/overburden/spent ore except if mine drainage is used for dust control; runoff from tailings dams/dikes when not constructed of waste rock/tailings and no process fluids are present; runoff from tailings dams/dikes when constructed of waste rock/tailings and no process fluids are present if composed entirely of storm water and not combining with mine drainage; concentration building if no contact with material piles; mill site if no contact with material piles; office/administrative building and housing if mixed with storm water from industrial area; chemical storage area; docking facility if no excessive contact with waste product that would otherwise constitute mine drainage; explosive storage; fuel storage; vehicle/equipment maintenance area/building; parking areas (if necessary); power plant; truck wash areas if no excessive contact with waste product that would otherwise constitute mine drainage; unreclaimed, disturbed areas outside of active mining area; reclaimed areas released from reclamation bonds prior to December 17, 1990; and partially/inadequately reclaimed areas or areas not released from reclamation bonds;

3. Storm water discharges from exploration and development of metal mining and/or ore dressing facilities; ~~and~~

4. Storm water discharges from facilities at mining sites undergoing reclamation.

B. Limitations on coverage. Storm water discharges from active metal mining facilities that are subject to the effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR Part 440 ~~(2002)~~ (2007)) are not authorized by this permit.

Note: Discharges that come in contact with overburden/waste rock are subject to 40 CFR Part 440 ~~(2002)~~ (2007), providing: the discharges drain to a point source (either naturally or as a result of intentional diversion), and they combine with mine drainage that is otherwise regulated under 40 CFR Part 440 ~~(2002)~~ (2007). Discharges from overburden/waste rock can be covered under this permit if they are composed entirely of storm water and do not combine with sources of mine drainage that are subject to 40 CFR Part 440 ~~(2002)~~ (2007).

C. Special Conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: adit drainage or contaminated springs or seeps. Contaminated seeps and springs discharging from waste rock dumps that do not directly result from precipitation events are not authorized by this permit.

D. Special definitions. The following definitions are only for this section of the general permit:

"Active metal mining facility" means a place where work or other related activity to the extraction, removal, or recovery of metal ore is being conducted. For surface mines, this definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun.

"Active phase" means activities including each step from extraction through production of a salable product.

"Exploration and ~~construction~~ development phase" entails exploration and land disturbance activities to determine the financial viability of a site. Construction Development includes the building of site access roads and removal of overburden and waste rock to expose mineable minerals.

"Final stabilization" - a site or portion of a site is "finally stabilized" when:

1. All soil-disturbing activities at the site have been completed and either of the two following criteria are met:

a. A uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or

[~~(b)~~ b.] Equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

2. When background native vegetation will cover less than 100% of the ground (e.g., arid areas, beaches), the 70% coverage criteria is adjusted as follows: if the native vegetation covers 50% of the ground, 70% of 50% (0.70 x 0.50 = 0.35) would require 35% total cover for final

stabilization. On a beach with no natural vegetation, no stabilization is required.

"Inactive metal mining facility" means a site or portion of a site where metal mining and/or milling occurred in the past but is not an active facility as defined in this permit, and where the inactive portion is not covered by an active mining permit issued by the applicable ~~(federal or state)~~ federal or state governmental agency.

"Mining operation" typically consists of three phases, any one of which individually qualifies as a "mining activity." The phases are the exploration and ~~construction~~ development phase, the active phase, and the reclamation phase.

"Reclamation phase" means activities intended to return the land to its premining use.

"Temporarily inactive metal mining facility" means a site or portion of a site where metal mining and/or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable ~~(federal or state)~~ federal or state government agency.

E. Clearing, grading, and excavation activities. Clearing, grading, and excavation activities being conducted as part of the exploration and development phase of a mining operation are covered under this permit.

1. Management practices for clearing, grading, and excavation activities.

a. Selecting and installing control measures. A combination of erosion and sedimentation control measures are required to achieve maximum pollutant prevention and removal. All control measures shall be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices.

b. Removal of sediment. If sediment escapes the site, off-site accumulations of sediment shall be removed at a frequency sufficient to prevent off-site impacts.

c. Good housekeeping. Litter, debris, and chemicals shall be prevented from becoming a pollutant source in storm water discharges.

d. Velocity dissipation. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide a nonerosive flow velocity from disturbed areas and from any storm water retention or detention facilities to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

e. Retention and detention of storm water runoff. For drainage locations serving more than one acre, sediment basins and/or temporary sediment traps should be used.

At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the development area unless a sediment basin providing storage for a calculated volume of runoff from a two-year, 24-hour storm or 3,600 cubic feet of storage per acre drained is provided.

f. Temporary stabilization of disturbed areas. Stabilization measures shall be initiated immediately in portions of the site where development activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased. In arid, semiarid, and drought-stricken areas where initiating perennial vegetative stabilization measures is not possible within 14 days after construction activity has temporarily or permanently ceased, final vegetative stabilization measures shall be initiated as soon as possible. Until full vegetative stabilization is achieved, interim measures such as blankets and tackifiers shall be employed.

2. Requirements for inspection of clearing, grading, and excavation activities.

a. Inspection frequency. Inspections shall be conducted at least once every seven calendar days or at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater. Inspection frequency may be reduced to at least once every month if the entire site is temporarily stabilized, if runoff is unlikely due to winter conditions (e.g., site is covered with snow, ice, or the ground is frozen), or construction is occurring during seasonal arid periods in arid areas and semi-arid areas.

b. Qualified personnel for inspections. Inspections shall be conducted by qualified personnel. "Qualified personnel" means a person knowledgeable in the principles and practice of erosion and sediment control who possesses the skills to assess conditions at the construction site that could impact storm water quality and the effectiveness of any sediment and erosion control measures selected to control the quality of storm water discharges from the clearing, grading, and excavation activities.

c. Location of inspections. Inspections shall include all areas of the site disturbed by clearing, grading, and excavation activities and areas used for storage of materials that are exposed to precipitation. Sedimentation and erosion control measures identified in the SWPPP shall be observed to ensure proper operation. Discharge locations shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to state waters, where accessible. Where

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discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

d. Inspection reports. For each inspection required above, an inspection report shall be completed. At a minimum, the inspection report shall include:

(1) The inspection date;

(2) Names, titles, and qualifications of personnel making the inspection;

(3) Weather information for the period since the last inspection (or note if it is the first inspection) including a best estimate of the beginning of each storm event, duration of each storm event, approximate amount of rainfall for each storm event (in inches), and whether any discharges occurred;

(4) Weather information and a description of any discharges occurring at the time of the inspection;

(5) Location(s) of discharges of sediment or other pollutants from the site;

(6) Location(s) of BMPs that need to be maintained;

(7) Location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;

(8) Location(s) where additional BMPs are needed that did not exist at the time of inspection; and

(9) Corrective action(s) required, including any changes to the SWPPP necessary and implementation dates.

A record of each inspection and of any actions taken in accordance with this section shall be retained as part of the SWPPP for at least three years from the date that permit coverage expires or is terminated. The inspection reports shall identify any incidents of noncompliance with the permit conditions. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the clearing, grading, and excavation activities are in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part II K of the permit.

3. Maintenance of controls for clearing, grading, and excavation activities.

a. Maintenance of BMPs. All erosion and sediment control measures and other protective measures identified in the SWPPP shall be maintained in effective operating condition. If site inspections required by subdivision 2 of this subsection identify BMPs that are not operating effectively, maintenance shall be performed as soon as possible and before the next storm event whenever

practicable to maintain the continued effectiveness of storm water controls.

b. Modification of BMPs. Existing BMPs need to be modified or, if additional BMPs are necessary for any reason, implementation shall be completed before the next storm event whenever practicable. If implementation before the next storm event is impracticable, the situation shall be documented in the SWPPP and alternative BMPs shall be implemented as soon as possible.

c. Maintenance of sediment traps and ponds. Sediment from sediment traps or sedimentation ponds shall be removed when design capacity has been reduced by 50%.

4. Requirements for cessation of clearing, grading, and excavation activities.

a. Inspections and maintenance. Inspections and maintenance of BMPs associated with clearing, grading, and excavation activities being conducted as part of the exploration and construction phase of a mining operation shall continue until final stabilization has been achieved on all portions of the disturbed area.

b. Final stabilization. Stabilization measures shall be initiated immediately in portions of the site where development activities have permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has permanently ceased. In arid, semiarid, and drought-stricken areas where initiating perennial vegetative stabilization measures is not possible within 14 days after construction activity has temporarily or permanently ceased, final vegetative stabilization measures shall be initiated as soon as possible. Until final stabilization is achieved temporary stabilization measures, such as blankets and tackifiers, shall be used.

E. F. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.

1. SWPPP requirements for active, inactive, and temporarily inactive metal mining facilities, and sites undergoing reclamation.

a. Site description.

(1) Activities at the facility. A description of the mining and associated activities taking place at the site that can potentially affect storm water discharges covered by this permit. The description shall include ~~the total acreage within the mine site; an estimate of the number of acres of disturbed land; an estimate of the total amount of land proposed to be disturbed throughout the life of the mine~~ and a general description of the location of the site relative to major transportation routes and communities.

(2) Site map. The site map shall identify the locations of the following, as appropriate: mining/milling site boundaries; access and haul roads; an outline of the drainage areas of each storm water outfall within the facility, and an indication of the types of discharges from the drainage areas; location(s) of all permitted discharges covered under an individual VPDES permit; equipment storage, fueling and maintenance areas; materials handling areas; outdoor manufacturing, storage or material disposal areas; storage areas for chemicals and explosives; areas used for storage of overburden, materials, soils or wastes; location of mine drainage (where water leaves mine) or any other process water; tailings piles/ponds, both proposed and existing; heap leach pads; points of discharge from the property for mine drainage/process water; surface waters; ~~and~~ boundary of tributary areas that are subject to effluent limitations guidelines; and location(s) of reclaimed areas.

b. Summary of potential pollutant sources. For each area of the mine/mill site where storm water discharges associated with industrial activities occur, the plan shall identify the types of pollutants likely to be present in significant amounts ~~must be identified~~ (e.g., heavy metals, sediment). The following factors must shall be considered: the mineralogy of the ore and waste rock (e.g., acid forming); toxicity and quantity of chemicals used, produced or discharged; the likelihood, if any, of contact with storm water; vegetation of site; history of significant leaks/spills of toxic or hazardous pollutants. A summary of any existing ore or waste rock/overburden characterization data and test results for potential generation of acid rock shall also be included. If the ore or waste rock/overburden characterization data are updated due to a change in the ore type being mined, the SWPPP shall be updated with the new data.

c. Storm water controls.

(1) ~~Nonstructural BMPs.~~

~~(a) (1) Routine facility inspections. Active mining sites must~~ Sites shall be inspected at least monthly. ~~Temporarily inactive sites must be inspected at least quarterly unless adverse weather conditions make the site inaccessible.~~

~~(b) (2) Employee training. Employee training shall be conducted at least annually at active mining and temporarily inactive sites. All employee training shall be documented in the SWPPP.~~

(2) (3) Structural BMPs. Each of the following BMPs shall be considered in the SWPPP. The potential pollutants identified in subpart ~~E E~~ 1 b above shall determine the priority and appropriateness of the BMPs selected. ~~If it is determined that one or more of these BMPs are not appropriate for the facility, the plan must~~

~~explain why it is not appropriate.~~ If BMPs are implemented or planned but are not listed here (e.g., substituting a less toxic chemical for a more toxic one), descriptions of them ~~must~~ shall be included in the SWPPP.

(a) Sediment and erosion control. The measures to consider include: diversion of flow away from areas susceptible to erosion (measures such as interceptor dikes and swales, diversion dikes, curbs and berms); stabilization methods to prevent or minimize erosion (such as temporary or permanent seeding; vegetative buffer strips; protection of trees; topsoiling; soil conditioning; contouring; mulching; geotextiles (matting, netting, or blankets); riprap; gabions; and retaining walls); and structural methods for controlling sediment (such as check dams; rock outlet protection; level spreaders; gradient terraces; straw bale barriers; silt fences; gravel or stone filter berms; brush barriers; sediment traps; grass swales; pipe slope drains; earth dikes; other controls such as entrance stabilization, waterway crossings or wind breaks; or other equivalent measures).

(b) Storm water diversion. A description of how and where storm water will be diverted away from potential pollutant sources to prevent storm water contamination. BMP options may include the following: interceptor dikes and swales; diversion dikes, curbs and berms; pipe slope drains; subsurface drains; drainage/storm water conveyance systems (channels or gutters, open top box culverts and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts) or equivalent measures.

(c) Management of runoff. The potential pollutant sources given in ~~9VAC25-151-150 E 1 b~~ must subdivision 1 b of this subsection shall be considered when determining reasonable and appropriate measures for managing runoff.

(d) Capping. ~~Where~~ When capping of a contaminant source is necessary, the source being capped and materials and procedures used to cap the contaminant source ~~must~~ shall be identified.

(e) Treatment. If treatment of a storm water discharge is necessary to protect water quality, include a description of the type and location of storm water treatment that will be used. Storm water treatments include the following: chemical or physical systems; oil/water separators; artificial wetlands; etc. The permittee is encouraged to use both passive and/or active treatment of storm water runoff. Treated runoff may be discharged as a storm water source regulated under this permit provided the discharge is not combined with discharges subject to effluent limitation guidelines for the Ore Mining and

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Dressing Point Source Category (40 CFR Part 440 (2007)).

(f) Certification of discharge testing. The permittee ~~must~~ shall test or evaluate all outfalls covered under this permit for the presence of specific mining-related nonstorm water discharges such as seeps or adit discharges or discharges subject to effluent limitations guidelines (e.g., 40 CFR Part 440 (2007)), such as mine drainage or process water. Alternatively (if applicable), the permittee may certify in the SWPPP that a particular discharge ~~comprised~~ composed of commingled storm water and nonstorm water is covered under a separate VPDES permit; and that permit subjects the nonstorm water portion to effluent limitations prior to any commingling. This certification shall identify the nonstorm water discharges, the applicable VPDES permit(s), the effluent limitations placed on the nonstorm water discharge by the permit(s), and the points at which the limitations are applied.

~~2. SWPPP requirements for inactive metal mining facilities.~~

~~a. Site description.~~

~~(1) Activities at the facility. The SWPPP shall briefly describe the mining and associated activities that took place at the site that can potentially affect the storm water discharges covered by this permit. The following must be included: approximate dates of operation; total acreage within the mine and/or processing site; estimate of acres of disturbed earth; activities currently occurring on site (e.g., reclamation); a general description of site location with respect to transportation routes and communities.~~

~~(2) Site map. The site map shall identify the locations of the following, as appropriate: mining/milling site boundaries; access and haul roads; an outline of the drainage areas of each storm water outfall within the facility, and an indication of the types of discharges from the drainage areas; equipment storage, fueling and maintenance areas; materials handling areas; outdoor manufacturing, storage or material disposal areas; storage areas for chemicals and explosives; areas used for storage of overburden, materials, soils or wastes; location of mine drainage (where water leaves mine) or any other process water; tailings piles/ponds, both proposed and existing; heap leach pads; points of discharge from the property for mine drainage/process water; surface waters; and boundary of tributary areas that are subject to effluent limitations guidelines.~~

~~b. Summary of potential pollutant sources. For each area of the mine/mill site where storm water discharges associated with industrial activities occur, the types of pollutants likely to be present in significant amounts must be identified (e.g., heavy metals, sediment). The~~

~~following factors must be considered: the mineralogy of the ore and waste rock (e.g., acid forming); toxicity and quantity of chemicals used, produced or discharged; the likelihood, if any, of contact with storm water; vegetation of site; history of significant leaks/spills of toxic or hazardous pollutants. A summary of any existing ore or waste rock/overburden characterization data and test results for potential generation of acid rock shall also be included. If the ore or waste rock/overburden characterization data are updated due to a change in the ore type being mined, the SWPPP shall be updated with the new data.~~

~~e. Storm water controls.~~

~~(1) Nonstructural BMPs. The nonstructural controls in the general requirements at Part III B 6 b 1 are not required for inactive facilities.~~

~~(2) Structural BMPs. Each of the following BMPs shall be considered in the SWPPP. The potential pollutants identified in subpart E 2 b above shall determine the priority and appropriateness of the BMPs selected. If it is determined that one or more of these BMPs are not appropriate for the facility, the plan must explain why it is not appropriate. If BMPs are implemented or planned but are not listed here (e.g., substituting a less toxic chemical for a more toxic one), descriptions of them must be included in the SWPPP.~~

~~(a) Sediment and erosion control. The measures to consider include: diversion of flow away from areas susceptible to erosion (measures such as interceptor dikes and swales, diversion dikes, curbs and berms); stabilization methods to prevent or minimize erosion (such as temporary or permanent seeding; vegetative buffer strips; protection of trees; topsoiling; soil conditioning; contouring; mulching; geotextiles (matting; netting; or blankets); riprap; gabions; and retaining walls; and structural methods for controlling sediment (such as check dams; rock outlet protection; level spreaders; gradient terraces; straw bale barriers; silt fences; gravel or stone filter berms; brush barriers; sediment traps; grass swales; pipe slope drains; earth dikes; other controls such as entrance stabilization, waterway crossings or wind breaks; or other equivalent measures).~~

~~(b) Storm water diversion. A description of how and where storm water will be diverted away from potential pollutant sources to prevent storm water contamination. BMP options may include the following: interceptor dikes and swales; diversion dikes, curbs and berms; pipe slope drains; subsurface drains; drainage/storm water conveyance systems (channels or gutters, open top box culverts and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts) or equivalent measures.~~

~~(c) Management of runoff. The potential pollutant sources given in 9VAC25-151-150 E 2 b must be considered when determining reasonable and appropriate measures for managing runoff.~~

~~(d) Capping. Where capping of a contaminant source is necessary, the source being capped and materials and procedures used to cap the contaminant source must be identified.~~

~~(e) Treatment. If treatment of a storm water discharge is necessary to protect water quality, include a description of the type and location of storm water treatment that will be used. Storm water treatments include the following: chemical or physical systems; oil/water separators; artificial wetlands; etc.~~

~~d. Comprehensive site compliance evaluation. Annual site compliance evaluations may be impractical for inactive mining sites due to remote location/inaccessibility of the site, in which case the permittee must conduct the evaluation at least once every three years. The SWPPP must be documented to explain why annual compliance evaluations are not possible. If the evaluations will be conducted more often than every three years, the frequency of evaluations must be specified.~~

2. Termination of permit coverage.

a. Termination of permit coverage for sites reclaimed after December 17, 1990. A site or a portion of a site that has been released from applicable state or federal reclamation requirements after December 17, 1990, is no longer required to maintain coverage under this permit, provided that the covered storm water discharges do not have the potential to cause or contribute to violations of state water quality standards. If the site or portion of a site reclaimed after December 17, 1990, was not subject to reclamation requirements, the site or portion of the site is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed as defined in subpart 2 b below.

b. Termination of permit coverage for sites reclaimed before December 17, 1990. A site or portion of a site that was released from applicable state or federal reclamation requirements before December 17, 1990, or that was otherwise reclaimed before December 17, 1990, is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed. A site or portion of a site is considered to have been reclaimed if storm water runoff that comes into contact with (i) raw materials, intermediate byproducts, finished products, and waste products does not have the potential to cause or contribute to violations of state water quality standards, (ii) soil-disturbing activities related to mining at the sites or portion of the site have been completed,

(iii) the site or portion of the site has been stabilized to minimize soil erosion, and (iv) as appropriate depending on location, size, and the potential to contribute pollutants to storm water discharges, the site or portion of the site has been revegetated, will be amenable to natural revegetation, or will be left in a condition consistent with the post-mining land use.

F. G. Benchmark monitoring and reporting requirements.

1. Copper ore mining and dressing facilities. Active copper ore mining and dressing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 150-1 below.

2. Discharges from waste rock and overburden piles at ~~active ore mining and dressing facilities sites, inactive sites, and sites undergoing reclamation. Active ore mining and dressing facilities with discharges~~ Discharges from waste rock and overburden piles must perform analytie monitoring at active sites, inactive sites, and sites undergoing reclamation shall be analyzed for the parameters listed in Table ~~150-1~~ 150-2. Facilities ~~must~~ shall also monitor for the parameters listed in Table ~~150-2~~ 150-3. ~~However, the~~ The director may also notify the facility that additional monitoring must be performed to accurately characterize the quality and quantity of pollutants discharged from the waste rock/overburden piles. ~~Monitoring requirements for discharges from waste rock and overburden piles are not eligible for the waiver in Part I A 3 b.~~

Table 150-1.

Sector G – Benchmark Monitoring Requirements - Copper Ore Mining and Dressing Facilities.

Pollutants of Concern	Monitoring Cut-Off Benchmark Concentration
Active Copper Ore Mining and Dressing Facilities (SIC 1021)	
Total Suspended Solids (TSS)	100 mg/L
Discharges From Waste Rock and Overburden Piles From Active Ore Mining or Dressing Facilities Iron Ores; Copper Ores; Lead and Zinc Ores; Gold and Silver Ores; Ferroalloy Ores Except Vanadium; Miscellaneous Metal Ores (SIC Codes 1011, 1021, 1031, 1041, 1044, 1061, 1081, 1094, 1099)	
Total Suspended Solids (TSS)	100 mg/L
Turbidity (NTUs)	5 NTUs above background
PH	6.0 - 9.0 s.u.
Hardness (as CaCO ₃)	no benchmark value

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Total Recoverable Antimony	640 µg/L
Total Recoverable Arsenic	50 µg/L
Total Recoverable Beryllium	130 µg/L
Total Recoverable Cadmium	3.9 µg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Manganese	1.0 mg/L
Total Recoverable Mercury	2.4 µg/L
Total Recoverable Nickel	1.4 mg/L
Total Recoverable Selenium	20 µg/L
Total Recoverable Silver	3.8 µg/L
Total Recoverable Zinc	120 µg/L

Table 150-2.

Sector G – Benchmark Monitoring Requirements - Discharges from Waste Rock and Overburden Piles from Active Ore Mining or Dressing Facilities, Inactive Ore Mining or Dressing Facilities, and Sites Undergoing Reclamation.

<u>Pollutants of Concern</u>	<u>Benchmark Concentration</u>
<u>Iron Ores; Copper Ores; Lead and Zinc Ores; Gold and Silver Ores; Ferroalloy Ores Except Vanadium; Miscellaneous Metal Ores (SIC Codes 1011, 1021, 1031, 1041, 1044, 1061, 1081, 1094, 1099)</u>	
<u>Total Suspended Solids (TSS)</u>	<u>100 mg/L</u>
<u>Turbidity (NTUs)</u>	<u>50 NTU</u>
<u>pH</u>	<u>6.0 - 9.0 s.u.</u>
<u>Hardness (as CaCO₃)</u>	<u>no benchmark value</u>
<u>Total Recoverable Antimony</u>	<u>640 µg/L</u>
<u>Total Recoverable Arsenic</u>	<u>50 µg/L</u>
<u>Total Recoverable Beryllium</u>	<u>130 µg/L</u>
<u>Total Recoverable Cadmium</u>	<u>2.1 µg/L</u>

<u>Total Recoverable Copper</u>	<u>18 µg/L</u>
<u>Total Recoverable Iron</u>	<u>1.0 mg/L</u>
<u>Total Recoverable Lead</u>	<u>120 µg/L</u>
<u>Total Recoverable Mercury</u>	<u>1.4 µg/L</u>
<u>Total Recoverable Nickel</u>	<u>470 µg/L</u>
<u>Total Recoverable Selenium</u>	<u>5.0 µg/L</u>
<u>Total Recoverable Silver</u>	<u>3.8 µg/L</u>
<u>Total Recoverable Zinc</u>	<u>120 µg/L</u>

Table 150-2 150-3.

Sector G – Additional Monitoring Requirements for Discharges From Waste Rock and Overburden Piles From Active Ore Mining or Dressing Facilities, Inactive Ore Mining or Dressing Facilities, and Sites Undergoing Reclamation.

Type of Ore Mined	Pollutants of Concern		
	TSS (mg/L)	pH	Metals, Total Recoverable
Tungsten Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Nickel Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Aluminum Ore	X	X	Iron.
Mercury Ore	X	X	Nickel (H).
Iron Ore	X	X	Iron (Dissolved).
Platinum Ore			Cadmium (H), Copper (H), Mercury, Lead (H), Zinc (H).
Titanium Ore	X	X	Iron, Nickel (H), Zinc (H).
Vanadium Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Copper, Lead, Zinc, Gold, Silver and Molybdenum	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Mercury, Zinc (H).

Uranium, Radium and Vanadium	X	X	Chemical Oxygen Demand, Arsenic, Radium (Dissolved and Total Recoverable), Uranium, Zinc (H).
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Note: (H) indicates that hardness must also be measured when this pollutant is measured.

9VAC25-151-160. Sector H - Coal mines and coal mining-related facilities.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from coal mining-related areas (SIC Major Group 12) if (i) they are not subject to effluent limitations guidelines under 40 CFR Part 434 (2002) (2007) or (ii) they are not subject to the standards of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) and the Virginia Department of Mines, Minerals and Energy's individual permit requirements. The requirements of this section shall apply to storm water discharges from coal mining-related activities exempt from SMCRA, including the public financed exemption, the 16-2/3% exemption, the private use exemption, the under 250 tons exemption, the nonincidental tipple exemption, and the exemption for coal piles and preparation plants associated with the end user. Storm water discharges from the following portions of eligible coal mines and coal mining related facilities may be eligible for this permit: haul roads (nonpublic roads on which coal or coal refuse is conveyed), access roads (nonpublic roads providing light vehicular traffic within the facility property and to public roadways), railroad spurs, sidings, and internal haulage lines (rail lines used for hauling coal within the facility property and to off-site commercial railroad lines or loading areas); conveyor belts, chutes, and aerial tramway haulage areas (areas under and around coal or refuse conveyor areas, including transfer stations); and equipment storage and maintenance yards, coal handling buildings and structures, coal tipples, coal loading facilities and inactive coal mines and related areas (abandoned and other inactive mines, refuse disposal sites and other mining-related areas).

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: discharges from pollutant seeps or underground drainage from inactive coal mines and refuse disposal areas that do not result from precipitation events and discharges from floor drains in maintenance buildings and other similar drains in mining and preparation plant areas.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include at a minimum, the following items.

1. Site description.
 - a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff:
 - (1) Drainage direction and discharge points from all applicable mining-related areas described in ~~9VAC25-151-160 A~~ [~~subpart A above~~ subsection A of this section];
 - (2) Acidic spoil, refuse or unreclaimed disturbed areas; and
 - (3) Liquid storage tanks containing pollutants such as caustics, hydraulic fluids and lubricants.
 - b. Summary of potential pollutant sources. A description of the potential pollutant sources from the following activities: truck traffic on haul roads and resulting generation of sediment subject to runoff and dust generation; fuel or other liquid storage; pressure lines containing slurry, hydraulic fluid or other potential harmful liquids; and loading or temporary storage of acidic refuse/spoil.
2. Storm water controls.
 - a. Good housekeeping. As part of the facility's good housekeeping program, the permittee ~~should~~ shall consider the following: using sweepers, covered storage, and watering of haul roads to minimize dust generation; and conservation of vegetation (where possible) to minimize erosion.
 - b. Preventive maintenance. The permittee shall also perform inspections of storage tanks and pressure lines for fuels, lubricants, hydraulic fluid or slurry to prevent leaks due to deterioration or faulty connections; or other equivalent measures.
3. Comprehensive site compliance evaluation. The evaluation program shall also include inspections for pollutants entering the drainage system from activities located on or near coal mining-related areas. Among the areas to be inspected: haul and access roads; railroad spurs, sliding and internal hauling lines; conveyor belts, chutes and aerial tramways; equipment storage and maintenance yards; coal handling buildings/structures; and inactive mines and related areas.

D. Benchmark monitoring and reporting requirements. Coal mining facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 160.

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Table 160.
Sector H - Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut Off Benchmark Concentration
Coal Mines and Related Areas (SIC 1221-1241)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	± <u>1.0</u> mg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-170. Sector I - Oil and gas extraction and refining.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from oil and gas extraction and refining facilities listed under SIC Major Group 13 which have had a discharge of a reportable quantity (RQ) of oil or a hazardous substance for which notification is required under 40 CFR 110.6 ~~(2002)~~ (2007), 40 CFR 117.21 ~~(2002)~~ (2007) or 40 CFR 302.6 ~~(2002)~~ (2007). These include oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with any overburden raw material, intermediate products, finished products, by-products or waste products located on the site of such operations. Industries in SIC Major Group 13 include the extraction and production of crude oil, natural gas, oil sands and shale; the production of hydrocarbon liquids and natural gas from coal; and associated oilfield service, supply and repair industries. This section also covers petroleum refineries listed under SIC Code 2911.

Contaminated storm water discharges from petroleum refining or drilling operations that are subject to nationally established BAT or BPT guidelines found at 40 CFR Part 419 ~~(2002)~~ (2006) and 40 CFR Part 435 ~~(2002)~~ (2007) respectively are not authorized by this permit.

Note: most contaminated discharges from petroleum refining and drilling facilities are subject to these effluent guidelines and are not eligible for coverage under this permit.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: discharges of vehicle and equipment washwater, including tank cleaning operations. Alternatively, washwater discharges must be authorized under a separate VPDES permit, or be discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: reportable quantity (RQ) releases; locations used for the treatment, storage or disposal of wastes; processing areas and storage areas; chemical mixing areas; construction and drilling areas; all areas subject to the effluent guidelines requirement of "No Discharge" in accordance with 40 CFR 435.32 ~~(2002)~~ (2007) and the structural controls to achieve compliance with the "No Discharge" requirement.

b. Summary of potential pollutant sources.

(1) The plan shall also include a description of the potential pollutant sources from the following activities: chemical, cement, mud or gel mixing activities; drilling or mining activities; and equipment cleaning and rehabilitation activities.

(2) The plan ~~must~~ shall include information about the RQ release which triggered the permit application requirements, including: the nature of the release (e.g., spill of oil from a drum storage area); the amount of oil or hazardous substance released; amount of substance recovered; date of the release; cause of the release (e.g., poor handling techniques and lack of containment in the area); areas affected by the release, including land and waters; procedure to cleanup release; actions or procedures implemented to prevent or improve response to a release; and remaining potential contamination of storm water from release (taking into account human health risks, the control of drinking water intakes, and the designated uses of the receiving water).

2. Storm water controls.

a. Routine facility inspections. All equipment and areas addressed in the SWPPP shall be inspected at ~~a minimum of six month intervals~~ least monthly. Equipment and vehicles which store, mix (including all on-site and off-site mixing tanks) or transport chemicals/hazardous materials (including those transporting supplies to oil field activities) will be inspected ~~at least quarterly~~ on a monthly basis. For temporarily or permanently inactive oil and gas extraction facilities within Major SIC Group 13, which are remotely located and unstaffed, the inspections shall be performed at least annually.

b. Sediment and erosion control. ~~Unless covered by another VPDES permit, the additional~~ The erosion control requirement for well drillings and sand/shale mining areas are as follows:

(1) Site description. Each plan shall provide a description of the following:

- (a) A description of the nature of the exploration activity;
- (b) Estimates of the total area of the site and the area of the site that is expected to be disturbed due to the exploration activity;
- (c) An estimate of the runoff coefficient of the site;
- (d) A site map indicating drainage patterns and approximate slopes; and
- (e) The name of all receiving water(s).

(2) Vegetative controls. The SWPPP shall include a description of vegetative practices designed to preserve existing vegetation where attainable and revegetate open areas as soon as practicable after grade drilling. Such practices may include: temporary or permanent seeding, mulching, sod stabilization, vegetative buffer strips, tree protection practices. The permittee shall initiate appropriate vegetative practices on all disturbed areas within 14 calendar days of the last activity at that area.

(3) Off-site vehicle tracking of sediments shall be minimized.

(4) Procedures in the plan shall provide that all erosion controls on the site are inspected at least once every seven calendar days.

c. Good housekeeping measures.

(1) Vehicle and equipment storage areas. The storage of vehicles and equipment awaiting or having completed maintenance ~~must~~ shall be confined to designated areas (delineated on the site map). The plan ~~must~~ shall describe measures that prevent or minimize contamination of the storm water runoff from these areas (e.g., drip pans under equipment, indoor storage, use of berms and dikes, or other equivalent measures).

(2) Materials and chemical storage areas. Storage units of all chemicals and materials ~~must~~ shall be maintained in good condition so as to prevent contamination of storm water. Hazardous materials ~~must~~ shall be plainly labeled.

(3) Chemical mixing areas. The plan ~~must~~ shall describe measures that prevent or minimize contamination of the storm water runoff from chemical mixing areas.

d. Contact with waste water pollutants at exploration and production facilities. The permittee shall take all measures necessary to prevent the discharge of storm water that has come into contact with waste water pollutants from any sources associated with production, field exploration, drilling, well completion, or well treatment (i.e., produced water, drilling muds, drill cuttings, and produced sand).

~~[D. Benchmark monitoring and reporting requirements. Oil refining facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 170.~~

Table 170.
Sector I – Benchmark Monitoring Requirements.

<u>Pollutants of Concern</u>	<u>Benchmark Concentration</u>
<u>Oil Refining (SIC 2911)</u>	
<u>Total Recoverable Lead</u>	<u>120 µg/L</u>
<u>Total Recoverable Nickel</u>	<u>470 µg/L</u>
<u>Total Recoverable Zinc</u>	<u>120 µg/L</u>
<u>Total Kjeldahl Nitrogen (TKN)</u>	<u>1.5 mg/L</u>
<u>Total Nitrogen</u>	<u>2.2 mg/L</u>
<u>Total Suspended Solids (TSS)</u>	<u>100 mg/L]</u>

~~Sector J – Mineral Mining and Dressing (facilities described by this sector are not covered by this general permit—see 9VAC25-190, Nonmetallic Mineral Mining General Permit) (SIC 1411-1499). Facilities described by this sector are not covered by this general permit. Facilities with storm water discharges that fall under this sector should apply for coverage under the VPDES Nonmetallic Mineral Mining General Permit (VAG 84).~~

9VAC25-151-180. Sector K - Hazardous waste treatment, storage, or disposal facilities.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities that treat, store, or dispose of hazardous wastes, including those that are operating under interim status or a permit under subtitle C of RCRA (Industrial Activity Code "HZ"). Disposal facilities that have been properly closed and capped, and have no significant materials exposed to storm water, are considered inactive and do not require permits.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory-derived wastewater and contact washwater from washing truck and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

C. Definitions.

"Contaminated storm water" means storm water that comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in this section. Some specific areas of a landfill that may produce

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contaminated storm water include, but are not limited to: the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.

"Drained free liquids" means aqueous wastes drained from waste containers (e.g., drums, etc.) prior to landfilling.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, a salt bed formation, an underground mine or a cave as these terms are defined in 40 CFR 257.2 ~~(2002)~~ (2006), 40 CFR 258.2 ~~(2002)~~ (2006) and 40 CFR 260.10 ~~(2002)~~ (2007).

"Landfill wastewater" as defined in 40 CFR Part 445 ~~(2002)~~ (2007) (Landfills Point Source Category) means all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, noncontaminated storm water, contaminated ground water, and wastewater from recovery pumping wells. Landfill wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

"Noncontaminated storm water" means storm water that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined above. Noncontaminated storm water includes storm water that flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

"Pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

"Surface impoundment" means a facility or part of a facility that is a natural topographic depression, man-made excavation or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons.

D. Numeric effluent limitations. As set forth at 40 CFR Part 445 Subpart A ~~(2002)~~ (2007), the numeric limitations in Table 180-1 apply to contaminated storm water discharges from hazardous waste landfills subject to the provisions of RCRA Subtitle C at 40 CFR Parts 264 (Subpart N) ~~(2002)~~ (2007) and 265 (Subpart N) ~~(2002)~~ (2007) except for any of the facilities described in subdivisions 1 through 4 of this subsection:

1. Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;
2. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N ~~(2002)~~ (2007) as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;
3. Landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR Part 437 ~~(2002)~~ (2007) so long as the CWT facility commingles the landfill wastewater with other nonlandfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or
4. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Table 180-1.
Sector K – Numeric Effluent Limitations.

Parameter	Effluent Limitations	
	Maximum Daily	Maximum Monthly Average
Hazardous Waste Treatment, Storage, or Disposal Facilities (Industrial Activity Code "HZ") Subject to the Provisions of 40 CFR Part 445 Subpart A (2002) (2007).		
Biochemical Oxygen Demand (BOD ₅)	220 mg/L	56 mg/L
Total Suspended Solids (TSS)	88 mg/L	27 mg/L

Ammonia	10 mg/L	4.9 mg/L
Alpha Terpineol	0.042 mg/L	0.019 mg/L
Aniline	0.024 mg/L	0.015 mg/L
Benzoic Acid	0.119 mg/L*	0.073 mg/L
Naphthalene	0.059 mg/L	0.022 mg/L
p-Cresol	0.024 mg/L	0.015 mg/L
Phenol	0.048 mg/L	0.029 mg/L
Pyridine	0.072 mg/L	0.025 mg/L
Arsenic (Total)	1.1 mg/L	0.54 mg/L
Chromium (Total)	1.1 mg/L	0.46 mg/L
Zinc (Total)	0.535 mg/L*	0.296 mg/L*
pH	Within the range of 6.0 - 9.0 s.u.	

*These effluent limitations are three significant digits for reporting purposes.

E. Benchmark monitoring and reporting requirements. Permittees with hazardous waste treatment, storage, or disposal facilities (TSDFs) are required to monitor their storm water discharges for the pollutants of concern listed in Table 180-2. These benchmark monitoring cutoff concentrations apply to storm water discharges associated with industrial activity other than contaminated storm water discharges from landfills subject to the numeric effluent limitations set forth in Table 180-1.

Table 180-2.
Sector K – Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut Off Benchmark Concentration
Hazardous Waste Treatment, Storage, or Disposal Facilities (Industrial Activity Code "HZ")	
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
Total Suspended Solids (TSS)	100 mg/L
Total Organic Carbon (TOC)	110 mg/L
Total Recoverable Arsenic	50 µg/L
Total Recoverable Cadmium	3.9 2.1 µg/L
Total Cyanide	22 µg/L
Total Recoverable Lead	120 µg/L
Total Recoverable	2.4 1.4 µg/L

Mercury	
Total Recoverable Selenium	20 5.0 µg/L
Total Recoverable Silver	4.4 3.8 µg/L

9VAC25-151-190. Sector L - Landfills, land application sites and open dumps.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from waste disposal at landfills, land application sites, and open dumps that receive or have received industrial wastes (Industrial Activity Code "LF"), including sites subject to regulation under Subtitle D of RCRA. Open dumps are solid waste disposal units that are not in compliance with state/federal criteria established under RCRA Subtitle D. Landfills, land application sites, and open dumps that have storm water discharges from other types of industrial activities such as vehicle maintenance, truck washing, and/or recycling may be subject to additional requirements specified elsewhere in this permit.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory wastewater, and contact washwater from washing truck and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

C. Definitions.

"Contaminated storm water" means storm water that comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined below. Some specific areas of a landfill that may produce contaminated storm water include, but are not limited to: the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.

"Drained free liquids" means aqueous wastes drained from waste containers (e.g., drums, etc.) prior to landfilling.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, salt bed formation, an underground mine or a cave as these terms are defined in 40 CFR 257.2 (2002), 40 CFR 258.2 (2002) and 40 CFR 260.10 (2002).

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"Landfill wastewater" as defined in 40 CFR Part 445 (2002) (2007) (Landfills Point Source Category) means all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, noncontaminated storm water, contaminated groundwater, and wastewater from recovery pumping wells. Landfill process wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

"Noncontaminated storm water" means storm water that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined above. Noncontaminated storm water includes storm water that flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

~~"Surface impoundment" means a facility or part of a facility that is a natural topographic depression, man made excavation or diked area formed primarily of earthen materials (although it may be lined with man made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons.~~

D. Storm water pollution prevention plan requirements. In addition to the requirements in Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: active and closed landfill cells or trenches; active and closed land application areas; locations where open dumping is occurring or has occurred; locations of any known leachate springs or other areas where uncontrolled leachate may commingle with runoff; and leachate collection and handling systems.

b. Summary of potential pollutant sources. The SWPPP shall also include a description of potential pollutant sources associated with any of the following: fertilizer, herbicide and pesticide application; earth/soil moving; waste hauling and loading/unloading; outdoor storage of significant materials including daily, interim and final cover material stockpiles as well as temporary waste storage areas; exposure of active and inactive landfill and land application areas; uncontrolled leachate flows; and

failure or leaks from leachate collection and treatment systems.

2. Storm water controls.

a. Preventive maintenance program. As part of the preventive maintenance program, the permittee shall maintain: all containers used for outdoor chemical/significant materials storage to prevent leaking; all elements of leachate collection and treatment systems to prevent commingling of leachate with storm water; and the integrity and effectiveness of any intermediate or final cover (including making repairs to the cover as necessary to minimize the effects of settlement, sinking, and erosion).

b. Good housekeeping measures. As part of the good housekeeping program, the permittee shall consider providing protected storage areas for pesticides, herbicides, fertilizer and other significant materials.

c. Routine facility inspections.

(1) Inspections of active sites. Operating landfills, open dumps, and land application sites shall be inspected at least once every seven days. Qualified personnel shall inspect areas of landfills that have not yet been finally stabilized, active land application areas, areas used for storage of materials/wastes that are exposed to precipitation, stabilization and structural control measures, leachate collection and treatment systems, and locations where equipment and waste trucks enter and exit the site. Erosion and sediment control measures shall be observed to ensure they are operating correctly. For stabilized sites and areas where land application has been completed, or where the climate is seasonally arid (annual rainfall averages from 0 to 10 inches) or semi-arid (annual rainfall averages from 10 to 20 inches), inspections shall be conducted at least once every month.

(2) Inspections of inactive sites. Inactive landfills, open dumps, and land application sites shall be inspected at least quarterly. Qualified personnel shall inspect landfill (or open dump) stabilization and structural erosion control measures and leachate collection and treatment systems, and all closed land application areas.

d. Recordkeeping and internal reporting procedures. Landfill and open dump owners shall provide for a tracking system for the types of wastes disposed of in each cell or trench of a landfill or open dump. Land application site owners shall track the types and quantities of wastes applied in specific areas.

~~e. Nonstorm water discharge test certification~~ Certification of outfall evaluation for unauthorized discharges. The discharge test and certification ~~must~~ shall also be conducted for the presence of leachate and vehicle washwater.

f. Sediment and erosion control plan. Landfill and open dump owners shall provide for temporary stabilization of materials stockpiled for daily, intermediate, and final cover. Stabilization practices to consider include, but are not limited to, temporary seeding, mulching, and placing geotextiles on the inactive portions of the stockpiles. Landfill and open dump owners shall provide for temporary stabilization of inactive areas of the landfill or open dump which have an intermediate cover but no final cover. Landfill and open dump owners shall provide for temporary stabilization of any landfill or open dumping areas which have received a final cover until vegetation has established itself. Land application site owners shall also stabilize areas where waste application has been completed until vegetation has been established.

g. Comprehensive site compliance evaluation. Areas contributing to a storm water discharge associated with industrial activities at landfills, open dumps and land application sites shall be evaluated for evidence of, or the potential for, pollutants entering the drainage system.

E. Numeric effluent limitations. As set forth at 40 CFR Part 445 Subpart B ~~(2002)~~ (2007), the numeric limitations in Table 190-1 apply to contaminated storm water discharges from municipal solid waste landfills (MSWLFs) that have not been closed in accordance with 40 CFR 258.60 ~~(2002)~~ (2006), and contaminated storm water discharges from those landfills that are subject to the provisions of 40 CFR Part 257 ~~(2002)~~ (2006) (these include CDD landfills (also known as C&D landfills), and industrial landfills) except for discharges from any of the facilities described in subdivisions 1 through 4 of this subsection:

1. Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

2. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N ~~(2002)~~ (2007) as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

3. Landfills operated in conjunction with centralized waste treatment (CWT) facilities subject to 40 CFR Part 437 ~~(2002)~~ (2007) so long as the CWT facility commingles the landfill wastewater with other nonlandfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater

or commingles the wastewater from its landfill only with wastewater from other landfills; or

4. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Table 190-1.
Sector L – Numeric Effluent Limitations.

Parameter	Effluent Limitations	
	Maximum Daily	Maximum Monthly Average
Landfills (Industrial Activity Code "LF") that are Subject to the Requirements of 40 CFR Part 445 Subpart B (2002) (2007).		
Biochemical Oxygen Demand (BOD ₅)	140 mg/L	37 mg/L
Total Suspended Solids (TSS)	88 mg/L	27 mg/L
Ammonia	10 mg/L	4.9 mg/L
Alpha Terpineol	0.033 mg/L	0.016 mg/L
Benzoic Acid	0.12 mg/L	0.071 mg/L
p-Cresol	0.025 mg/L	0.014 mg/L
Phenol	0.026 mg/L	0.015 mg/L
Zinc (Total)	0.20 mg/L	0.11 mg/L
pH	Within the range of 6.0 - 9.0 s.u.	

F. Benchmark monitoring and reporting requirements. Landfill/land application/open dump sites are required to monitor their storm water discharges for the pollutants of concern listed in Table 190-2. These benchmark monitoring cutoff concentrations apply to storm water discharges associated with industrial activity other than contaminated storm water discharges from landfills subject to the numeric effluent limitations set forth in Table 190-1.

Table 190-2.
Sector L – Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut-Off Benchmark Concentration
	Landfills, Land Application Sites and Open Dumps (Industrial Activity Code "LF").
Total Suspended Solids (TSS)	100 mg/L
Landfills, Land Application Sites and Open Dumps (Industrial Activity Code "LF"), except MSWLF Areas Closed in Accordance with the Requirements of the	

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Virginia Solid Waste Management Regulation, 9VAC20-80	
Total Recoverable Iron	± 1.0 mg/L

9VAC25-151-200. Sector M - Automobile salvage yards.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities engaged in dismantling or wrecking used motor vehicles for parts recycling/resale and for scrap (SIC Code 5015).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

1. Site description.

a. Site map. The map ~~must shall~~ include the location of each monitoring point, and an estimation (in acres) of the total area used for industrial activity including, but not limited to, dismantling, storage, and maintenance of used motor vehicle parts. The site map ~~must shall~~ also identify where any of the following may be exposed to precipitation/surface runoff: vehicle storage areas; dismantling areas; parts storage areas (e.g., engine blocks, tires, hub caps, batteries, hoods, mufflers); and liquid storage tanks and drums for fuel and other fluids.

b. Summary of potential pollutant sources. The permittee ~~must shall~~ assess the potential for the following activities to contribute pollutants to storm water discharges: vehicle storage areas; dismantling areas; parts storage areas (e.g., engine blocks, tires, hub caps, batteries, and hoods); fueling stations.

2. Storm water controls.

a. Spill and leak prevention procedures. ~~After clean up from a spill, absorbents must be promptly placed in containers for proper disposal.~~ All vehicles that are intended to be dismantled ~~must shall~~ be properly drained of all fluids prior to being dismantled or crushed, or other equivalent means ~~must shall~~ be taken to prevent leaks or spills of fluids ~~including motor oil, transmission fluid, fuel and antifreeze.~~

b. Inspections. Upon arrival at the site, or as soon ~~thereafter~~ as feasible ~~thereafter~~, vehicles ~~must shall~~ be inspected for leaks. Any equipment containing oily parts, hydraulic fluids, ~~or~~ any other types of fluids, ~~or mercury switches~~ shall be inspected at least quarterly (four times per year) for signs of leaks. ~~Any outdoor storage of All vessels and areas where hazardous materials and general automotive fluids are stored,~~ including, but not limited to, mercury switches, brake fluid, transmission fluid, radiator water, and antifreeze, ~~must shall~~ be inspected at least quarterly for leaks. ~~All outdoor liquid storage containers (e.g., tanks, drums) must be inspected at least quarterly for leaks.~~

c. Employee training. Employee training ~~must shall~~, at a minimum, address the following areas when applicable to a facility: proper handling (collection, storage, and disposal) of oil, used mineral spirits, anti-freeze, mercury switches, and solvents.

d. Management of runoff. The plan ~~must shall~~ consider management practices, such as berms or drainage ditches on the property line, ~~that may be used to help~~ prevent runoff from neighboring properties. Berms ~~must shall~~ be considered for uncovered outdoor storage of oily parts, engine blocks, and aboveground liquid storage. The permittee shall consider the installation of detention ponds, filtering devices, and oil/water separators.

C. Benchmark monitoring and reporting requirements. Automobile salvage yards are required to monitor their storm water discharges for the pollutants of concern listed in Table 200.

Table 200.

Sector M – Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut-Off Benchmark Concentration
Automobile Salvage Yards (SIC 5015)	
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	± 1.0 mg/L
Total Recoverable Lead	120 µg/L

9VAC25-151-210. Sector N - Scrap recycling and waste recycling facilities.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities that are engaged in the processing, reclaiming and wholesale distribution of scrap and waste materials such as ferrous and nonferrous metals, paper, plastic, cardboard, glass, animal hides (these types of activities are typically identified as SIC Code 5093), and facilities that are engaged in reclaiming and recycling liquid wastes such as used oil, antifreeze, mineral spirits, and industrial solvents (also identified as SIC Code 5093). Separate permit requirements have been established for recycling facilities that only receive source-separated recyclable materials primarily from nonindustrial and residential sources (also identified as SIC Code 5093) (e.g., common consumer products including paper, newspaper, glass, cardboard, plastic containers, aluminum and tin cans). This includes recycling facilities commonly referred to as material recovery facilities (MRF). Separate permit requirements have also been established for facilities that are

engaged in dismantling ships, marine salvaging, and marine wrecking—ships for scrap (SIC 4499, limited to those listed; for others in SIC 4499 not listed above, see Sector Q (9VAC25-151-240)).

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, nonstorm water discharges from turnings containment areas are not covered by this permit (~~see also 9VAC25-151-210 C 2 e~~) (see also subdivision C 2 c [of this] section). Discharges from containment areas in the absence of a storm event are prohibited unless covered by a separate VPDES permit.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, all facilities are required to comply with the general SWPPP requirement in subdivision 1 of this subsection.

Subdivisions 2 through 5 of this subsection have SWPPP requirements for specific types of recycling facilities. The permittee shall implement and describe in the SWPPP a program to address those items that apply. Included are lists of BMP options that, along with any functional equivalents, ~~should~~ shall be considered for implementation. Selection or deselection of a particular BMP or approach is up to the best professional judgment of the permittee, as long as the objective of the requirement is met.

1. Site description. Site map. The site map shall identify the locations where any of the following activities or sources may be exposed to precipitation/surface runoff: scrap and waste material storage, outdoor scrap and waste processing equipment, and containment areas for turnings exposed to cutting fluids.

2. Scrap recycling and waste recycling facilities [() nonsource-separated, nonliquid recyclable materials). The following SWPPP special conditions have been established for facilities that receive, process and do wholesale distribution of nonliquid recyclable wastes (e.g., ferrous and nonferrous metals, plastics, glass, cardboard and paper). These facilities may receive both nonrecyclable and recyclable materials. This section is not intended for those facilities that only accept recyclable materials primarily from nonindustrial and residential sources.

a. Inbound recyclable and waste material control program. The plan shall include a recyclable and waste material inspection program to minimize the likelihood of receiving materials that may be significant pollutant sources to storm water discharges. BMP options:

(1) ~~Provision of~~ Provide information/education flyers, brochures and pamphlets to suppliers of scrap and recyclable waste materials on draining and properly disposing of residual fluids prior to delivery to the facility (e.g., from vehicles and equipment engines, radiators, and transmissions, oil-filled transformers, and

individual containers or drums), and on removal of mercury switches prior to delivery to the facility;

(2) ~~Procedures~~ Establish procedures to minimize the potential of any residual fluids from coming in contact with precipitation/runoff;

(3) ~~Procedures~~ Establish procedures for accepting scrap lead-acid batteries. (~~Additional requirements for the handling, storage and disposal or recycling of batteries are contained in the scrap lead acid battery program provisions in 9VAC25-151-210 C 2 f~~) Additional requirements for the handling, storage and disposal or recycling of batteries are contained in the scrap lead-acid battery program provisions in subdivision 2 f of this subsection;

(4) ~~Training~~ Provide training targeted for those personnel engaged in the inspection and acceptance of inbound recyclable materials;

(5) ~~Liquid~~ Establish procedures to ensure that liquid wastes, including used oil, shall be are stored in materially compatible and nonleaking containers and disposed or recycled in accordance with all requirements under the Resource Recovery and Conservation Act (RCRA), and other state or local requirements.

b. Scrap and waste material stockpiles/storage (outdoor). The plan ~~must~~ shall describe measures and controls to minimize contact of storm water runoff with stockpiled materials, processed materials and nonrecyclable wastes. BMP options:

(1) Permanent or semipermanent covers;

(2) The use of sediment traps, vegetated swales and strips, catch basin filters and sand filters to facilitate settling or filtering of pollutants;

(3) Diversion of runoff away from storage areas via dikes, berms, containment trenches, culverts and surface grading;

(4) Silt fencing;

(5) Oil/water separators, sumps and dry adsorbents for areas where potential sources of residual fluids are stockpiled (e.g., automotive engine storage areas).

c. Stockpiling of turnings exposed to cutting fluids (~~outdoor~~) (outdoor storage). The plan shall implement measures necessary to minimize contact of surface runoff with residual cutting fluids. BMP options (use singularly or in combination):

(1) Storage of all turnings exposed to cutting fluids under some form of permanent or semipermanent cover. Storm water discharges from these areas are permitted provided the runoff is first treated by an oil/water separator or its equivalent. Procedures to collect, handle, and dispose or

Regulations

recycle residual fluids that may be present shall be identified in the plan;

(2) Establish dedicated containment areas for all turnings that have been exposed to cutting fluids. Storm water runoff from these areas can be discharged provided:

(a) The containment areas are constructed of either concrete, asphalt or other equivalent type of impermeable material;

(b) There is a barrier around the perimeter of the containment areas to prevent contact with storm water runoff (e.g., berms, curbing, elevated pads, etc.);

(c) There is a drainage collection system for runoff generated from containment areas;

(d) There is a schedule to maintain the oil/water separator (or its equivalent); and

(e) Procedures are identified for the proper disposal or recycling of collected residual fluids.

d. Scrap and waste material stockpiles/storage (covered or indoor storage). The plan shall address measures and controls to minimize contact of residual liquids and particulate matter from materials stored indoors or under cover from coming in contact with surface runoff. BMP options:

(1) Good housekeeping measures, including the use of dry absorbent or wet vacuum clean up methods, to contain or dispose/recycle residual liquids originating from recyclable containers, or mercury spill kits from storage of mercury switches;

(2) Prohibiting the practice of allowing washwater from tipping floors or other processing areas from discharging to the storm sewer system;

(3) Disconnecting or sealing off all floor drains connected to the storm sewer system.

e. Scrap and recyclable waste processing areas. The plan shall include measures and controls to minimize surface runoff from coming in contact with scrap processing equipment. In the case of processing equipment that generate visible amounts of particulate residue (e.g., shredding facilities), the plan shall describe measures to minimize the contact of residual fluids and accumulated particulate matter with runoff (i.e., through good housekeeping, preventive maintenance, etc.). BMP options:

(1) A schedule of regular inspections of equipment for leaks, spills, malfunctioning, worn or corroded parts or equipment;

(2) A preventive maintenance program for processing equipment;

(3) Removal of mercury switches from the hood and trunk lighting units, and removal of anti-lock brake system units containing mercury switches;

~~(3)~~ (4) Use of dry-absorbents or other cleanup practices to collect and to dispose/recycle spilled/leaking fluids, or use of mercury spill kits for spills from storage of mercury switches;

~~(4)~~ (5) Installation of low-level alarms or other equivalent protection devices on unattended hydraulic reservoirs over 150 gallons in capacity. Alternatively, provide secondary containment with sufficient volume to contain the entire volume of the reservoir.

~~(5)~~ (6) Containment or diversion structures such as dikes, berms, culverts, trenches, elevated concrete pads, and grading to minimize contact of storm water runoff with outdoor processing equipment or stored materials;

~~(6)~~ (7) Oil/water separators or sumps;

~~(7)~~ (8) Permanent or semipermanent covers in processing areas where there are residual fluids and grease;

~~(8)~~ (9) Retention and detention basins or ponds, sediment traps, vegetated swales or strips, to facilitate pollutant settling/ filtration;

~~(9)~~ (10) Catch basin filters or sand filters.

f. Scrap lead-acid battery program. The plan shall address measures and controls for the proper handling, storage and disposal of scrap lead-acid batteries. BMP options:

(1) Segregate scrap lead-acid batteries from other scrap materials;

(2) A description of procedures and/or measures for the proper handling, storage and disposal of cracked or broken batteries;

(3) A description of measures to collect and dispose of leaking lead-acid battery fluid;

(4) A description of measures to minimize and, whenever possible, eliminate exposure of scrap lead-acid batteries to precipitation or runoff;

(5) A description of employee training for the management of scrap batteries.

g. Spill prevention and response procedures. The SWPPP shall include measures to minimize storm water contamination at loading/unloading areas, and from equipment or container failures. BMP options:

(1) Description of spill prevention and response measures to address areas that are potential sources of fluid leaks or spills;

(2) Immediate containment and clean up of spills/leaks. If malfunctioning equipment is responsible for the

spill/leak, repairs ~~should~~ shall also be conducted as soon as possible;

(3) Cleanup procedures ~~should~~ shall be identified in the plan, including the use of dry absorbents. Where dry absorbent cleanup methods are used, an adequate supply of dry absorbent material ~~should~~ shall be maintained on-site. Used absorbent material ~~should~~ shall be disposed of properly;

(4) Drums containing liquids, especially oil and lubricants, ~~should~~ shall be stored: indoors; in a bermed area; in overpack containers or spill pallets; or in similar containment devices;

(5) Overfill prevention devices ~~should~~ shall be installed on all fuel pumps or tanks;

(6) Drip pans or equivalent measures ~~should~~ shall be placed under any leaking piece of stationary equipment until the leak is repaired. The drip pans ~~should~~ shall be inspected for leaks and potential overflow and all liquids properly disposed of in accordance with RCRA requirements;

(7) An alarm and/or pump shut off system ~~should~~ shall be installed on outdoor equipment with hydraulic reservoirs exceeding 150 gallons in order to prevent draining the tank contents in the event of a line break. Alternatively, the equipment may have a secondary containment system capable of containing the contents of the hydraulic reservoir plus adequate freeboard for precipitation. A mercury spill kit shall be used for any release of mercury from switches, anti-lock brake systems, and switch storage areas.

h. ~~Quarterly inspection~~ Inspection program. All designated areas of the facility and equipment identified in the plan shall be inspected at least ~~quarterly~~ monthly.

i. Supplier notification program. The plan shall include a program to notify major suppliers which scrap materials will not be accepted at the facility or are only accepted under certain conditions.

3. Waste recycling facilities (~~liquid recyclable wastes~~) (liquid recyclable materials).

a. Waste material storage (indoor). The plan shall include measures and controls to minimize/eliminate contact between residual liquids from waste materials stored indoors and surface runoff. The plan may refer to applicable portions of other existing plans such as SPCC plans required under 40 CFR Part 112 ~~(2002)~~ (2007). BMP options:

(1) Procedures for material handling (including labeling and marking);

(2) A sufficient supply of dry-absorbent materials or a wet vacuum system to collect spilled or leaked materials

(note: spilled or leaking mercury should never be vacuumed);

(3) An appropriate containment structure, such as trenches, curbing, gutters or other equivalent measures;

(4) A drainage system, including appurtenances (e.g., pumps or ejectors, or manually operated valves), to handle discharges from diked or bermed areas. Drainage ~~should~~ shall be discharged to an appropriate treatment facility, sanitary sewer system, or otherwise disposed of properly. Discharges from these areas may require coverage under a separate VPDES permit or industrial user permit under the pretreatment program.

b. Waste material storage (outdoor). The plan shall describe measures and controls to minimize contact between stored residual liquids and precipitation or runoff. The plan may refer to applicable portions of other existing plans such as SPCC plans required under 40 CFR Part 112 ~~(2002)~~ (2007). Discharges of precipitation from containment areas containing used oil shall also be in accordance with applicable sections of 40 CFR Part 112 ~~(2002)~~ (2007). BMP options:

(1) Appropriate containment structures (e.g., dikes, berms, curbing, pits) to store the volume of the largest single tank, with sufficient extra capacity for precipitation;

(2) Drainage control and other diversionary structures;

(3) For storage tanks, provide corrosion protection and/or leak detection systems;

(4) Dry-absorbent materials or a wet vacuum system to collect spills.

c. Truck and rail car waste transfer areas. The plan shall describe measures and controls to minimize pollutants in discharges from truck and rail car loading/unloading areas. The plan shall also address measures to clean up minor spills/leaks resulting from the transfer of liquid wastes. BMP options:

(1) Containment and diversionary structures to minimize contact with precipitation or runoff;

(2) Use of dry cleanup methods, wet vacuuming, roof coverings, or runoff controls.

d. ~~Quarterly inspections~~ Inspections. ~~The quarterly inspections~~ Inspections shall be made monthly and shall also include all areas where waste is generated, received, stored, treated or disposed that are exposed to either precipitation or storm water runoff.

4. Recycling facilities (source separated materials). The following SWPPP special conditions have been established for facilities that receive only source-separated recyclable

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materials primarily from nonindustrial and residential sources.

a. Inbound recyclable material control. The plan shall include an inbound materials inspection program to minimize the likelihood of receiving nonrecyclable materials (e.g., hazardous materials) that may be a significant source of pollutants in surface runoff. BMP options:

- (1) ~~Information~~ Provide information and education measures to inform suppliers of recyclable materials on the types of materials that are acceptable and those that are not acceptable;
- (2) A description of training measures for drivers responsible for pickup of recyclable materials;
- (3) Clearly ~~marking~~ mark public drop-off containers regarding which materials can be accepted;
- (4) Rejecting nonrecyclable wastes or household hazardous wastes at the source;
- (5) ~~Procedures~~ Establish procedures for the handling and disposal of nonrecyclable materials.

b. Outdoor storage. The plan shall include procedures to minimize the exposure of recyclable materials to surface runoff and precipitation. The plan shall include good housekeeping measures to prevent the accumulation of particulate matter and fluids, particularly in high traffic areas. BMP options:

- (1) Provide totally-enclosed drop-off containers for the public;
- (2) Install a sump/pump with each containment pit, and discharge collected fluids to a sanitary sewer system;
- (3) Provide dikes and curbs for secondary containment (e.g., around bales of recyclable waste paper);
- (4) Divert surface runoff away from outside material storage areas;
- (5) Provide covers over containment bins, dumpsters, roll-off boxes;
- (6) Store the equivalent one day's volume of recyclable materials indoors.

c. Indoor storage and material processing. The plan shall include measures to minimize the release of pollutants from indoor storage and processing areas. BMP options:

- (1) Schedule routine good housekeeping measures for all storage and processing areas;
- (2) Prohibit a practice of allowing tipping floor washwaters from draining to any portion of the storm sewer system; and

(3) Provide employee training on pollution prevention practices.

d. Vehicle and equipment maintenance. The plan shall also provide for BMPs in those areas where vehicle and equipment maintenance is occurring outdoors. BMP options:

- (1) Prohibit vehicle and equipment washwater from discharging to the storm sewer system;
- (2) Minimize or eliminate outdoor maintenance areas, wherever possible;
- (3) Establish spill prevention and clean-up procedures in fueling areas;
- (4) Avoid topping off fuel tanks;
- (5) Divert runoff from fueling areas;
- (6) Store lubricants and hydraulic fluids indoors;
- (7) Provide employee training on proper, handling, storage of hydraulic fluids and lubricants.

5. Facilities engaged in dismantling ships, marine salvaging, and marine wrecking—ships for scrap. The following SWPPP special conditions have been established for facilities that are engaged in dismantling ships, marine salvaging, and marine wrecking—ships for scrap.

Vessel Breaking/Scrapping Activities. Scrapping of vessels shall be accomplished ashore beyond the range of mean high tide, whenever practicable. If this activity must be conducted while a vessel is afloat or grounded in state waters, then the permittee ~~must~~ shall employ BMPs to reduce the amount of pollutants released. The following BMPs shall be implemented during those periods when vessels (ships, barges, yachts, etc.) are brought to the facility's site for recycling, scrapping and storage prior to scrapping.

a. Fixed or floating platforms sufficiently sized and constructed to catch and prevent scrap materials and pollutants from entering state waters (or equivalent measures approved by the department) shall be used as work surfaces when working on or near the water surface. These platforms shall be cleaned as required to prevent pollutants from entering state waters and at the end of each work shift. All scrap metals and pollutants shall be collected in a manner to prevent releases (containerization is recommended).

b. There shall be no discharge of oil or oily wastewater at the facility. Drip pans and other protective devices shall be required for all oil and oily waste transfer operations to catch incidental spillage and drips from hose nozzles, hose racks, drums or barrels. Drip pans and other protective devices shall be inspected and maintained to prevent releases. Oil and oily waste ~~must~~ shall be

disposed at a permitted facility and adequate documentation of off-site disposition shall be retained for review by the board upon request.

c. During the storage/breaking/scraping period, oil containment boom(s) shall be deployed either around the vessel being scrapped, or across the mouth of the facility's wet slip, to contain pollutants in the event of a spill. Booms ~~must~~ shall be inspected, maintained, and repaired as needed. Oil, grease and fuel spills shall be prevented from reaching state waters. Cleanup shall be carried out promptly after an oil, grease, and/or fuel spill is detected.

d. Paint and solvent spills shall be immediately cleaned up to prevent pollutants from reaching storm drains, deck drains, and state waters.

e. Contaminated bilge and ballast water shall not be discharged to state waters. If it becomes necessary to dispose of contaminated bilge and ballast waters during a vessel breaking activity, the wastewater ~~must~~ shall be disposed at a permitted facility and adequate documentation of off-site disposition shall be retained for review by the board upon request.

D. Benchmark monitoring and reporting requirements. Scrap recycling and waste recycling facilities (nonsource-separated facilities only), and facilities engaged in dismantling ships, marine salvaging, and marine wrecking—ships for scrap are required to monitor their storm water discharges for the pollutants of concern listed in Table 210.

Table 210.
Sector N – Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut Off Benchmark Concentration
Scrap Recycling and Waste Recycling Facilities (nonsource-separated facilities only) (SIC 5093)	
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Aluminum	750 µg/L
Total Recoverable Cadmium	3.9 2.1 µg/L
Hexavalent Total Recoverable Chromium	16 µg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	+ 1.0 mg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Zinc	120 µg/L
Facilities Engaged in Dismantling Ships, Marine Salvaging,	

and Marine Wrecking - Ships For Scrap (SIC 4499, limited to list)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Cadmium	2.1 µg/L
Total Recoverable Chromium	16 µg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Zinc	120 µg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-220. Sector O - Steam electric generating facilities.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from steam electric power generating facilities using coal, natural gas, oil, nuclear energy, etc. to produce a steam source, including coal handling areas (Industrial Activity Code "SE").

Storm water discharges from coal pile runoff subject to numeric effluent limitations are eligible for coverage under this permit, but are subject to the limitations established by Part I A I c (2).

Storm water discharges from ancillary facilities (e.g., fleet centers, gas turbine stations, and substations) that are not contiguous to a steam electric power generating facility are not covered by this permit. Heat capture/heat recovery combined cycle generation facilities are also not covered by this permit; however, dual fuel co-generation facilities that generate electric power are included.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, nonstorm water discharges subject to effluent limitation guidelines are also not covered by this permit.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.

1. Site description. Site map. The site map shall identify the locations of any of the following activities or sources that may be exposed to precipitation/surface runoff: storage tanks, scrap yards, general refuse areas; short and long term storage of general materials (including, but not limited to: supplies, construction materials, ~~plant~~ paint

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equipment, oils, fuels, used and unused solvents, cleaning materials, paint, water treatment chemicals, fertilizer, and pesticides); landfills; construction sites; and stock pile areas (such as coal or limestone piles).

2. Storm water controls.

a. Good housekeeping measures.

(1) Fugitive dust emissions. The permittee shall describe and implement measures that prevent or minimize fugitive dust emissions from coal handling areas. The permittee shall consider establishing procedures to minimize off-site tracking of coal dust such as installing specially designed tires, or washing vehicles in a designated area before they leave the site, and controlling the wash water.

(2) Delivery vehicles. The plan ~~must~~ shall describe measures that prevent or minimize contamination of storm water runoff from delivery vehicles arriving on the plant site. At a minimum the permittee shall consider the following:

(a) Develop procedures for the inspection of delivery vehicles arriving on the plant site, and ensure overall integrity of the body or container; and

(b) Develop procedures to deal with leakage/spillage from vehicles or containers.

(3) Fuel oil unloading areas. The plan ~~must~~ shall describe measures that prevent or minimize contamination of precipitation/surface runoff from fuel oil unloading areas. At a minimum the permittee ~~must~~ shall consider using the following measures, or an equivalent:

(a) Use of containment curbs in unloading areas;

(b) During deliveries, having station personnel familiar with spill prevention and response procedures present to ensure that any leaks/spills are immediately contained and cleaned up; and

(c) Use of spill and overflow protection (e.g., drip pans, drip diapers, and/or other containment devices placed beneath fuel oil connectors to contain potential spillage during deliveries or from leaks at the connectors).

(4) Chemical loading/unloading areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize the contamination of precipitation/surface runoff from chemical loading/unloading areas. At a minimum the permittee ~~must~~ shall consider using the following measures (or their equivalents):

(a) Use of containment curbs at chemical loading/unloading areas to contain spills;

(b) During deliveries, having station personnel familiar with spill prevention and response procedures present to

ensure that any leaks/spills are immediately contained and cleaned up; and

(c) Covering chemical loading/unloading areas, and storing chemicals indoors.

(5) Miscellaneous loading/unloading areas. The permittee shall describe and implement measures that prevent or minimize the contamination of storm water runoff from loading and unloading areas. The permittee shall consider the following, at a minimum (or their equivalents):

(a) covering the loading area;

(b) grading, berming, or curbing around the loading area to divert runoff; or

(c) locating the loading/unloading equipment and vehicles so that leaks are contained in existing containment and flow diversion systems.

(6) Liquid storage tanks. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from aboveground liquid storage tanks. At a minimum the permittee ~~must~~ shall consider employing the following measures (or their equivalents):

(a) Use of protective guards around tanks;

(b) Use of containment curbs;

(c) Use of spill and overflow protection; and

(d) Use of dry cleanup methods.

(7) Large bulk fuel storage tanks. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from large bulk fuel storage tanks. At a minimum the permittee ~~must~~ shall consider employing containment berms (or its equivalent). The permittee shall also comply with applicable state and federal laws, including Spill Prevention Control and Countermeasures (SPCC).

(8) Spill reduction measures. The permittee shall describe and implement measures to reduce the potential for an oil/chemical spill, or reference the appropriate section of their SPCC plan. At a minimum the structural integrity of all aboveground tanks, pipelines, pumps and other related equipment shall be visually inspected on a weekly basis. All repairs deemed necessary based on the findings of the inspections shall be completed immediately to reduce the incidence of spills and leaks occurring from such faulty equipment.

(9) Oil bearing equipment in switchyards. The permittee shall describe and implement measures to prevent or minimize contamination of surface runoff from oil bearing equipment in switchyard areas. The permittee shall consider the use of level grades and gravel surfaces

to retard flows and limit the spread of spills, and the collection of storm water runoff in perimeter ditches.

(10) Residue hauling vehicles. All residue hauling vehicles shall be inspected for proper covering over the load, adequate gate sealing and overall integrity of the container body. Vehicles without load coverings or adequate gate sealing, or with leaking containers or beds ~~must shall~~ be repaired as soon as practicable.

(11) Ash loading areas. The permittee shall describe and implement procedures to reduce or control the tracking of ash/residue from ash loading areas where practicable, clear the ash building floor and immediately adjacent roadways of spillage, debris and excess water before departure of each loaded vehicle.

(12) Areas adjacent to disposal ponds or landfills. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from areas adjacent to disposal ponds or landfills. The permittee ~~must shall~~ develop procedures to:

(a) Reduce ash residue which may be tracked on to access roads traveled by residue trucks or residue handling vehicles; and

(b) Reduce ash residue on exit roads leading into and out of residue handling areas.

(13) Landfills, scrapyards, surface impoundments, open dumps, general refuse sites. The plan ~~must shall~~ address and include appropriate BMPs for landfills, scrapyards, surface impoundments, open dumps and general refuse sites.

(14) Vehicle maintenance activities. For vehicle maintenance activities performed on the plant site, the permittee shall use the applicable BMPs outlined in Sector P (9VAC25-151-230).

(15) Material storage areas. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from material storage areas (including areas used for temporary storage of miscellaneous products, and construction materials stored in ~~lay-down lay-down~~ areas). The permittee shall consider the use of the following measures (or their equivalents): flat yard grades; runoff collection in graded swales or ditches; erosion protection measures at steep outfall sites (e.g., concrete chutes, riprap, stilling basins); covering ~~lay-down lay-down~~ areas; storing materials indoors; and covering materials temporarily with polyethylene, polyurethane, polypropylene, or hypalon. Storm water runoff may be minimized by constructing an enclosure or building a berm around the area.

b. Comprehensive site compliance evaluation. As part of the evaluation, qualified facility personnel shall inspect the following areas on a monthly basis: coal handling

areas, loading/unloading areas, switchyards, fueling areas, bulk storage areas, ash handling areas, areas adjacent to disposal ponds and landfills, maintenance areas, liquid storage tanks, and long term and short term material storage areas.

D. Numeric effluent limitations. Permittees with point sources of coal pile runoff associated with steam electric power generation ~~must shall~~ monitor these storm water discharges for the presence of TSS and for pH at least annually (one time per year) in accordance with PART I A 1 c (2).

E. Benchmark monitoring and reporting requirements. Steam electric power generating facilities are required to monitor their storm water discharges for the ~~pollutant~~ pollutants of concern listed in Table 220.

Table 220.
Sector O – Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut-Off Benchmark Concentration
Steam Electric Generating Facilities (Industrial Activity Code "SE")	
Total Recoverable Iron	+ 1.0 mg/L
[Total Suspended Solids (TSS)]	[100 mg/L]

9VAC25-151-230. Sector P - Land transportation and warehousing.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from ground transportation facilities and rail transportation facilities (generally identified by SIC Codes 40, 41, 42, 43, and 5171), that have vehicle and equipment maintenance shops (vehicle and equipment rehabilitation, mechanical repairs, painting, fueling and lubrication) and/or equipment cleaning operations. Also covered under this section are facilities found under SIC Codes 4221 through 4225 (public warehousing and storage) that do not have vehicle and equipment maintenance shops and/or equipment cleaning operations.

~~B. Special conditions. Prohibition of nonstorm water discharges. This permit does not authorize the discharge of vehicle/equipment/surface washwater, including tank-cleaning operations. Such discharges must be authorized under a separate VPDES permit, discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements, or recycled on-site.~~

~~B. C.~~ Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

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1. Site description. Site Map. The site map shall identify the locations of any of the following activities ~~or sources~~ and indicate whether the activities may be exposed to precipitation/surface runoff: fueling stations; vehicle/equipment maintenance or cleaning areas; storage areas for vehicle/equipment with actual or potential fluid leaks; loading/unloading areas; areas where treatment, storage or disposal of wastes occur; liquid storage tanks; processing areas; and storage areas; ~~and all monitoring areas~~.

2. Summary of potential pollutant sources. The plan shall describe and assess the potential for the following to contribute pollutants to storm water discharges: on-site waste storage or disposal; dirt/gravel parking areas for vehicles awaiting maintenance; plumbing connections between shop floor drains and the stormwater conveyance system; and fueling areas.

3. Storm water controls.

a. Good housekeeping.

(1) Vehicle and equipment storage areas. The storage of vehicles and equipment awaiting maintenance with actual or potential fluid leaks ~~must~~ shall be confined to designated areas (delineated on the site map). The permittee shall consider the following measures (or their equivalents): the use of drip pans under vehicles and equipment; indoor storage of vehicles and equipment; installation of berms or dikes; use of absorbents; roofing or covering storage areas; and cleaning pavement surface to remove oil and grease.

(2) Fueling areas. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from fueling areas. The permittee shall consider the following measures (or their equivalents): covering the fueling area; using spill/overflow protection and cleanup equipment; minimizing storm water runoff/runoff to the fueling area; using dry cleanup methods; and treating and/or recycling collected storm water runoff.

(3) Material storage areas. Storage vessels of all materials (e.g., for used oil/oil filters, spent solvents, paint wastes, hydraulic fluids) ~~must~~ shall be maintained in good condition, so as to prevent contamination of storm water, and plainly labeled (e.g., "used oil," "spent solvents," etc.). The permittee shall consider the following measures (or their equivalents): indoor storage of the materials; installation of berms/dikes around the areas, minimizing runoff of storm water to the areas; using dry cleanup methods; and treating and/or recycling the collected storm water runoff.

(4) Vehicle and equipment cleaning areas. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from all

areas used for vehicle/equipment cleaning. The permittee shall consider the following measures (or their equivalents): performing all cleaning operations indoors; covering the cleaning operation; ensuring that all washwaters drain to a proper collection system (i.e., not the storm water drainage system unless VPDES permitted); and treating and/or recycling the collected storm water runoff. ~~Note: the discharge of vehicle/equipment wash waters, including tank cleaning operations, are not authorized by this permit and must be covered under a separate VPDES permit or discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements.~~

(5) Vehicle and equipment maintenance areas. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from all areas used for vehicle/equipment maintenance. The permittee shall consider the following measures (or their equivalents): performing maintenance activities indoors; using drip pans; keeping an organized inventory of materials used in the shop; draining all parts of fluids prior to disposal; prohibiting wet clean up practices where the practices would result in the discharge of pollutants to storm water drainage systems; using dry cleanup methods; treating and/or recycling collected storm water runoff; and minimizing runoff/runoff of storm water to maintenance areas.

(6) Locomotive sanding (loading sand for traction) areas. The plan ~~must~~ shall describe measures that prevent or minimize contamination of the storm water runoff from areas used for locomotive sanding. The permittee shall consider the following measures (or their equivalents): covering sanding areas; minimizing storm water runoff/runoff; or appropriate sediment removal practices to minimize the off-site transport of sanding material by storm water.

b. Routine facility inspections. The following areas/activities shall be included in all inspections: storage area for vehicles/equipment awaiting maintenance; fueling areas; indoor and outdoor vehicle/equipment maintenance areas; material storage areas; vehicle/equipment cleaning areas; and loading/unloading areas.

c. Employee training. Employee training shall take place, at a minimum, annually (once per calendar year). Employee training ~~must~~ shall address the following as applicable: used oil and spent solvent management; fueling procedures; general good housekeeping practices; proper painting procedures; and used battery management.

~~[d.] Nonstorm water discharges [Vehicle and equipment washwater requirements. For facilities that discharge vehicle and equipment washwaters to the~~

~~sanitary sewer system, the operator of the sanitary system and associated treatment plant must be notified. In such cases, a copy of the notification letter] must [shall be attached to the plan. If an industrial user permit is issued under a pretreatment program, a reference to that permit] must [shall be in the plan. In all cases, any permit conditions or pretreatment requirements] must [shall be considered in the plan. If the washwaters are handled in another manner (e.g., hauled off site), the disposal method] must [shall be described and all pertinent documentation (e.g., frequency, volume, destination, etc.)] must [shall be attached to the plan.]~~

D. Benchmark monitoring and reporting requirements. Land transportation and warehousing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 230.

Table 230.

Sector P - Benchmark Monitoring Requirements.

<u>Pollutants of Concern</u>	<u>Benchmark Concentration</u>
<u>Land Transportation and Warehousing Facilities (SIC 4011, 4013, 4111-4173, 4212-4231, 4311, and 5171)</u>	
<u>Total Petroleum Hydrocarbons (TPH) *</u>	<u>15.0 mg/L</u>
<u>Total Suspended Solids (TSS)</u>	<u>100 mg/L</u>

*Total Petroleum Hydrocarbons shall be analyzed using the Wisconsin Department of Natural Resources Modified Diesel Range Organics Method as specified in Wisconsin publication SW-141 (1995), or by EPA SW-846 Method 8015C for diesel range organics, or by EPA SW-846 Method 8270D. If Method 8270D is used, the lab must report the combination of diesel range organics and polynuclear aromatic hydrocarbons.

9VAC25-151-240. Sector Q - Water transportation.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from water transportation facilities (generally identified by SIC Major Group 44), that have vehicle (vessel) maintenance shops and/or equipment cleaning operations. The water transportation industry includes facilities engaged in foreign or domestic transport of freight or passengers in deep sea or inland waters; marine cargo handling operations; ferry operations; towing and tugboat services; and marinas.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: bilge and ballast water, sanitary wastes, pressure wash water, and cooling water originating from vessels.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify the locations where any of the following activities may be exposed to precipitation/surface runoff: fueling; engine maintenance/repair; vessel maintenance/repair, pressure washing; painting; sanding; blasting; welding; metal fabrication; loading/unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron).

b. Summary of potential pollutant sources. The plan shall describe the following additional sources and activities that have potential pollutants associated with them: outdoor manufacturing or processing activities (i.e., welding, metal fabricating); and significant dust or particulate generating processes (e.g., abrasive blasting, sanding, painting).

2. Storm water controls.

a. Good housekeeping.

(1) Pressure washing area. If pressure washing is used to remove marine growth from vessels, the discharge water must be permitted by a separate VPDES permit. The SWPPP ~~must~~ shall describe: the measures to collect or contain the discharge from the pressure washing area; the method for the removal of the visible solids; the methods of disposal of the collected solids; and where the discharge will be released.

(2) Blasting and painting areas. The permittee ~~must~~ shall describe and implement measures to prevent spent abrasives, paint chips, and overspray from discharging into the receiving water or the storm sewer system. The permittee may consider containing all blasting/painting activities, or the use of other measures to prevent or minimize the discharge of contaminants (e.g., hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris). Storm water conveyances shall be regularly cleaned to remove deposits of abrasive blasting debris and paint chips. The plan ~~should~~ shall include any standard operating practices with regard to blasting and painting activities, such as the prohibition of uncontained blasting/painting over open water, or the prohibition of blasting/painting during windy conditions which can render containment ineffective.

(3) Material storage areas. All containerized materials ~~(fuels, paints, solvents, waste oil, antifreeze, batteries)~~ (e.g., fuels, paints, solvents, waste oil, antifreeze, batteries) ~~must~~ shall be plainly labeled and stored in a

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protected, secure location away from drains. The permittee ~~must~~ shall describe and implement measures to prevent or minimize the contamination of precipitation/surface runoff from the storage areas. The plan ~~must~~ shall specify which materials are stored indoors and consider containment or enclosure for materials that are stored outdoors. The permittee ~~must~~ shall consider implementing an inventory control plan to limit the presence of potentially hazardous materials on-site. Where abrasive blasting is performed, the plan ~~must~~ shall specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility.

(4) Engine maintenance and repair areas. The permittee ~~must~~ shall describe and implement measures to prevent or minimize contamination of precipitation/surface runoff from all areas used for engine maintenance and repair. The permittee shall consider the following measures (or their equivalent): performing all maintenance activities indoors; maintaining an organized inventory of materials used in the shop; draining all parts of fluids prior to disposal; prohibiting the practice of hosing down the shop floor using dry cleanup methods; and treating and/or recycling storm water runoff collected from the maintenance area.

(5) Material handling areas. The permittee ~~must~~ shall describe and implement measures to prevent or minimize contamination of precipitation/surface runoff from material handling operations and areas (e.g., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). The permittee shall consider the following measures (or their equivalents): covering fueling areas; using spill/overflow protection; mixing paints and solvents in a designated area (preferably indoors or under a shed); and minimizing runoff of storm water to material handling areas.

(6) Drydock activities. The plan ~~must~~ shall address the routine maintenance and cleaning of the drydock to minimize the potential for pollutants in the storm water runoff. The plan ~~must~~ shall describe the procedures for cleaning the accessible areas of the drydock prior to flooding and final cleanup after the vessel is removed and the dock is raised. Cleanup procedures for oil, grease, or fuel spills occurring on the drydock ~~must~~ shall also be included within the plan. The permittee shall consider the following measures (or their equivalents): sweeping rather than hosing off debris/spent blasting material from the accessible areas of the drydock prior to flooding; and having absorbent materials and oil containment booms readily available to contain/cleanup any spills.

(7) General yard area. The plan ~~must~~ shall include a schedule for routine yard maintenance and cleanup.

Scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc., ~~must~~ shall be routinely removed from the general yard area.

b. Preventative Maintenance. As part of the facility's preventive maintenance program, storm water management devices shall be inspected and maintained in a timely manner (e.g., oil/water separators and sediment traps cleaned to ensure that spent abrasives, paint chips and solids are intercepted and retained prior to entering the storm drainage system). Facility equipment and systems shall also be inspected and tested to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

c. Routine facility inspections. The following areas shall be included in all monthly inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; drydock area; and general yard area.

d. Employee training. Training shall address, at a minimum, the following activities (as applicable): used oil management; spent solvent management; disposal of spent abrasives; disposal of vessel wastewaters; spill prevention and control; fueling procedures; general good housekeeping practices; painting and blasting procedures; and used battery management.

e. Comprehensive site compliance evaluation. The permittee shall conduct regularly scheduled evaluations at least once a year and address those areas contributing to a storm water discharge associated with industrial activity (e.g., pressure washing area, blasting/sanding areas, painting areas, material storage areas, engine maintenance/repair areas, material handling areas, and drydock area). These sources shall be inspected for evidence of, or the potential for, pollutants entering the drainage system.

D. Benchmark monitoring and reporting requirements. Water transportation facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 240.

Table 240.
Sector Q – Benchmark Monitoring Requirements.

Pollutants of Concern	<u>Monitoring Cut-Off</u> <u>Benchmark</u> Concentration
Water Transportation Facilities (SIC 4412-4499)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	+ 1.0 mg/L

Total Recoverable Zinc	120 µg/L
[Total Suspended Solids (TSS)]	[100 mg/L]

9VAC25-151-250. Sector R - Ship and boat building or repair yards.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities engaged in ship building and repairing and boat building and repairing (SIC Code 373). (According to the U.S. Coast Guard, a vessel 65 feet or greater in length is referred to as a ship and a vessel smaller than 65 feet is a boat.)

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: bilge and ballast water, pressure wash water, sanitary wastes, and cooling water originating from vessels.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify the locations where any of the following activities may be exposed to precipitation/surface runoff: fueling; engine maintenance/repair; vessel maintenance/repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading/unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron).

b. Potential pollutant sources. The plan shall include a description of the following additional sources and activities that have potential pollutants associated with them (if applicable): outdoor manufacturing/processing activities (e.g., welding, metal fabricating); and significant dust/particulate generating processes (e.g., abrasive blasting, sanding, painting).

2. Storm water controls.

a. Good housekeeping measures.

(1) Pressure washing area. If pressure washing is used to remove marine growth from vessels, the discharge water must be permitted as a process wastewater by a separate VPDES permit.

(2) Blasting and painting areas. The permittee ~~must~~ shall describe and implement measures to prevent spent abrasives, paint chips and overspray from discharging into the receiving waterbody or the storm sewer system.

To prevent the discharge of contaminants, the permittee shall consider containing all blasting/painting activities or using other methods, such as hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris. ~~Where necessary, the~~ The plan ~~should~~ shall include a schedule for regularly cleaning storm systems to remove deposits of abrasive blasting debris and paint chips. The plan ~~should~~ shall include any standard operating practices with regard to blasting and painting activities, such as the prohibition of uncontained blasting/painting over open water or the prohibition of blasting/painting during windy conditions that can render containment ineffective.

(3) Material storage areas. All containerized materials (fuels, paints, solvents, waste oil, antifreeze, batteries) ~~must~~ shall be plainly labeled and stored in a protected, secure location away from drains. The permittee ~~must~~ shall describe and implement measures to prevent or minimize contamination of precipitation/surface runoff from the storage areas. The plan ~~must~~ shall specify which materials are stored indoors and consider containment or enclosure for materials that are stored outdoors. The permittee ~~must~~ shall consider implementing an inventory control plan to limit the presence of potentially hazardous materials on-site. Where abrasive blasting is performed, the plan ~~must~~ shall specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility.

(4) Engine maintenance and repair areas. The permittee ~~must~~ shall describe and implement measures to prevent or minimize contamination of precipitation/surface runoff from all areas used for engine maintenance and repair. The permittee shall consider the following measures (or their equivalent): performing all maintenance activities indoors; maintaining an organized inventory of materials used in the shop; draining all parts of fluids prior to disposal; prohibiting the practice of hosing down the shop floor; using dry cleanup methods; and treating and/or recycling storm water runoff collected from the maintenance area.

(5) Material handling areas. The permittee ~~must~~ shall describe and implement measures to prevent or minimize contamination of precipitation/surface runoff from material handling operations and areas (e.g., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). The permittee shall consider the following methods (or their equivalents): covering fueling areas; using spill/overflow protection; mixing paints and solvents in a designated area (preferably indoors or under a shed); and minimizing runoff of storm water to material handling areas.

(6) Drydock activities. The plan ~~must~~ shall address the routine maintenance and cleaning of the drydock to

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minimize the potential for pollutants in the storm water runoff. The plan must shall describe the procedures for cleaning the accessible areas of the drydock prior to flooding and final cleanup after the vessel is removed and the dock is raised. Cleanup procedures for oil, grease, or fuel spills occurring on the drydock must shall also be included within the plan. The permittee shall consider the following measures (or their equivalents): sweeping rather than hosing off debris/spent blasting material from the accessible areas of the drydock prior to flooding and having absorbent materials and oil containment booms readily available to contain/cleanup any spills.

(7) General yard area. The plan must shall include a schedule for routine yard maintenance and cleanup. Scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc., must shall be routinely removed from the general yard area.

b. Preventative maintenance. As part of the facility's preventive maintenance program, storm water management devices shall be inspected and maintained in a timely manner (e.g., oil/water separators and sediment traps cleaned to ensure that spent abrasives, paint chips and solids are intercepted and retained prior to entering the storm drainage system). Facility equipment and systems shall also be inspected and tested to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

c. Routine facility inspections. The following areas shall be included in all monthly inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance/repair areas; material handling areas; drydock area; and general yard area.

d. Employee training. Training shall address, at a minimum, the following activities (as applicable): used oil management; spent solvent management; proper disposal of spent abrasives; proper disposal of vessel wastewaters, spill prevention and control; fueling procedures; general good housekeeping practices; painting and blasting procedures; and used battery management.

e. Comprehensive site compliance evaluation. The permittee shall conduct regularly scheduled evaluations at least once a year and address those areas contributing to a storm water discharge associated with industrial activity (e.g., pressure washing area, blasting/sanding areas, painting areas, material storage areas, engine maintenance/repair areas, material handling areas, and drydock area). These sources areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system.

D. Benchmark monitoring and reporting requirements. Ship and boat building or repairing yards are required to monitor their storm water discharges for the pollutants of concern listed in Table 250.

Table 250.
Sector R - Benchmark Monitoring Requirements.

<u>Pollutants of Concern</u>	<u>Benchmark Concentration</u>
<u>Ship and Boat Building or Repairing Yards (SIC 3731, 3732)</u>	
<u>Total Suspended Solids (TSS)</u>	<u>100 mg/L</u>

9VAC25-151-260. Sector S - Air transportation.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from air transportation facilities including airports, airport terminal services, air transportation (scheduled and nonscheduled), flying fields, air courier services, and establishments engaged in operating and maintaining airports, and servicing, repairing or maintaining aircraft (generally classified under SIC Code 45), which have vehicle maintenance shops, material handling facilities, equipment cleaning operations or airport and/or aircraft deicing/anti-icing operations. For the purpose of this section, the term "deicing" is defined as the process to remove frost, snow, or ice and "anti-icing" is the process which prevents the accumulation of frost, snow, or ice. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or deicing/anti-icing operations are addressed under this section.

B. Special conditions.

1. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: aircraft, ground vehicle, runway and equipment washwaters, and dry weather discharges of deicing/anti-icing chemicals. These discharges must be covered by a separate VPDES permit.

2. Releases of reportable quantities of hazardous substances and oil. Each individual permittee is required to report spills as described at Part I B 2 3. If an airport authority is the sole permittee, then the sum total of all spills at the airport must shall be assessed against the reportable quantity. If the airport authority is a copermittee with other deicing/anti-icing operators at the airport, such as numerous different airlines, the assessed amount must shall be the summation of spills by each copermittee. If separate, distinct individual permittees exist at the airport, then the amount spilled by each separate permittee must shall be the assessed amount for the reportable quantity determination.

C. Storm water pollution prevention plan requirements. SWPPPs developed for areas of the facility occupied by tenants of the airport shall be integrated with the plan for the entire airport. For the purposes of this permit, tenants of the airport facility include airline passenger or cargo companies, fixed based operators and other parties who have contracts with the airport authority to conduct business operations on airport property and whose operations result in storm water discharges associated with industrial activity. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify ~~where any the location~~ of the following activities and indicate any of the activities that may be exposed to precipitation/surface runoff: aircraft and runway deicing/anti-icing operations; fueling stations; aircraft, ground vehicle and equipment maintenance/cleaning areas; and storage areas for aircraft, ground vehicles and equipment awaiting maintenance.

b. Summary of potential pollutant sources. ~~A~~ The plan shall include a narrative description of the potential pollutant sources from the following activities: aircraft, runway, ground vehicle and equipment maintenance and cleaning; aircraft and runway deicing/anti-icing operations (including apron and centralized aircraft deicing/anti-icing stations, runways, taxiways and ramps). Facilities which conduct deicing/anti-icing operations shall maintain a record of the types (including the Material Safety Data Sheets (MSDS)) and monthly quantities of deicing/anti-icing chemicals used, either as measured amounts, or in the absence of metering, as estimated amounts. This includes all deicing/anti-icing chemicals, not just glycols and urea (e.g., potassium acetate). Tenants and fixed-base operators who conduct deicing/anti-icing operations shall provide the above information to the airport authority for inclusion in the storm water pollution prevention plan for the entire facility.

The SWPPP shall define the average seasonal timeframe (e.g., December-February, October-March, etc.) during which deicing activities typically occur at the facility. Implementation of BMPs, facility inspections and monitoring shall be conducted with particular emphasis throughout the defined deicing season.

2. Storm water controls.

a. Good housekeeping.

(1) Aircraft, ground vehicle and equipment maintenance areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize the contamination of storm water runoff from all areas used for aircraft, ground vehicle and equipment maintenance (including

the maintenance conducted on the terminal apron and in dedicated hangars). The following practices (or their equivalents) shall be considered: performing maintenance activities indoors; maintaining an organized inventory of materials used in the maintenance areas; draining all parts of fluids prior to disposal; preventing the practice of hosing down the apron or hangar floor; using dry cleanup methods; and collecting the storm water runoff from the maintenance area and providing treatment or recycling.

(2) Aircraft, ground vehicle and equipment cleaning areas. Permittees ~~should~~ shall ensure that cleaning of equipment is conducted in designated areas only and clearly identify these areas on the ground and delineate them on the site map. The permittee ~~must~~ shall describe and implement measures that prevent or minimize the contamination of the storm water runoff from cleaning areas.

(3) Aircraft, ground vehicle and equipment storage areas. The storage of aircraft, ground vehicles and equipment awaiting maintenance ~~must~~ shall be confined to designated areas (delineated on the site map). The following BMPs (or their equivalents) shall be considered: indoor storage of aircraft and ground vehicles; the use of drip pans for the collection of fluid leaks; and perimeter drains, dikes or berms surrounding storage areas.

(4) Material storage areas. Storage vessels of all materials (e.g., used oils, hydraulic fluids, spent solvents, and waste aircraft fuel) ~~must~~ shall be maintained in good condition, so as to prevent or minimize contamination of storm water, and plainly labeled (e.g., "used oil," "Contaminated Jet A," etc.). The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of precipitation/runoff from storage areas. The following BMPs or their equivalents shall be considered: indoor storage of materials; centralized storage areas for waste materials; and installation of berms/dikes around storage areas.

(5) Airport fuel system and fueling areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize the discharge of fuels to the storm sewer/surface waters resulting from fuel servicing activities or other operations conducted in support of the airport fuel system. The following BMPs (or their equivalents) shall be considered: implementing spill and overflow practices (e.g., placing absorptive materials beneath aircraft during fueling operations); using dry cleanup methods; and collecting the storm water runoff.

b. Source reduction. Owners who conduct deicing/anti-icing operations shall consider alternatives to the use of urea and glycol-based deicing/anti-icing chemicals to reduce the aggregate amount of deicing/anti-icing

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chemicals used and/or lessen the environmental impact. Chemical options to replace ethylene glycol, propylene glycol and urea include: potassium acetate; magnesium acetate; calcium acetate; anhydrous sodium acetate.

(1) Runway deicing operations. Owners shall evaluate present application rates to ensure against excessive over application by analyzing application rates and adjusting as necessary, consistent with considerations of flight safety. Also the following BMP options shall be considered (or their equivalents): metered application of chemicals; prewetting dry chemical constituents prior to application; installation of runway ice detection systems; implementing anti-icing operations as a preventive measure against ice buildup.

(2) Aircraft deicing/anti-icing operations. Owners shall determine whether excessive application of deicing/anti-icing chemicals occurs, and adjust as necessary, consistent with considerations of flight safety. This evaluation ~~should~~ shall be carried out by the personnel most familiar with the particular aircraft and flight operations in question (versus an outside entity such as the airport authority). The use of alternative deicing/anti-icing agents as well as containment measures for all applied chemicals shall be considered. Also, the following BMP options (or their equivalents) shall be considered for reducing deicing fluid use: forced-air deicing systems; computer-controlled fixed-gantry systems; infrared technology; hot water; varying glycol content to air temperature; enclosed-basket deicing trucks; mechanical methods; solar radiation; hangar storage; aircraft covers; and thermal blankets for MD-80s and DC-9s. The use of ice-detection systems and airport traffic flow strategies and departure slot allocation systems shall also be considered.

c. Management of runoff. Where deicing/anti-icing operations occur, owners shall describe and implement a program to control or manage contaminated runoff to reduce the amount of pollutants being discharged from the site. The plan shall describe the controls used for collecting or containing contaminated melt water from collection areas used for disposal of contaminated snow. The following BMPs (or their equivalents) shall be considered: establishing a dedicated deicing facility with a runoff collection/recovery system; using vacuum/collection trucks; storing contaminated storm water/deicing fluids in tanks and releasing controlled amounts to a publicly owned treatment works; collecting contaminated runoff in a wet pond for biochemical decomposition (be aware of attracting wildlife that may prove hazardous to flight operations); and directing runoff into vegetative swales or other infiltration measures. The plan ~~should~~ shall consider the recovery of deicing/anti-icing materials when these materials are applied during nonprecipitation events (e.g., covering

storm sewer inlets, using booms, installing absorptive interceptors in the drains, etc.) to prevent these materials from later becoming a source of storm water contamination. Used deicing fluid ~~should~~ shall be recycled whenever possible.

d. Routine facility inspections. The inspection frequency shall be specified in the plan. At a minimum, inspections shall be conducted once per month during deicing/anti-icing season (e.g., October through April for most airports). If deicing occurs before or after this period, the inspections shall be expanded to include all months during which deicing chemicals may be used. Also, if significantly or deleteriously large quantities of deicing chemicals are being spilled or discharged, or if water quality impacts have been reported, the inspection frequency shall be increased to weekly until such time as the chemical spills/discharges or impacts are reduced to acceptable levels. The director may specifically require increased inspections and the SWPPP to be reevaluated as necessary.

e. Comprehensive site compliance evaluation. The annual site compliance evaluations shall be conducted by qualified facility personnel during periods of actual deicing operations, if possible. If not practicable during active deicing or if the weather is too inclement, the evaluations shall be conducted when deicing operations are likely to occur and the materials and equipment for deicing are in place.

~~[f. Vehicle and equipment washwater requirements. For facilities that discharge vehicle and equipment washwaters to the sanitary sewer system, the operator of the sanitary system and associated treatment plant must be notified. In such cases, a copy of the notification letter shall be attached to the plan. If an industrial user permit is issued under a pretreatment program, a reference to that permit shall be in the plan. In all cases, any permit conditions or pretreatment requirements shall be considered in the plan. If the washwaters are handled in another manner (e.g., hauled off site), the disposal method shall be described and all pertinent documentation (e.g., frequency, volume, destination, etc.) shall be attached to the plan.]~~

D. Benchmark monitoring and reporting requirements. Airports that use more than 100,000 gallons of glycol-based deicing/anti-icing chemicals and/or 100 tons or more of urea on an average annual basis shall sample their storm water discharges for the parameters listed in Table 260. Only those outfalls from the airport facility that collect runoff from areas where deicing/anti-icing activities occur ~~must~~ shall be monitored. ~~The alternative certification provision of Part I-A 3-b is not applicable to discharges covered under this section.~~

Table 260.
Sector S – Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut Off Benchmark Concentration
Facilities at airports that use more than 100,000 gallons of glycol-based deicing/anti-icing chemicals and/or 100 tons or more of urea on an average annual basis: monitor ONLY those outfalls from the airport facility that collect runoff from areas where deicing/anti-icing activities occur (SIC 45).	
Biochemical Oxygen Demand (BOD ₅)	30 mg/L
<u>Chemical Oxygen Demand (COD)</u>	<u>120 mg/L</u>
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
pH	within the range 6.0 to 9 s.u.
<u>Total Suspended Solids (TSS)</u>	<u>100 mg/L</u>

9VAC25-151-270. Sector T - Treatment works.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 9VAC25-31-730 (Industrial Activity Code "TW"). Farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and that are not physically located within the facility, or areas that are in compliance with § 405 of the CWA are not required to have permit coverage.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: sanitary and industrial wastewater; and equipment/vehicle washwaters.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff:

grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and storage areas for process chemicals, petroleum products, solvents, fertilizers, herbicides and pesticides.

b. Summary of potential pollutant sources. ~~A~~ The plan shall include a description of the potential pollutant sources from the following activities, as applicable: grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and access roads/rail lines.

2. Storm water controls.

a. Best Management Practices (BMPs). In addition to the other BMPs considered, the following BMPs shall be considered: routing storm water to the treatment works; or covering exposed materials (i.e., from the following areas: grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station).

b. Inspections. The following areas shall be included in all inspections: access roads/rail lines, grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station areas.

c. Employee training. Employee training ~~must~~ shall, at a minimum, address the following areas when applicable to a facility: petroleum product management; process chemical management; spill prevention and control; fueling procedures; general good housekeeping practices; proper procedures for using fertilizers, herbicides and pesticides.

~~d. Nonstorm water discharges. For facilities that discharge vehicle and equipment washwaters to the sanitary sewer system, the operator of the sanitary system and associated treatment plant must be notified. In such cases, a copy of the notification letter must be attached to the plan. If an industrial user permit is issued under a pretreatment program, a reference to that permit must be in the plan. These provisions do not apply if the discharger and the operator of the treatment works receiving the discharge are the same. In all cases, any permit conditions must be considered in the plan. If vehicle and equipment washwaters are handled in another manner (e.g., hauled off site), the disposal method must be described and all pertinent documentation (e.g., frequency, volume, destination, etc.) must be attached to the plan.~~

9VAC25-151-280. Sector U - Food and kindred products.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges

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associated with industrial activity from food and kindred products processing facilities (commonly identified by SIC Code 20), including: meat products; dairy products; canned, frozen and preserved fruits, vegetables, and food specialties; grain mill products; bakery products; sugar and confectionery products; fats and oils; beverages; and miscellaneous food preparations and kindred products and tobacco products manufacturing (SIC Code 21).

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: boiler blowdown, cooling tower overflow and blowdown, ammonia refrigeration purging, and vehicle washing/clean-out operations.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify the locations of the following activities if they are exposed to precipitation/surface runoff: vents/stacks from cooking, drying, and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage areas.

b. Summary of potential pollutant sources. In addition to food and kindred products processing-related industrial activities, the plan ~~must~~ shall also describe application and storage of pest control chemicals (e.g., rodenticides, insecticides, fungicides, etc.) used on plant grounds.

2. Storm water controls.

a. Routine facility inspections. At a minimum, the following areas, where the potential for exposure to storm water exists, ~~must~~ shall be inspected on a monthly basis: loading and unloading areas for all significant materials; storage areas, including associated containment areas; waste management units; vents and stacks emanating from industrial activities; spoiled product and broken product container holding areas; animal holding pens; staging areas; and air pollution control equipment.

b. Employee training. The employee training program ~~must~~ shall also address pest control.

D. Benchmark monitoring and reporting requirements. ~~Grain Dairy products, grain~~ mills and fats and oils products facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 280.

Table 280.
Sector U – Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut-Off Benchmark Concentration
<u>Dairy Products (SIC 2021-2026)</u>	
<u>Biochemical Oxygen Demand (BOD₅)</u>	<u>30 mg/L</u>
<u>Total Suspended Solids (TSS)</u>	<u>100 mg/L</u>
<u>Grain Mill Products (SIC 2041-2048)</u>	
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
<u>Total Suspended Solids (TSS)</u>	<u>100 mg/L</u>
<u>Fats and Oils Products (SIC 2074-2079)</u>	
Biochemical Oxygen Demand (BOD ₅)	30 mg/L
Total Nitrogen	2.2 mg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-290. Sector V - Textile mills, apparel, and other fabric products.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from textile mills, apparel and other fabric product manufacturing, generally described by SIC 22 and 23. This section also covers facilities engaged in manufacturing finished leather and artificial leather products (SIC 31, except 3111). Facilities in this sector are primarily engaged in the following activities: textile mill products, of and regarding facilities and establishments engaged in the preparation of fiber and subsequent manufacturing of yarn, thread, braids, twine, and cordage, the manufacturing of broad woven fabrics, narrow woven fabrics, knit fabrics, and carpets and rugs from yarn; processes involved in the dyeing and finishing of fibers, yarn fabrics, and knit apparel; the integrated manufacturing of knit apparel and other finished articles of yarn; the manufacturing of felt goods (wool), lace goods, nonwoven fabrics, miscellaneous textiles, and other apparel products.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: discharges of wastewater (e.g., wastewater as a result of wet processing or from any processes relating to the production process); reused/recycled water; and waters used in cooling towers. These discharges must be covered under a separate VPDES permit.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description. Summary of potential pollutant sources. ~~A~~ The plan shall include a description of the potential pollutant sources from the following activities: industry-specific significant materials and industrial activities (e.g., backwinding, beaming, bleaching, backing, bonding carbonizing, carding, cut and sew operations, desizing, drawing, dyeing, ~~flocking~~ [~~locking~~, flocking], fulling, knitting, mercerizing, opening, packing, plying, scouring, slashing, spinning, synthetic-felt processing, textile waste processing, tufting, turning, weaving, web forming, winding, yarn spinning, and yarn texturing).

2. Storm water controls.

a. Good housekeeping measures.

(1) Material storage areas. All containerized materials (~~fuels, petroleum products, solvents, dyes, etc.~~) must (e.g., fuels, petroleum products, solvents, dyes, etc.) shall be clearly labeled and stored in a protected area, away from drains. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of storm water runoff from such storage areas, and ~~must~~ shall include a description of the containment area or enclosure for those materials that are stored outdoors. The permittee may consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances. The permittee shall ensure that empty chemical drums/containers are clean (~~triple rinsing should be considered~~) (triple-rinsing shall be considered) and residuals are not subject to contact with precipitation/runoff. Washwater from these cleanings ~~must~~ shall be collected and disposed of properly.

(2) Material handling area. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from materials handling operations and areas. The permittee shall consider the following measures (or their equivalents): use of spill/overflow protection; covering fueling areas; and covering and enclosing areas where the transfer of materials may occur. Where applicable, the plan ~~must~~ shall address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals, dyes, or wastewater.

(3) Fueling areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from fueling areas. The permittee shall consider the following measures (or their equivalents): covering the fueling area; using spill and overflow protection; minimizing runoff of storm water to the fueling areas; using dry

cleanup methods; and treating and/or recycling storm water runoff collected from the fueling area.

(4) Aboveground storage tank areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from aboveground storage tank areas, including the associated piping and valves. The permittee shall consider the following measures (or their equivalents): regular cleanup of these areas; preparation of a spill prevention control and countermeasure program; (SPCC to provide spill and overflow protection; minimizing runoff of storm water from adjacent areas; restricting access to the area; insertion of filters in adjacent catch basins; absorbent booms in unbermed fueling areas; use of dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.

b. Routine facility inspections. Inspections shall be conducted at least monthly, and shall include the following activities and areas (at a minimum): transfer and transmission lines; spill prevention; good housekeeping practices; management of process waste products; all structural and nonstructural management practices.

c. Employee training. Employee training ~~must~~ shall, at a minimum address, the following areas when applicable to a facility: use of reused/recycled waters; solvents management; proper disposal of dyes; proper disposal of petroleum products and spent lubricants; spill prevention and control; fueling procedures; and general good housekeeping practices.

d. Comprehensive Site Compliance Evaluation. Regularly scheduled evaluations shall be conducted at least once a year and address those areas contributing to a storm water discharge associated with industrial activity. Inspections ~~should~~ shall look for evidence of, or the potential for, pollutants entering the drainage system from the following areas, as appropriate: storage tank areas; waste disposal and storage areas; dumpsters and open containers stored outside; materials storage areas; engine maintenance and repair areas; material handling areas and loading dock areas.

9VAC25-151-310. Sector X - Printing and publishing.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from printing and publishing facilities (generally classified under SIC Major Group 27), and include the following types of facilities: newspaper, periodical, and book publishing and/or printing (SIC Codes 271 through 273); miscellaneous publishing (SIC Code 274); commercial printing (SIC Code 275); manifold business forms, greeting cards, bankbooks, looseleaf binders

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and book binding and related work (SIC Codes 276 through 278); and service industries for the printing trade (SIC 279).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: aboveground storage tanks, drums and barrels permanently stored outside.

b. Summary of potential pollutant sources. The plan shall include a description of the following additional sources and activities that have potential pollutants associated with them, as applicable: loading and unloading operations; outdoor storage activities; significant dust or particulate generating processes; and on-site waste disposal practices (e.g., blanket wash). Also, the pollutant or pollutant parameter (e.g., oil and grease, scrap metal, etc.) associated with each pollutant source shall be identified (e.g., oil and grease, scrap metal, etc.).

2. Storm water controls.

a. Good housekeeping measures.

(1) Material storage areas. All containerized materials (skids, pallets, solvents, bulk inks, and hazardous waste, empty drums, portable/mobile containers of plant debris, wood crates, steel racks, fuel oil, etc.) ~~should~~ shall be properly labeled and stored in a protected area, away from drains. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from such storage areas and shall include a description of the containment area or enclosure for those materials which are stored outdoors. The permittee may consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances.

(2) Material handling areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from material handling operations and areas (e.g., blanket wash, mixing solvents, loading/unloading materials). The permittee shall consider the following measures (or their equivalents): the use of spill/overflow protection; covering fuel areas; and covering/enclosing areas where the transfer of materials may occur. ~~Where~~ When applicable, the plan ~~must~~ shall address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals, or wastewater.

(3) Fueling areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from fueling areas. The permittee shall consider the following

measures (or their equivalents): covering the fueling area; using spill and overflow protection; minimizing runoff of storm water to the fueling area; using dry cleanup methods; and treating and/or recycling storm water runoff collected from the fueling areas.

(4) Aboveground storage tank areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from aboveground storage tank areas, including the associated piping and valves. The permittee shall consider the following measures (or their equivalents): regular cleanup of these areas; preparation of a spill prevention control and countermeasure program; (SPCC) to provide spill and overflow protection; minimizing runoff of storm water from adjacent facilities and properties; restricting access to the area; insertion of filters in adjacent catch basins; absorbent booms in unbermed fueling areas; use of dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.

b. Employee training. Employee training ~~must~~ shall, at a minimum, address the following areas when applicable to a facility: spent solvent management; spill prevention and control; used oil management; fueling procedures; and general good housekeeping practices.

9VAC25-151-320. Sector Y - Rubber, miscellaneous plastic products, and miscellaneous manufacturing industries.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from rubber and miscellaneous plastic products manufacturing facilities (SIC Major Group 30) and miscellaneous manufacturing industries, except jewelry, silverware, and plated ware (SIC Major Group 39, except 391).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

1. Site description. Summary of potential pollutant sources. ~~The permittee~~ Rubber manufacturing facilities shall review the use of zinc at the facility and the possible pathways through which zinc may be discharged in storm water runoff.

2. Storm water controls.

a. Controls for rubber manufacturers. ~~The permittee~~ Rubber manufacturing facilities shall describe and implement specific controls to minimize the discharge of zinc in storm water discharges from the facility. ~~The following [Subdivision 2 of this subsection lists Listed below are]~~ possible sources of zinc. These shall be reviewed and the accompanying BMPs (or their equivalents) shall be considered in the SWPPP. Also,

some general BMP options to consider include: using chemicals that are purchased in pre-weighed, sealed polyethylene bags; storing materials that are in use in sealable containers; ensuring an airspace between the container and the cover to minimize "puffing" losses when the container is opened; and using automatic dispensing and weighing equipment.

a. (1) Inadequate housekeeping. All permittees shall review the handling and storage of zinc bags at their facilities and consider the following BMP options: employee training regarding the handling/storage of zinc bags; indoor storage of zinc bags; cleanup of zinc spills without washing the zinc into the storm drain; and the use of 2,500-pound sacks of zinc rather than 50- to 100-pound sacks.

b. (2) Dumpsters. The following BMPs shall be considered to reduce discharges of zinc from dumpsters: providing a cover for the dumpster; move the dumpster to an indoor location; or provide a lining for the dumpster.

c. (3) Malfunctioning dust collectors or baghouses. Permittees shall review dust collectors/baghouses as possible sources in zinc in storm water runoff. Improperly operating dust collectors/baghouses shall be replaced or repaired as appropriate.

d. (4) Grinding operations. Permittees shall review dust generation from rubber grinding operations at their facility and, as appropriate, install a dust collection system.

e. (5) Zinc stearate coating operations. Permittees shall include in the SWPPP appropriate measures to prevent or clean up drips/spills of zinc stearate slurry that may be released to the storm drain. Alternate compounds to zinc stearate shall also be considered.

b. Controls for plastic products manufacturers. Plastic products manufacturing facilities shall describe and implement specific controls to minimize the discharge of plastic resin pellets in stormwater discharges from the facility. The following BMPs (or their equivalents) shall be considered in the SWPPP: minimizing spills; cleaning up of spills promptly and thoroughly; sweeping thoroughly; pellet capturing; employee education; and disposal precautions.

C. Benchmark monitoring and reporting requirements. Rubber product manufacturing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 320.

Table 320.

Sector Y – Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut Off Benchmark Concentration
Tires and Inner Tubes; Rubber Footwear; Gaskets, Packing and Sealing Devices; Rubber Hose and Belting; and Fabricated Rubber Products, Not Elsewhere Classified (SIC 3011-3069).	
Total Recoverable Zinc	120 µg/L
[Total Recoverable Lead]	[120 µg/L]
[Total Suspended Solids (TSS)]	[100 mg/L]

9VAC25-151-330. Sector Z - Leather tanning and finishing.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from leather tanning, currying and finishing (commonly identified by SIC Code 3111).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.
 - a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: processing and storage areas of the beamhouse, tanyard, retan-wet finishing and dry finishing operations; and haul roads, access roads and rail spurs.
 - b. Summary of potential pollutant sources. A description of potential pollutant sources including (as appropriate): temporary or permanent storage of fresh and brine cured hides; chemical drums, bags, containers and aboveground tanks; leather dust, scraps, trimmings and shavings; spent solvents; extraneous hide substances and hair; empty chemical containers and bags; floor sweepings/washings; refuse ~~and~~ waste piles and sludge; and significant dust/particulate generating processes (e.g., buffing).
2. Storm water controls.
 - a. Good housekeeping.
 - (1) Storage areas for raw, semiprocessed, or finished tannery by-products. Pallets/bales of raw, semiprocessed or finished tannery by-products (e.g., splits, trimmings, shavings, etc.) ~~should~~ **shall** be stored indoors or protected by polyethylene wrapping, tarpaulins, roofed storage area or other suitable means. Materials ~~should~~ **shall** be placed on an impermeable surface, the area ~~should~~ **shall** be enclosed or bermed, or other equivalent measures ~~should~~

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shall be employed to prevent runoff of storm water.

(2) Material storage areas. ~~Label storage~~ Storage units of all materials should be labeled (e.g., specific chemicals, hazardous materials, spent solvents, waste materials). ~~Describe~~ The permittee shall describe and implement measures that prevent or minimize contact with storm water.

(3) Buffing and shaving areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff with leather dust from buffing/shaving areas. The permittee may consider dust collection enclosures, preventive inspection/maintenance programs or other appropriate preventive measures.

(4) Receiving, unloading, and storage areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from receiving, unloading, and storage areas. The following measures (or their equivalents) shall be considered for exposed receiving, unloading and storage areas: hides and chemical supplies protected by a suitable cover; diversion of drainage to the process sewer; and grade berming/curbing area to prevent runoff of storm water.

(5) Outdoor storage of contaminated equipment. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contact of storm water with contaminated equipment. The following measures (or their equivalents) shall be considered: equipment protected by suitable cover; diversion of drainage to the process sewer; thorough cleaning prior to storage.

(6) Waste management. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from waste storage areas. The permittee shall consider the following measures (or their equivalents): inspection/maintenance programs for leaking containers or spills; covering dumpsters; moving waste management activities indoors; covering waste piles with temporary covering material such as tarpaulins or polyethylene; and minimizing storm water runoff by enclosing the area or building berms around the area.

C. Benchmark monitoring and reporting requirements. Leather tanning and finishing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 330.

Table 330.
Sector Z – Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut Off <u>Benchmark Concentration</u>
Leather Tanning and Finishing (SIC 3111)	
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
[Total Suspended Solids (TSS)]	[100 mg/L]

9VAC25-151-340. Sector AA - Fabricated metal products.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from the fabricated metals industry listed below, except for electrical related industries: fabricated metal products, except machinery and transportation equipment (SIC Code 34); and jewelry, silverware, and plated ware (SIC Code 391).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site Map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: raw metal storage areas; finished metal storage areas; scrap disposal collection sites; equipment storage areas; retention and detention basins; temporary/permanent diversion dikes or berms; right-of-way or perimeter diversion devices; sediment traps/barriers; processing areas including outside painting areas; wood preparation; recycling; and raw material storage.

b. Spills and Leaks. When listing significant spills/leaks, the permittee shall pay attention to the following materials, at a minimum: chromium, toluene, pickle liquor, sulfuric acid, zinc and other water priority chemicals and hazardous chemicals and wastes.

c. Summary of potential pollutant sources. ~~A~~ The plan shall include a description of the potential pollutant sources from the following activities: loading and unloading operations for paints, chemicals and raw materials; outdoor storage activities for raw materials, paints, empty containers, corn cob, chemicals, scrap metals; outdoor manufacturing or processing activities such as grinding, cutting, degreasing, buffing, brazing, etc.; and on-site waste disposal practices for spent solvents, sludge, pickling baths, shavings, ingots pieces, refuse and waste piles.

2. Storm water controls.

a. Good housekeeping.

(1) Raw steel handling storage. ~~Describe~~ The permittee shall describe and implement measures controlling or recovering scrap metals, fines, and iron dust, including measures for containing materials within storage handling areas.

(2) Paints and painting equipment. ~~Describe~~ The permittee shall describe and implement measures to prevent or minimize exposure of paint and painting equipment from exposure to storm water.

b. Spill prevention and response procedures. The permittee shall ensure that the necessary equipment to implement a clean up is available to personnel. The following areas ~~should~~ shall be addressed:

(1) Metal fabricating areas. ~~Describe~~ The permittee shall describe and implement measures for maintaining clean, dry, orderly conditions in these areas. Use of dry clean-up techniques ~~should~~ shall be considered in the plan.

(2) Storage areas for raw metal. ~~Describe~~ The permittee shall describe and implement measures to keep these areas free of conditions that could cause spills or leakage of materials. The following measures (or their equivalents) ~~should~~ shall be considered: storage areas maintained such that there is easy access in the event of a spill; stored materials labeled to aid in identifying spill contents.

(3) Receiving, unloading, and storage areas. ~~Describe~~ The permittee shall describe and implement measures to prevent spills and leaks; plan for quick remedial clean up and instruct employees on clean-up techniques and procedures.

(4) Storage of equipment. ~~Describe~~ The permittee shall describe and implement measures for preparing equipment for storage and the proper method to store equipment. The following measures (or their equivalents) shall be considered: protecting with covers; storing indoors; and cleaning potential pollutants from equipment to be stored outdoors.

(5) Metal working fluid storage areas. ~~Describe~~ The permittee shall describe and implement measures for storage of metal working fluids.

(6) Cleaners and rinse water. ~~Describe~~ The permittee shall describe and implement measures to control/cleanup spills of solvents and other liquid cleaners; control sand buildup and disbursement from sand-blasting operations; and prevent exposure of recyclable wastes. Environmentally benign cleaners ~~should~~ shall be substituted when possible.

(7) Lubricating oil and hydraulic fluid operations. ~~Consider~~ The permittee shall consider using devices or monitoring equipment or other devices to detect and control leaks/overflows. ~~Consider the~~ The installation of

perimeter controls such as dikes, curbs, grass filter strips, or other equivalent measures shall also be considered.

(8) Chemical storage areas. ~~Describe~~ The permittee shall describe and implement proper storage methods that prevent storm water contamination and accidental spillage. The plan ~~should~~ shall include a program to inspect containers, and identify proper disposal methods.

c. Inspections. Metal fabricators shall at a minimum include the following areas for inspection: raw metal storage areas; finished product storage areas; material and chemical storage areas; recycling areas; loading and unloading areas; equipment storage areas; paint areas; and vehicle fueling and maintenance areas.

d. Comprehensive site compliance evaluation. The site compliance evaluation shall also include inspections of: areas associated with the storage of raw metals; storage of spent solvents and chemicals; outdoor paint areas; and roof drainage. Potential pollutants include chromium, zinc, lubricating oil, solvents, aluminum, oil and grease, methyl ethyl ketone, steel and other related materials.

C. Benchmark monitoring and reporting requirements. Metal fabricating facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 340.

Table 340.

Sector AA – Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut-Off Benchmark Concentration
Fabricated Metal Products Except Coating (SIC 3411-3471, 3482-3499, 3911-3915)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	+ 1.0 mg/L
Total Recoverable Zinc	120 µg/L
[Total Suspended Solids (TSS)]	[100 mg/L]
Fabricated Metal Coating and Engraving (SIC 3479)	
Total Recoverable Zinc	120 µg/L
[Total Suspended Solids (TSS)]	[100 mg/L]

9VAC25-151-350. Sector AB - [transportation Transportation] equipment, industrial, or commercial machinery.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from transportation equipment, industrial or commercial machinery manufacturing facilities (commonly described by SIC Major

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Group 35 (except SIC Code 357), and SIC Major Group 37 (except SIC Code 373)).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

1. Site description. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: vents and stacks from metal processing and similar operations.

2. Storm water controls. Nonstorm water discharges. For facilities that discharge wastewater, other than solely domestic wastewater, to the sanitary sewer system, the permittee ~~must~~ shall notify the operator of the sanitary sewer and associated treatment works of its discharge. In such cases, a copy of a notification letter ~~must~~ shall be attached to the plan. Any specific permit conditions ~~must~~ shall be considered in the plan.

9VAC25-151-360. Sector AC - Electronic, electrical equipment and components, photographic and optical goods.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities that manufacture: electronic and other electrical equipment and components, except computer equipment (SIC Major Group 36); measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks (SIC Major Group 38) and computer and office equipment (SIC Code 357).

B. Additional requirements. No additional sector-specific requirements apply to this sector.

~~[C. Benchmark monitoring and reporting requirements. Electronic and electrical equipment and components facilities (except computers) (SIC 3612-3699) are required to monitor their storm water discharges for the pollutants of concern listed in Table 360.~~

~~Table 360.~~

~~Sector AC - Benchmark Monitoring Requirements.~~

Pollutants of Concern	Benchmark Concentration
Electronic and Electrical Equipment and Components, except Computers (SIC 3612-3699)	
Total Recoverable Copper	18 µg/L
Total Recoverable Lead	120 µg/L
Total Suspended Solids (TSS)	100 mg/L]

9VAC25-151-370. Sector AD - Nonclassified facilities/storm water discharges designated by the board as requiring permits.

A. Discharges covered under this section. Sector AD is used to provide permit coverage for facilities designated by the board as needing a storm water permit, or any discharges of industrial activity that do not meet the description of an industrial activity covered by Sectors A-AC. Therefore, almost any type of storm water discharge could be covered under this sector. Permittees ~~must~~ shall be assigned to Sector AD by the director and may not choose Sector AD as the sector describing the facility's activities.

B. Additional requirements. No additional sector-specific requirements apply to this sector.

C. Benchmark monitoring and reporting requirements. Nonclassified facilities/storm water discharges designated by the board as requiring permits are required to monitor their storm water discharges for the pollutants of concern listed in Table 370.

Table 370.

Sector AD - Benchmark Monitoring Requirements.

<u>Pollutants of Concern</u>	<u>Benchmark Concentration</u>
<u>Nonclassified Facilities/Storm Water Discharges Designated By the Board As Requiring Permits</u>	
<u>Total Suspended Solids (TSS)</u>	<u>100 mg/L</u>

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (9VAC25-151)

Department of Environmental Quality Water Quality Division Permit Application Fee Form (~~rev. 7/02~~) (rev. 1/08).

VPDES General Permit Registration Statement – Industrial Activity Storm Water Discharges, SWGP VAR05-RS (~~eff. 7/04~~) (eff. 7/09).

VPDES General Permit Notice of Termination – Industrial Activity Storm Water Discharges, SWGP VAR05-NOT (~~eff. 7/04~~) (eff. 7/09).

Virginia Pollutant Discharge Elimination System (VPDES) Discharge Monitoring Report (DMR) – Industrial Activity Storm Water Discharges (~~eff. 7/04~~) (eff. 7/09).

VPDES Change of Ownership Agreement Form.

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-151)

Standard Industrialization Classification (SIC) Manual, 1987, Office of Management and Budget.

Modified DRO Method for Determining Diesel Range Organics, PUBL-SW-141, September 1995, Wisconsin Department of Natural Resources.

Method 8015C, Nonhalogenated Organics Using GC/FID, Revision 3, February 2007, U.S. Government Printing Office.

Method 8270D, Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 4, February 2007, U.S. Government Printing Office.

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Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 9 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-190. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining (amending 9VAC25-190-10, 9VAC25-190-20, 9VAC25-190-50, 9VAC25-190-60, 9VAC25-190-70; adding 9VAC25-190-65).**

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

Effective Date: June 24, 2009.

Agency Contact: George Cosby, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4067, FAX (804) 698-4032, or email gecosby@deq.virginia.gov.

Summary:

The regulation sets forth standard language for effluent limitations and monitoring requirements necessary to regulate the discharge of wastewater from nonmetallic mineral mining. The existing general permit expires on June 30, 2009. The general permit is being reissued in

order to continue making it available for nonmetallic mineral mining operations after that date. Revisions include the addition of language defining vehicle and equipment washing and the addition of provisions concerning the discharge to waters where a total maximum daily load has been developed and approved by the U.S. Environmental Protection Agency.

Changes from the proposed are in response to comments from the U.S. Environmental Protection Agency. Among other things, a new section (9VAC25-190-65) is added to detail requirements for termination of coverage and language is added to clarify the applicability of total maximum daily load language and to address Virginia's antidegradation policy.

9VAC25-190-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31-10 et seq.) unless the context clearly indicates otherwise. Additionally, for the purposes of this chapter:

~~"Co-located"~~ **"Colocated facility"** means an industrial activity other than mineral mining operating on a site where the primary industrial activity is mineral mining. Such an activity must have wastewater characteristics similar to those of the mineral mine and be located within the permitted mining area. The term refers to activities that are commonly found at mining sites such as manufacturing of ready-mix concrete (SIC Code 3273), concrete products (SIC Codes 3271 and 3272), and asphalt paving materials (SIC Code 2951) except asphalt emulsion manufacturing. It does not mean industrial activity that is specifically excluded from this permit.

"Industrial activity" means activity associated with mineral mining facilities generally identified by SIC Major Group 14 including active or inactive mining operations that discharge storm water that has come into contact with any overburden, raw material, intermediate products, finished products, by-products or waste products located on the site of such operations. (Inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.) Industrial activity also includes facilities classified under other SIC codes that may be colocated within the mineral mine permit area, unless they are expressly excluded by this general permit.

"Permittee" means the owner of a nonmetallic mineral mine covered under this general permit.

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"Process wastewater" means any wastewater used in the slurry transport of mined material, air emissions control, or processing exclusive of mining, and any other water that becomes commingled with such wastewater in a pit, pond, lagoon, mine, or other facility used for treatment of such wastewater. It includes mine pit dewatering, water used in the process of washing stone, noncontact cooling water, wastewater from vehicle/equipment washing activities, return water from operations where mined material is dredged and miscellaneous plant cleanup wastewaters.

"Run-off coefficient" means the fraction of total rainfall that will appear at the conveyance as run-off.

"SIC" means the Standard Industrial Classification Code or Industrial Grouping from the U.S. Office of Management and Budget Standard Industrial Classification Manual, 1987 Edition.

"Significant materials" includes, but is not limited to, raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.); any chemical the owner is required to report pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 USC § 11001 et seq.); fertilizers; pesticides; and waste products such as ashes, slag and sludge (including pond sediments) that have the potential to be released with storm water discharges.

"Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under ~~9VAC25-31-10 et seq~~ 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the mineral mine; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this

paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

"Vehicle/equipment washing" means the washing with detergents or steam cleaning of engines and other drive components in which the purpose is to clean and degrease the equipment for maintenance and other purposes. The application of water without detergent to a vehicle exterior for the purpose of removing sediment is excluded.

9VAC25-190-20. Purpose; delegation of authority; effective date of permit.

A. The purpose of this chapter is to establish General Permit Number VAG84 to regulate wastewater discharge from nonmetallic mineral mines as follows:

1. For active and inactive nonmetallic mineral mining facilities in SIC Major Group 14, this general permit covers discharges composed entirely of storm water associated with industrial activity.
2. This general permit authorizes the discharge of process wastewater as well as storm water associated with industrial activity from active and inactive mineral mines classified under Standard Industrial Classification Codes 1411, 1422, 1423, 1429, 1442, 1455, 1459 excluding bentonite and magnesite mines, 1475, and 1499 excluding gypsum, graphite, asbestos, diatomite, jade, novaculite, wollastonite, tripoli or asphaltic mineral mines.
3. Coal mining, metal mining, and oil and gas extraction are not covered by this general permit.

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

C. This general permit will become effective on ~~July 1, 2004~~ July 1, 2009, and will expire five years after the effective date. For any covered owner, this general permit is effective upon compliance with all the provisions of 9VAC25-190-50 and the receipt of this general permit.

9VAC25-190-50. Authorization to discharge.

A. Any owner governed by this general permit is authorized by this to discharge to surface waters of the Commonwealth of Virginia provided that the owner files a registration statement as described in 9VAC25-190-60 that is accepted by the board, files the required permit fee, complies with the effluent limitations and other requirements of 9VAC25-190-70, and provided that:

1. The owner shall not have been required to obtain an individual permit as may be required in the VPDES permit regulation (~~9VAC25-31-10 et seq.~~; 9VAC25-31).

2. The owner shall not be authorized by this general permit to discharge to state waters specifically named in other board regulations or policies which prohibit such discharges;

3. The owner shall have a mineral mining permit for the operation to be covered by this general permit which has been approved by the Virginia Department of Mines, Minerals and Energy, Division of Mineral Mining (or associated waived program, locality or state agency) under provisions and requirements of Title 45.1 of the Code of Virginia. Mineral mines located in bordering states with discharges in Virginia shall provide documentation that they have a mining permit from the appropriate state authority. Mineral mines owned and operated by governmental bodies not subject to the provisions and requirements of Title 45.1 of the Code of Virginia are exempt from this requirement; ~~and~~.

4. The owner shall implement pollution control measures necessary to comply with the conditions and limitations of this general permit including, but not limited to, the installation, operation and maintenance of sediment control structures.

5. The owner shall not be authorized by this general permit to discharge to waters for which a "total maximum daily load" (TMDL) allocation has been established by the board and approved by EPA prior to the term of this permit, unless the owner develops, implements and maintains a storm water pollution prevention plan (SWPPP) that is consistent with the assumptions and requirements of the TMDL. This only applies where the facility is [~~an~~ identified a] source of the TMDL pollutant of concern. [~~The SWPPP shall specifically address any conditions or requirements included in the TMDL that are applicable that applies to discharges from the facility, the owner shall incorporate that allocation into the facility's SWPPP and implement measures necessary to meet that allocation.~~]

B. The board shall deny coverage under this general permit to any owner with discharge or storm water discharge-related activities which the board determines cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to adversely affect aquatic life.

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

9VAC25-190-60. Registration statement.

The owner shall file a complete general VPDES permit registration statement, which will serve as a notice of intent for coverage under the general permit for nonmetallic mineral mining. Any owner proposing a new discharge shall file the registration statement at least 30 days prior to the date planned for operation of the mineral mine. Any owner of an existing mineral mine covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing mineral mine covered by the general VPDES permit for nonmetallic mineral mining that became effective on June 30, 1999, who wishes to remain covered by this general permit shall file a new registration statement in accordance with the general permit requirements in order to avoid a lapse in coverage. Any owner of an existing mineral mine not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file the registration statement. The required registration statement shall contain the following information:

1. Facility name, owner, mailing address, email address and telephone number;
2. Project name, county, ~~and~~ location, latitude and longitude;
3. Description of mining activity;
4. Primary and secondary SIC codes;
5. Discharge information including:
 - a. A list of outfalls identified by outfall numbers;
 - b. Characterization of the type of each listed outfall's discharge as either process wastewater, storm water, or process wastewater commingled with storm water;
 - c. Characterization of the source of each listed outfall's discharge as either mine pit dewatering, storm water associated with industrial activity (see definition in 9VAC25-115-10), storm water not associated with industrial activity, ground water infiltration, wastewater from vehicle and/or equipment washing activities, mined material washing, noncontact cooling water, miscellaneous plant cleanup wastewater, ~~co-located~~ colocated facility discharges (identify the [~~co-located~~ colocated] facility), other discharges not listed here (describe), or any combination of the above;
 - d. The receiving stream [, including wetlands] for each outfall listed;
 - e. The latitude and longitude for each outfall listed; and
 - f. Indicate which storm water outfalls will be representative outfalls that require a single Discharge Monitoring Report (DMR). For storm water outfalls that

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are to be represented by other outfall discharges, provide a description of the activities associated with those outfalls and explain why they are substantially the same as the representative outfall to be sampled;

6. Indicate if the facility has a current VPDES permit and the permit number if it does;

7. Description of wastewater treatment or reuse/recycle systems or both;

8. List of any chemicals added to water that could be discharged;

9. List of ~~co-located~~ colocated facilities;

10. Indicate if the facility is a hazardous waste treatment, storage or disposal facility;

11. Schematic drawing showing water flow from source to water-using industrial operations to waste treatment and disposal, and disposal of any solids removed from wastewater;

12. Aerial photo or scale map that clearly shows the property boundaries, plant site, drainage areas associated with each outfall, locations of all mine pit dewatering, existing, significant sources of materials exposed to precipitation, storm water or process wastewater outfalls and the receiving streams;

13. Evidence that the operation to be covered by this general permit has a mining permit that has been approved by the Virginia Department of Mines, Minerals and Energy, Division of Mineral Mining (or associated waived program) under the provisions and requirements of Title 45.1 of the Code of Virginia (or appropriate bordering state authorization). Mineral mines owned and operated by governmental bodies not subject to the provisions and requirements of Title 45.1 of the Code of Virginia are exempt from this requirement;

14. Mining permit number;

15. [Indicate if the facility discharge storm water into a Municipal Separate Storm Sewer System (MS4). If yes, state the name of the MS4 operator.

16. The owner shall not be authorized by this general permit unless the discharge complies with Virginia's antidegradation policy in the Water Quality Standards at 9VAC25-260-30. The department will notify the applicant if authorization to discharge under this general permit will not comply with the antidegradation requirements set forth in 9VAC25-260-30.

17.] The following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and

evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

The registration statement shall be signed in accordance with 9VAC25-31-110.

[9VAC25-190-65. Termination of permit coverage.

A. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination may be filed after one or more of the following conditions have been met:

1. Operations have ceased at the facility and there are no longer discharges of storm water associated with industrial activity from the facility;

2. A new owner has assumed responsibility for the facility (NOTE: A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement form has been submitted); or

3. All storm water discharges associated with industrial activity have been covered by an individual VPDES permit.

B. The notice of termination shall contain the following information:

1. Owner's name, mailing address and telephone number;

2. Facility name and location;

3. VPDES industrial storm water general permit number;

4. The basis for submitting the notice of termination, including:

a. A statement indicating that a new owner has assumed responsibility for the facility;

b. A statement indicating that operations have ceased at the facility and there are no longer discharges of storm water associated with industrial activity from the facility;

c. A statement indicating that all storm water discharges associated with industrial activity have been covered by an individual VPDES permit; or

d. A statement indicating that termination of coverage is being requested for another reason (state the reason); and

5. The following certification: "I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual permit,

or that I am no longer the owner of the industrial activity, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity in accordance with the general permit, and that discharging pollutants in storm water associated with industrial activity to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

General Permit No.: VAG84
 Effective date: July 1, ~~2004~~ 2009
 Expiration date: June 30, ~~2009~~ 2014

GENERAL PERMIT FOR NONMETALLIC MINERAL MINING

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, owners of nonmetallic mineral mines are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations or policies which prohibit such discharges.

C. The notice of termination shall be signed in accordance with 9VAC25-190-70, Part III K.

D. The notice of termination shall be submitted to the DEQ regional office serving the area where the industrial facility is located.]

The authorized discharge shall be in accordance with this cover page, Part I—Effluent Limitations and Monitoring Requirements, Part II—Storm Water Management, and Part III—Conditions Applicable to All VPDES Permits, as set forth herein.

9VAC25-190-70. General permit.

Any owner whose registration statement is accepted by the board will receive the following permit and shall comply with the requirements in it and be subject to all requirements of the VPDES permit regulation, ~~9VAC25-31-10 et seq~~ 9VAC25-31.

Part I

Effluent Limitations ~~And~~ and Monitoring Requirements

A. Effluent limitations and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge process wastewater and commingled storm water associated with industrial activity from outfall(s).

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Monthly Average	Daily Minimum	Daily Maximum	Frequency ⁽³⁾	Sample Type
Flow (MGD)	NL	NA	NL	1/3 Months	Estimate
Total Suspended Solids (mg/l)	30	NA	60	1/3 Months	Grab
pH (standard units)	NA	6.0* <u>6.0⁽¹⁾</u>	9.0* <u>9.0⁽¹⁾</u>	1/3 Months	Grab
Total Petroleum Hydrocarbons (mg/l)** <u>(mg/l)⁽²⁾</u>	NA	NA	NL	1/3 Months	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

~~*Where~~ ⁽¹⁾Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH, pH effluent limits may be adjusted within the 6 to 9 S.U. range.

~~**Monitoring~~ ⁽²⁾Monitoring for Total Petroleum Hydrocarbons is only required for outfalls from vehicle/equipment washing facilities or from discharges that pass through oil/water separators.

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⁽³⁾Discharge Monitoring Reports (DMRs) of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January.

2. There shall be no discharge of floating solids or visible foam in other than trace amounts.

3. During the period beginning with the permittee's coverage under the general permit and lasting until the permit's expiration date, the permittee is authorized to discharge storm water associated with industrial activity which does not combine with other wastewaters prior to discharge from outfall(s).

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Monthly Average	Daily Minimum	Daily Maximum	Frequency ⁽²⁾	Sample Type
Flow (MG)	NA	NA	NL	1/Year	Estimate* Estimate ⁽¹⁾
Total Suspended Solids (mg/l)	NA	NA	NL ⁽³⁾	1/Year	Grab
pH (standard units)	NA	NL	NL	1/Year	Grab

NL = No Limitation, monitoring required

NA = Not applicable

*Estimate ⁽¹⁾Estimate of the total volume of the discharge during the storm event.

⁽²⁾Discharge Monitoring Reports (DMRs) of yearly monitoring (January 1 to December 31) shall be submitted to the DEQ regional office no later than the 10th day of January.

⁽³⁾Refer to Part I B 13 should the TSS evaluation monitoring exceed 100 mg/l daily maximum.

4. All samples taken to meet the monitoring requirements specified above in A.3 Part I A 3 shall be collected [~~from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude~~] and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. ~~The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the permittee shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable on a storm event that results in an actual discharge (defined as a "measurable storm event") that follows the preceding measurable storm event by at least 72 hours (three days). The 72-hour (three-day) storm interval does not apply if the permittee is able to document that less than a 72-hour (three-day) interval is representative for local storm events during the sampling period. The grab sample shall be taken during the first 30 minutes of the storm water discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the permittee shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. In the case of snowmelt or a discharge from a storm water~~

settling lagoon, a representative sample shall be taken at the time the discharge occurs].

B. Special conditions.

1. Vehicles and equipment utilized during the industrial activity on a site must be operated and maintained in such a manner as to prevent the potential or actual point source pollution of the surface or groundwaters of the state. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products, shall not be disposed of by discharging on the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or groundwaters of the state and in accordance with the applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up to the maximum extent practicable and disposed of in a manner so as not to allow their entry into the surface or groundwaters of the state.

2. No sewage shall be discharged from this mineral mining activity except under the provisions of another VPDES permit specifically issued for that purpose.

3. There shall be no chemicals added to the discharge, other than those listed on the owner's approved registration statement.

4. The permittee shall submit a new registration statement if the mining permit approved by the Division of Mineral Mining (or associated waived program, or bordering state mine authority) is modified or reissued in any way that would affect the outfall location or the characteristics of a discharge covered by this general permit. Government owned and operated mines without mining permits shall submit the registration statement whenever outfall location or characteristics are altered. The new registration statement shall be filed within 30 days of the outfall relocation or change in the characteristics of the discharge.

5. The permittee shall notify the department as soon as they know or have reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

- (1) One hundred micrograms per liter (100 µg/l);
- (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- (3) Five times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the board.

b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

- (1) Five hundred micrograms per liter (500 µg/l);
- (2) One milligram per liter (1 mg/l) for antimony;
- (3) Ten times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the board.

6. This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation or prohibition for a pollutant which is promulgated or approved under § 307(a)(2) of the federal Clean Water Act, if the effluent standard or limitation so issued or approved:

- a. Is more stringent than any effluent limitation on the pollutant already in the permit; or
- b. Controls any pollutant not limited in the permit.

7. Except as expressly authorized by this permit, no product, materials, industrial wastes, or other wastes

resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.

8. There shall be no discharge of process wastewater pollutants from ~~co-located~~ colocated asphalt paving materials operations. For the purposes of this special condition, process wastewater pollutants are any pollutants present in water used in asphalt paving materials manufacturing which come into direct contact with any raw materials, intermediate product, by-product or product related to the asphalt paving materials manufacturing process.

9. Process water may be used on site for the purpose of dust suppression. Dust suppression shall be carried out as a best management practice but not as a wastewater disposal method provided that ponding or direct runoff from the site does not occur during or immediately following its application.

10. Process water from mine dewatering may be provided to local property owners for beneficial agricultural use.

11. Vehicle/equipment washing shall include washing with detergents or steam cleaning of engines and other drive components in which the purpose is to clean and decrease the equipment for maintenance and other purposes. The application of water without detergent to a vehicle exterior for the purpose of removing is excluded.

12. The permittee shall report at least two significant digits for a given parameter. Regardless of the rounding convention used (i.e., 5 always rounding up or to the nearest even number) by the permittee, the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

13. Storm Water Monitoring Total Suspended Solids (TSS) Evaluation. Permittees that monitor storm water associated with industrial activity which does not combine with other wastewaters prior to discharge shall review the results of the TSS monitoring required by Part I A 3 to determine if changes to the Storm Water Pollution Prevention Plan (SWPPP) may be necessary. If the TSS monitoring results are greater than the evaluation value of 100 mg/l, then the permittee shall perform the inspection and maintain documentation as described in Part II H 3 d for that outfall. Any deficiencies noted during the inspection shall be corrected in a timely manner.

14. Discharges to waters subject to TMDL waste load allocations. Facilities that are [~~an identified a~~] source of the specified pollutant of concern to waters for which a "total maximum daily load" (TMDL) waste load allocation

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~~has been established by the board and approved by EPA prior to the term of this permit shall incorporate measures and controls into the SWPPP required by Part [III] that are consistent with the assumptions and requirements of the TMDL. The department will provide written notification to the owner that a facility is subject to the TMDL requirements. [The facility's SWPPP shall specifically address any conditions or requirements included in the TMDL that are applicable to discharges from the facility.] If the TMDL establishes a [specific] numeric wasteload allocation that applies to discharges from the facility, the owner shall [incorporate that allocation into the facility's SWPPP,] perform any required monitoring in accordance with Part I A [1-e(3),] and implement measures necessary to meet that allocation.~~

~~[15. There shall be no discharge or storm water discharge-related activities that cause or contribute to a violation of water quality standards or that adversely affect aquatic life.]~~

Part II Storm Water Management

A. Recording of results.

1. Additional information. In addition to any reporting requirements of Part III, for each measurement or sample taken pursuant to the storm event monitoring requirements of this permit, the permittee shall record and report with the discharge monitoring report the following information:

- a. The date and duration (in hours) of the storm events sampled; and
- b. The rainfall measurements or estimates (in inches) of the storm event which generated the sampled discharge [~~and~~]
- ~~c. The duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.]~~

2. Additional reporting. In addition to filing copies of discharge monitoring reports in accordance with Part III, permittees with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) or a municipal system designated by the board must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system at the same time.

B. Representative discharge. When a facility has two or more exclusively storm water outfalls that, ~~based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and include with the discharge~~

~~monitoring report an explanation that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each exclusively storm water outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the run-off coefficient of the drainage area (e.g., low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided the permittee reasonably believes discharge substantially identical effluents, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfalls, then the permittee may submit information with the registration statement substantiating the request for only one DMR to be issued for the outfall to be sampled that represents one or more substantially identical outfalls. Also the permittee may list on the discharge monitoring report of the outfall to be sampled all outfall locations that are represented by the discharge.~~

C. Sampling waiver.

1. Adverse conditions. When a permittee is unable to collect samples within a specified sampling period due to adverse climatic conditions, the permittee shall collect a substitute sample from a separate qualifying event in the next period and submit these data along with the data for the routine sampling in that period. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

2. Inactive and unstaffed facilities. When a permittee is unable to conduct the storm water sampling required at an inactive and unstaffed facility, the permittee may exercise a waiver of the monitoring requirements as long as the facility remains inactive and unstaffed. The permittee must submit to the department, in lieu of monitoring data, a certification statement on the discharge monitoring report stating that the facility is inactive and unstaffed so that collecting a sample during a qualifying event is not possible. [The requirement for a quarterly visual assessment does not apply at a facility that is inactive and unstaffed, as long as there are no industrial materials or activities exposed to stormwater.]

D. Storm water pollution prevention plans. A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the

quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

The storm water pollution prevention plan requirements of this general permit may be fulfilled by incorporating by reference other plans or documents such as an erosion and sediment control plan, a mine drainage plan as required by the Virginia Division of Mineral Mining, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the federal Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the plan requirements of Part II H. If an erosion and sediment control plan is being incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate plan-approving authority authorized under the Virginia Erosion and Sediment Control Regulations, 4VAC50-30. All plans incorporated by reference into the storm water pollution prevention plan become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the storm water pollution prevention plan of Part II H, the permittee must develop the missing plan elements and include them in the required storm water pollution prevention plan.

E. Deadlines for plan preparation and compliance.

1. Existing facilities and new facilities that begin operation on or before July 1, ~~2004~~ 2009, shall prepare and implement a plan incorporating the storm water pollution prevention plan requirements of this permit, if not included in an existing plan, as expeditiously as practicable, but not later than July 1, ~~2005~~ 2010. Existing storm water pollution prevention plans being implemented as of July 1, ~~2004~~ 2009 shall continue to be implemented until a new plan is developed and implemented.
2. Facilities that begin operation after July 1, ~~2004~~ 2009, shall prepare and implement a plan incorporating the requirements of this permit prior to submitting the registration statement.

F. Signature and plan review.

1. The plan shall be signed in accordance with Part III K (signatory requirements), and be retained on-site at the facility covered by this permit in accordance with Part III B (records) of this permit. When there are no on-site buildings or offices in which to store the plan, it shall be kept at the nearest company office.

2. The permittee shall make the storm water pollution prevention plan, annual site compliance inspection report, or other information available to the department upon request.

3. The director, or an authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this part. Within 60 days of such notification from the director, or as otherwise provided by the director, or an authorized representative, the permittee shall make the required changes to the plan and shall submit to the department a written certification that the requested changes have been made.

G. Keeping plans current. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the state or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part II H 2 (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. New owners shall review the existing plan and make appropriate changes. Amendments to the plan may be reviewed by the department in the same manner as described in Part II F.

H. Contents of plan. The plan shall include, at a minimum, the following items:

1. Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.
2. Description of potential pollutant sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:
 - a. Drainage.

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(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water run-off, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part II H 2 c (spills and leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes and wastewaters, liquid storage tanks, processing areas and storage areas. The map must indicate all outfall locations. The types of discharges contained in the drainage areas of the outfalls must be indicated either on the map or in an attached narrative.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. Inventory of exposed materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of coverage under this general permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water run-off between the time of three years prior to the date of coverage under this general permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water run-off; and a description of any treatment the storm water receives.

c. Spills and leaks. A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the date of coverage under this general permit. Such list shall be updated as appropriate during the term of the permit.

d. Sampling data. A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. Risk identification and summary of potential pollutant sources. A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

3. Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. Good housekeeping. Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner. The plan shall describe procedures performed to minimize contact of materials with storm water run-off. Particular attention should be paid to areas where raw materials are stockpiled, material handling areas, storage areas, liquid storage tanks, and loading/unloading areas.

b. Preventive maintenance. A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems. The maintenance program shall require periodic removal of debris from discharge diversions and conveyance systems. Permittees using settling basins to control their effluents must provide maintenance schedules for such basins in the pollution prevention plan.

c. Spill prevention and response procedures. Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion

valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. Inspections. Facility personnel who are familiar with the mining activity, the best management practices and the storm water pollution prevention plan shall be identified to inspect material storage and handling areas, liquid storage tanks, hoppers or silos, vehicle and equipment maintenance areas, cleaning and fueling areas, material handling vehicles and designated equipment and processing areas of the facility; to inspect best management practices; and to conduct visual examinations of storm water associated with industrial activity. The inspection frequency shall be specified in the plan based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of quarterly. Inspections of best management practices shall include inspection of storm water discharge diversions, conveyance systems, sediment control and collection systems, containment structures, vegetation, serrated slopes, and benched slopes to determine their effectiveness, the integrity of control structures, if soil erosion has occurred, or if there is evidence of actual or potential discharge of contaminated storm water. Visual examinations of storm water discharges associated with industrial activity shall include examination of storm water samples representative of storm event discharges from the facility and observation of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. Site inspection, best management practices inspection and visual examination results must be documented and maintained on-site with the facility pollution prevention plan. Documentation for visual examinations of storm water shall include the examination date and time, examination personnel, outfall location, the nature of the discharge, visual quality of the storm water discharge and probable sources of any observed storm water contamination. Part II B regarding representative discharges and Part II C regarding sampling waivers shall apply to the taking of samples for visual examination except that (i) the documentation required by these sections shall be retained with the storm water pollution prevention plan visual examination records rather than submitted to the department, and (ii) substitute sampling for waived sampling is not required if the proper documentation is maintained. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections.

e. Employee training. Employee training programs shall inform personnel responsible for implementing activities

identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

f. Recordkeeping and internal reporting procedures. A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan. Ineffective best management practices must be recorded and the date of their corrective action noted.

g. Sediment and erosion control. The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, or stabilization measures to be used to limit erosion. Permittees must indicate the location and design for proposed best management practices to be implemented prior to land disturbance activities. For sites already disturbed but without best management practices, the permittee must indicate the location and design of best management practices that will be implemented. The permittee is required to indicate plans for grading, contouring, stabilization, and establishment of vegetative cover for all disturbed areas, including road banks.

h. Management of run-off. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or sources of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water run-off in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see Part II H 2 (description of potential pollutant sources) of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

4. Comprehensive site compliance evaluation. Facility personnel who are familiar with the mining activity, the

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best management practices and the storm water pollution prevention plan shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year for active sites. When annual compliance evaluations are shown in the plan to be impractical for inactive mining sites due to remote location and inaccessibility, site evaluations must be conducted at least once every three years. Such evaluations shall include the following:

a. Areas contributing to a storm water discharge associated with industrial activity, including material storage and handling areas; liquid storage tanks; hoppers or silos; vehicle and equipment maintenance, cleaning, and fueling areas; material handling vehicles; equipment and processing areas; and areas where aggregate is stockpiled outdoors, shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the evaluation, the description of potential pollutant sources identified in the plan in accordance with Part II H 2 (description of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with Part II H 3 (measures and controls) of this permit shall be revised as appropriate within 14 days of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 90 days after the inspection.

c. A report summarizing the scope of the inspection, personnel making the inspection, the dates of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with Part II H 4 b of this permit shall be made and retained as required in Part III B (records). The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part III K (signatory requirements) of this permit and retained as required in Part III B.

d. Where compliance evaluation schedules overlap with inspections required under Part II H 3 d (inspections), the compliance evaluation may be conducted in place of one such inspection.

~~5. Additional requirements for storm water discharges associated with industrial activity that discharge into or through municipal separate storm sewer systems serving a population of 100,000 or more:~~

~~a. In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under VPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the permittee has been notified of such conditions:~~

~~b. Permittees that discharge storm water associated with industrial activity through a municipal separate storm sewer system serving a population of 100,000 or more, or a municipal system designated by the director, shall make plans available to the municipal operator of the system upon request.~~

Part III

Conditions Applicable To All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) and time(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use

and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.
2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.
3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.
4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of

this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F (unauthorized discharges); or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the

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report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this subdivision:

- a. Any unanticipated bypass; and
- b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Parts III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

NOTE: The immediate (within 24 hours) reports required in Parts III G, H and I may be made to the department's regional office. Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the federal Clean Water Act which are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the federal Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purposes of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with

environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board, shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Parts III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the

information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the federal Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the federal Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the federal Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the federal Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights or any infringement of federal, state or local laws or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as provided in permit conditions on "bypass" (Part III U) and "upset" (Part III V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

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

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Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Parts III U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I (reports of noncompliance).

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part III I; and

d. The permittee complied with any remedial measures required under Part III S.

3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the federal Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part III Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the federal Clean Water Act.

2. As an alternative to transfers under Part III Y 1, this permit may be automatically transferred to a new permittee if:

- a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public

inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (9VAC25-190)

Department of Environmental Quality Water Division Permit Application Fee (rev. ~~6/99~~ 1/08).

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

Virginia Pollutant Discharge Elimination System General Permit Registration Statement - Nonmetallic Mineral Mining.

Virginia Pollutant Discharge Elimination System General Permit Notice of Termination for Nonmetallic Mineral Mining.

VA.R. Doc. No. R08-1057; Filed May 4, 2009, 1:09 p.m.

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TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Proposed Regulation

Title of Regulation: 10VAC5-160. Rules Governing Mortgage Lenders and Brokers (amending 10VAC5-160-10; repealing 10VAC5-160-70, 10VAC5-160-80).

Statutory Authority: §§ 6.1-421 and 12.1-13 of the Code of Virginia.

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comments: Public comments may be submitted until 5 p.m. on June 15, 2009.

Agency Contact: Susan Hancock, Deputy Commissioner, Bureau of Financial Institutions, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9657, FAX (804) 371-9240, or email susan.hancock@scc.virginia.gov.

Summary:

The proposed amendments repeal regulations requiring initial and continuing education of certain employees of licensees under Chapter 16 (§ 6.1-408 et seq.) of Title 6.1 of the Code of Virginia and eliminate a prohibition of employment by such licensees of certain individuals

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having criminal convictions, both in accordance with Chapter 452 of the 2009 Acts of Assembly.

AT RICHMOND, MAY 5, 2009

Ex Parte: In re: Proposed Amendments to Rules Governing Mortgage Lenders and Brokers

CASE NO. BFI-2009-00085

ORDER TO TAKE NOTICE

On July 30, 2008, in Case No. BFI-2008-00289, the Commission promulgated regulations which, among other things, implemented the provisions of §§ 6.1-423.1 and 6.1-423.2 of the Code of Virginia requiring licensees under Chapter 16 of Title 6.1 of the Code of Virginia to (1) obtain criminal history record checks for certain of their prospective employees and (2) provide initial and continuing education relating to laws governing mortgage lending to certain of their employees.

In the 2009 session of the Virginia General Assembly, Chapter 452 was enacted repealing §§ 6.1-423.1 and 6.1-423.2 of the Code of Virginia effective July 1, 2009.

Accordingly, the Commission proposes to amend its regulations to reflect this change of law;

IT IS THEREFORE ORDERED THAT:

(1) The proposed amendments, to become generally effective July 1, 2009, are appended hereto and made part of the record herein.

(2) On or before June 15, 2009, any person desiring to comment or request a hearing on the proposed amendments shall file such written comments or hearing requests containing a reference to Case No. BFI-2009-00085 with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. Interested persons desiring to submit comments or hearing requests electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) The proposed amendments shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed amendments, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order and the proposed amendments to all mortgage lender and broker licensees and such other interested persons as he may designate.

10VAC5-160-10. Definitions.

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

"Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a mortgage loan. The term includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, calendars, etc., as well as rate sheets or other information distributed or made available solely to other businesses.

"Affiliate" for purposes of subdivision 3 of § 6.1-411 of the Code of Virginia means an entity of which 25% or more of the voting shares or ownership interest is held, directly or indirectly, by a company that also owns a bank, savings institution, or credit union.

"Commission" and "commissioner" shall have the meanings ascribed to them in § 6.1-409 of the Code of Virginia.

"Commitment" means a written offer to make a mortgage loan signed by a person authorized to sign such offers on behalf of a mortgage lender.

"Commitment agreement" means a commitment accepted by an applicant for a mortgage loan, as evidenced by the applicant's signature thereon.

"Commitment fee" means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for binding the mortgage lender to make a mortgage loan in accordance with the terms of a commitment or as a requirement for acceptance by the applicant of a commitment, but the term does not include fees paid to third persons or interest.

~~"Covered employee" means an employee involved in originating, marketing, underwriting, closing, or performing compliance or quality control functions in connection with Virginia mortgage loan transactions.~~

~~"Customer" means an individual seeking a mortgage loan from, or with the assistance of, a licensee.~~

"Dwelling" means one- to four-family residential property located in the Commonwealth.

"Fees paid to third persons" means the bona fide fees or charges paid by the applicant for a mortgage loan to third persons other than the mortgage lender or mortgage broker, or paid by the applicant to, or retained by, the mortgage lender or mortgage broker for transmittal to such third persons in connection with the mortgage loan, including, but not limited to, recording taxes and fees, reconveyance or releasing fees, appraisal fees, credit report fees, attorney fees, fees for title reports and title searches, title insurance premiums, surveys and similar charges.

"Licensee" means a person licensed under Chapter 16 (§ 6.1-408 et seq.) of Title 6.1 of the Code of Virginia.

"Lock-in agreement" means a written agreement between a mortgage lender, or a mortgage broker acting on behalf of a mortgage lender, and an applicant for a mortgage loan that establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement. A lock-in agreement can be entered into before mortgage loan approval, subject to the mortgage loan being approved and closed, or after such approval. A commitment agreement that establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement is also a lock-in agreement. The interest rate that is established and set by the agreement may be either a fixed rate or an adjustable rate.

"Lock-in fee" means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for making a lock-in agreement, but the term does not include fees paid to third persons or interest.

"Mortgage lender," "mortgage broker," and "mortgage loan" shall have the meanings ascribed to them in § 6.1-409 of the Code of Virginia.

"Personal, family or household purposes" for purposes of § 6.1-409 of the Code of Virginia means that the individual obtaining the loan intends to use the proceeds to build or purchase a dwelling that will be occupied by such individual or another individual as their temporary or permanent residence. The term includes a loan used to build or purchase a dwelling that will be (i) improved or rehabilitated by or on behalf of the purchaser for subsequent sale to one or more other individuals who will reside in the dwelling on a temporary or permanent basis, or (ii) leased by the purchaser to one or more other individuals who will reside in the dwelling on a temporary or permanent basis.

~~"Personal identifying or financial information" means the name, social security number, driver license number, home address, telephone number, date of birth, place of birth, race or ethnic origin of a customer together with any information about the customer's account numbers, assets, liabilities, sources of income or credit worthiness.~~

"Points" means any fee or charge retained or received by a mortgage lender or mortgage broker stated or calculated as a percentage or fraction of the principal amount of the loan, other than or in addition to fees paid to third persons or interest.

"Reasonable period of time" means that period of time, determined by a mortgage lender in good faith on the basis of its most recent relevant experience and other facts and

circumstances known to it, within which the mortgage loan will be closed.

"Senior officer" for purposes of §§ 6.1-414, 6.1-415, 6.1-416 and 6.1-416.1 of the Code of Virginia means an individual who has significant management responsibility within an organization or otherwise has the authority to influence or control the conduct of the organization's affairs, including but not limited to its compliance with applicable laws and regulations.

"Subsidiary" for purposes of subdivision 3 of § 6.1-411 of the Code of Virginia means an entity of which 25% or more of the voting shares or ownership interest is held, directly or indirectly, by a bank, savings institution, or credit union.

10VAC5-160-70. Employee ~~criminal~~ record investigations; exemption. (Repealed.)

~~A. A licensee shall not, on or after July 1, 2008, hire any individual for a position of employment who may have access to personal identifying or financial information relating to any customer, without first obtaining a criminal history record from the Central Criminal Records Exchange that shows that the prospective employee has not been convicted in any court of any felony, or any misdemeanor involving fraud, misrepresentation or deceit, under the laws of any state or the United States. If the criminal history record reveals that an individual has been convicted as described, a licensee shall not hire the individual without obtaining prior approval from the commission, as specified in subsection C of this section. A licensee shall be subject to a separate penalty under § 6.1-428 of the Code of Virginia for each individual hired without obtaining the criminal history record required by this section.~~

~~B. Licensees shall make criminal history records obtained under subsection A of this section and employment history information available for review by commission staff.~~

~~C. If a licensee wishes to hire an individual notwithstanding the prohibition in subsection A of this section, the licensee shall file a petition seeking an exemption in accordance with 5VAC5-20-100 C of the commission's Rules of Practice and Procedure. The petition shall be accompanied by a copy of the individual's criminal history record, which shall be kept under seal in the Office of the Clerk.~~

~~D. When deciding whether or not to grant a petition filed in accordance with subsection C of this section, the commission shall consider the following factors:~~

- ~~1. The number and classification of offenses committed by the individual;~~
- ~~2. The potential and actual penalties imposed for the offenses committed;~~
- ~~3. The dates of the offenses or convictions;~~

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4. The extent to which the nature of the offenses committed relate to the prospective employee's job duties; and

5. Such other factors and evidence as the commission deems pertinent.

E. The petitioning licensee shall bear the burden of proof that an exemption from the employment prohibition under subsection A of this section should be granted.

10VAC5-160-80. Required employee training; exemption; penalty. (Repealed.)

A. Licensees shall be responsible for providing initial education, and continuing education on at least an annual basis, for all their covered employees with respect to all laws and regulations applicable to the licensees' business. Applicable laws and regulations include, but are not limited to, the Real Estate Settlement Procedures Act (12 USC § 2601 et seq.), Truth in Lending Act (15 USC § 1601 et seq.), Equal Credit Opportunity Act (15 USC § 1691 et seq.) and Fair Credit Reporting Act (15 USC § 1681 et seq.); federal and Virginia privacy protection laws, federal and Virginia laws relating to mortgage fraud, the Virginia Mortgage Lender and Broker Act (§ 6.1-408 et seq. of the Code of Virginia) and all other Virginia laws applicable to the licensees' business, and all regulations adopted under the foregoing laws.

B. Initial education shall consist of at least 12 hours relating to applicable federal laws and regulations, at least four hours relating to applicable Virginia laws and regulations, and additionally at least two hours relating to mortgage fraud prevention, including penalties for participating in mortgage fraud. Initial education shall be provided to individuals who are covered employees as of July 1, 2008, on or before May 1, 2009, and to individuals who become covered employees after July 1, 2008, within 90 days of their hire date. Continuing education shall be conducted on an annual basis and shall consist of at least four hours related to applicable federal laws and regulations, at least two hours related to applicable Virginia laws and regulations, and additionally at least one hour relating to mortgage fraud prevention, including penalties for participating in mortgage fraud.

C. A licensee that hires a covered employee who has received the initial education required under subsection B of this section while previously employed by another licensee shall not be required to provide the covered employee with initial education if the receipt of such education is adequately documented. Required annual education, if completed and so documented, likewise shall be credited with respect to the covered employee.

D. If prior to July 1, 2008, a covered employee has successfully obtained a mortgage certificate, designation or accreditation, the licensee may seek from the Commissioner of Financial Institutions an exemption, in whole or in part,

from the initial education requirements for such covered employee. An exemption request shall be made in writing and shall include documentation of the certification, designation or accreditation and a description, including the name and number of hours for each course taken to fulfill the requirements of the certification, designation or accreditation.

E. Licensees shall maintain a training manual and documentation available for commission staff's review demonstrating successful completion of the education required under this section, including names of education providers, names and descriptions of educational courses, and dates of attendance and numbers of hours completed by each covered employee, and shall provide any additional information relating to such education that the commissioner may require. Mere training in the sale or marketing of mortgage loans shall not count towards required education. Education relating to applicable federal laws and regulations, as identified in subsection A of this section, received pursuant to like educational requirements imposed by other states may be used to fulfill educational requirements imposed under this section relating to applicable federal laws and regulations.

F. A licensee shall be subject to a separate penalty under § 6.1-428 of the Code of Virginia for each covered employee not provided with the education required by this section.

VA.R. Doc. No. R09-1880; Filed May 6, 2009, 11:24 a.m.

Proposed Regulation

Title of Regulation: **10VAC5-161. Mortgage Loan Originators (adding 10VAC5-161-10 through 10VAC5-161-60).**

Statutory Authority: §§ 6.1-431.21 (effective July 1, 2009) and 12.1-13 of the Code of Virginia.

Public Hearing Information:

July 9, 2009 - 10 a.m. - State Corporation Commission Courtroom, Tyler Building, 2nd Floor, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on June 22, 2009.

Agency Contact: Nicholas Kyrus, Deputy Commissioner, Bureau of Financial Institutions, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9690, FAX (804) 371-9416, or email nick.kyrus@scc.virginia.gov.

Summary:

The proposed regulations implement the provisions of Chapters 273 and 453 of the 2009 Acts of Assembly relating to licensure of individual mortgage loan originators. The proposed regulations specify the individuals subject to licensure; prescribe the conditions; fees and procedure for licensing, prescribe the conditions; fees and procedure for annual license renewal; establish the amount of surety bond necessary

for licensing; and specify the reports and notices required in connection with licensing.

AT RICHMOND, MAY 6, 2009

Ex Parte: In re: Proposed Rules Governing
Licensing of Mortgage Loan Originators

CASE NO. BFI-2009-00290

ORDER TO TAKE NOTICE

In the 2009 session of the Virginia General Assembly, Chapters 273 and 453 were enacted creating a new Chapter 16.1 in Title 6.1 of the Code of Virginia ("Chapter 16.1" or the "Chapter"). Chapter 16.1 provides for the mandatory licensing of all "mortgage loan originators," as therein defined, by the State Corporation Commission ("Commission") by July 1, 2010. Licensing is to be accomplished in coordination with the Nationwide Mortgage Licensing System and Registry, a registration and licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, in accordance with the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

Under § 6.1-431.21 of the aforesaid Chapter 16.1, the Commission is authorized to promulgate rules and regulations deemed appropriate to effect the purposes and provisions of the Chapter. The Commissioner of Financial Institutions has proposed that the Commission adopt regulations implementing the provisions of the Chapter relating to individuals subject to licensure, license application procedure, conditions and fees for license applications and renewals, surety bond amounts, and required reports and notices.

IT IS THEREFORE ORDERED THAT:

(1) The proposed regulations are appended hereto and made part of the record in this case.

(2) Written comments must be filed with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before June 22, 2009, and shall contain a reference to Case No. BFI-2009-00290.

(3) Interested persons desiring to electronically submit comments may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>.

(4) The Commission shall conduct a hearing in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, at 10:00 a.m. on July 9, 2009, to consider adoption of the proposed regulations.

(5) The proposed regulations shall be posted on the Commission's website at the above Internet address.

(6) An attested copy of this Order, together with a copy of the proposed regulations, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions who shall forthwith mail a copy of this Order and the proposed regulations to all Chapter 16 licensees and such other interested persons as he may designate

CHAPTER 161
MORTGAGE LOAN ORIGINATORS

10VAC5-161-10. Definitions.

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

"Bureau" means the State Corporation Commission's Bureau of Financial Institutions.

"Licensee," "mortgage loan originator," "person," "registered mortgage loan originator," "registry," "residential mortgage loan," and "unique identifier" shall have the meanings ascribed to them in § 6.1-431.1 of the Code of Virginia.

10VAC5-161-20. Individuals subject to licensure.

A. In order to act as a mortgage loan originator on or after July 1, 2010, the following individuals must obtain a license:

1. Individuals acting as mortgage loan originators who are employees or exclusive agents of persons licensed under Chapter 16 (§ 6.1-408 et seq.) of Title 6.1 of the Code of Virginia;

2. Individuals, other than registered mortgage loan originators, acting as mortgage loan originators who are employees or exclusive agents of persons exempt from licensure under Chapter 16 (§ 6.1-408 et seq.) of Title 6.1 of the Code of Virginia; and

3. Individuals acting as independent contractors performing residential mortgage loan processing and underwriting activities.

B. Individuals who are coemployees of professional employer organizations or staffing services shall be deemed to be employees of the client company.

10VAC5-161-30. License application procedure.

A. Applications for a mortgage loan originator license shall be made through the registry in accordance with instructions from the registry and the bureau. In connection with such applications, the individual seeking a license shall furnish the registry all required information concerning his identity, personal history and experience, and fingerprints, and shall pay or cause to be paid through the registry required registry fees and an application fee of \$150.

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B. Within five days after registration with the registry, a bond with corporate surety on a commission-approved form and in an amount conforming to 10VAC5-161-50 shall be filed with the bureau, together with such further information as the bureau may require concerning the applicant's qualifications for licensure. In the case of individuals described in 10VAC5-161-20 A 1 and 2, the bond shall be filed by the person for whom the applicant will perform mortgage loan origination services. Filing of a bond under this subsection by a person licensed under Chapter 16 (§ 6.1-408 et seq.) of Title 6.1 of the Code of Virginia shall constitute compliance with § 6.1-413 of the Code of Virginia if the bond is in the amount required under § 6.1-413 of the Code of Virginia. In the case of individuals described in 10VAC5-161-20 A 3, the bond shall be filed by the individual applicant. In either case the person filing the bond shall, unless such information is contained in a prior filing under Chapter 16 of Title 6.1 of the Code of Virginia, simultaneously provide information to the bureau concerning his or its dollar volume of residential mortgage loans originated, processed, or underwritten during the immediately preceding calendar year.

C. If the bureau requests information to complete a deficient application and the information is not received within 60 days of the bureau's request, the application shall be deemed abandoned unless a request for an extension of time is received and approved by the bureau prior to the expiration of the 60-day period.

10VAC5-161-40. Conditions of licensure and renewals.

A. A mortgage loan originator license will be granted only if the individual meets the following conditions:

1. Application is made in accordance with 10VAC5-161-30;
2. The individual has obtained a unique identifier from the registry;
3. The individual's criminal history record contains no disqualifying convictions under § 6.1-431.8 of the Code of Virginia;
4. The individual has completed the prelicensing education prescribed by § 6.1-431.9 of the Code of Virginia.
5. The individual has achieved an acceptable score on the qualified written test prescribed by § 6.1-431.10 of the Code of Virginia; and
6. The individual possesses the financial responsibility, character, and general fitness required for licensure.

B. Licenses shall be subject to renewal each calendar year unless granted within 90 days before the end of the preceding calendar year. In order to renew a license, a licensee must apply for renewal through the registry on or before the end of the current license year in accordance with instructions from

the registry and the bureau. The licensee shall furnish the registry and the bureau all required information and documentation and shall pay or cause to be paid through the registry all required registry fees and a license renewal fee of \$100.

C. A mortgage loan originator license will be renewed only if the licensee meets the following conditions:

1. License renewal application is made in accordance with subsection B of this section;
2. The licensee continues to meet the conditions for initial licensure; and
3. The licensee has obtained the continuing education prescribed in § 6.1-431.11 of the Code of Virginia.

D. If a licensee fails to timely meet the conditions specified in subsection C of this section, but meets such conditions before March 1 of a renewal year and pays a reinstatement fee of \$30, his license will be reinstated.

10VAC5-161-50. Surety bond amount.

The surety bond amount required to be filed and maintained by or on behalf of the licensee shall be set and adjusted as necessary annually by the bureau in accordance with the following scale, based upon residential mortgage loans originated, processed or underwritten, as the case may be, during the preceding calendar year:

<u>LOANS</u>	<u>BOND AMOUNT</u>
<u>\$0 - \$5,000,000</u>	<u>\$25,000</u>
<u>\$5,000,001 - \$20,000,000</u>	<u>\$50,000</u>
<u>\$20,000,001 - \$50,000,000</u>	<u>\$75,000</u>
<u>\$50,000,001 - \$100,000,000</u>	<u>\$100,000</u>
<u>over \$100,000,000</u>	<u>\$150,000</u>

10VAC5-161-60. Required reports and notices.

A. On or before March 1 of each year, each person for whom an individual described in 10VAC5-161-20 A 1 or 2 performs services shall file an annual report with the bureau stating the amount of residential mortgage loans made or brokered during the preceding calendar year, identifying all licensees performing services for that person, and providing such additional information as the bureau may require. Timely filing of the annual report required by Chapter 16 (§ 6.1-408 et seq.) of Title 6.1 of the Code of Virginia by a person licensed under that chapter shall constitute compliance with this subsection by that person if the annual report contains the information specified in this subsection.

B. On or before March 1 of each year, each licensee who is an individual described in 10VAC5-161-20 A 3 shall file an annual report with the bureau stating the amount of residential

mortgage loans processed or underwritten and providing such additional information as the bureau may require.

C. Each licensee shall give notice to the bureau, either directly for a notice under subdivision 1 of this subsection or through the registry for other notices required by this section, within five days after the occurrence of any of the following events:

1. Cessation of activities for which a license is required, upon receipt of which notice the individual's license will be placed in inactive status and the individual shall not engage in activities requiring licensure under this chapter until such time as the individual meets the description in 10VAC5-161-20 A 1, 2, or 3 and other provisions of this chapter;

2. Termination of employment or exclusive agency as a mortgage loan originator for a person licensed or exempt from licensing under Chapter 16 of Title 6.1 of the Code of Virginia, upon receipt of which notice the individual's license will be placed in inactive status and the individual shall not engage in activities requiring licensure under this chapter until such time as the individual meets the description in 10VAC5-161-20 A 1, 2, or 3 and other provisions of this chapter;

3. Commencement of employment or exclusive agency as a mortgage loan originator for a new person licensed or exempt from licensing under Chapter 16 of Title 6.1 of the Code of Virginia, in which event the new person shall comply with the surety bond filing requirements of 10VAC5-161-30 B and 10VAC5-161-50; or

4. Surrender of a license, in which case the licensee shall mail his license to the bureau immediately upon giving notice of surrender of the license.

VA.R. Doc. No. R09-1904; Filed May 6, 2009, 11:25 a.m.



TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is exempt from the Administrative Process Act pursuant to subdivision A 18 of § 2.2-4002 of the Code of Virginia (i) when acting by and through its duly appointed stewards or in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse racing at race meetings licensed by the commission.

Title of Regulation: **11VAC10-110. Entries (amending 11VAC10-110-90).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: June 1, 2009.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Lane, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

Summary:

The amendments lift the requirement that horses with common ties through ownership must be coupled in thoroughbred stakes races with purse amounts of \$50,000 or higher. These amendments will make the regulations in Virginia more consistent with those of other jurisdictions in the Mid-Atlantic region.

11VAC10-110-90. Coupling.

All horses entered in the same race and owned wholly or partially by the same owner or spouse ~~or other common ownership ties~~ shall be joined as a mutuel entry and shall constitute a single wagering interest, ~~except as provided for in subdivision 7 of this section.~~ No trainer shall enter more than two horses in a an overnight race ~~except in split races.~~ ~~No trainer of any horse shall have any ownership interest or lease interest in any other horse in the same race unless such horses are coupled as a single wagering interest.~~ The following provisions shall apply to mutuel entries:

1. The racing secretary shall be responsible for coupling entries for wagering purposes;
2. No more than two horses having common ties through ownership, which would result in a mutuel entry and a single wagering interest, may be entered in an overnight race;
3. When two horses having common ties through ownership are entered in an overnight race, preference shall be given to the horse with the earliest preference date or the most stars;
4. Two horses having common ties through ownership shall not start as a mutuel entry in an overnight race to the exclusion of another horse nor shall a trainer be permitted to run two horses in a race to the exclusion of another horse;
5. The racing secretary shall be responsible for assigning horses to the mutuel field when the number of wagering interests exceeds the numbering capacity of the ~~totalizer system~~ infield tote board; ~~and~~
6. ~~The uncoupling of two horses having common ties through training is subject to the approval of the trainer. In an overnight race, the racing secretary may uncouple entries having common ties through training; and~~
7. In any thoroughbred stakes race with added or guaranteed money of \$50,000 or more, the racing secretary

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may uncouple mutual entries of horses sharing common ties through training or ownership or both.

VA.R. Doc. No. R09-1929; Filed May 6, 2009, 9:16 a.m.

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TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exclusion from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12VAC30-80. **Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-40).**

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

Effective Date: July 1, 2009.

Agency Contact: Rachel Cain, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0918, FAX (804) 786-1680, or email rachel.cain@dmas.virginia.gov.

Summary:

The amendment decreases the fee paid by Medicaid to pharmacists for the dispensing of drugs by pharmacy providers from \$4.00 to \$3.75 per prescription per month. This change is in response to a specific mandate from the 2009 General Assembly in the Appropriations Act, Chapter 781 Item 306 WW.

12VAC30-80-40. Fee-for-service providers: pharmacy.

Payment for pharmacy services shall be the lowest of items 1 through 5 (except that items 1 and 2 will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.331 (c) if the brand cost is greater than the Centers for Medicare and Medicaid Services (CMS) upper limit of VMAC cost) subject to the conditions, where applicable, set forth in subdivisions 6 and 7 of this section:

1. The upper limit established by the CMS for multiple source drugs pursuant to 42 CFR 447.331 and 447.332, as determined by the CMS Upper Limit List plus a dispensing

fee. If the agency provides payment for any drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.

2. The methodology used to reimburse for generic drug products shall be the higher of either (i) the lowest Wholesale Acquisition Cost (WAC) plus 10% or (ii) the second lowest WAC plus 6.0%. This methodology shall reimburse for products' costs based on a Maximum Allowable Cost (VMAC) list to be established by the single state agency.

a. In developing the maximum allowable reimbursement rate for generic pharmaceuticals, the department or its designated contractor shall:

(1) Identify three different suppliers, including manufacturers, that are able to supply pharmaceutical products in sufficient quantities. The drugs considered must be listed as therapeutically and pharmaceutically equivalent in the Food and Drug Administration's most recent version of the Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book). Pharmaceutical products that are not available from three different suppliers, including manufacturers, shall not be subject to the VMAC list.

(2) Identify that the use of a VMAC rate is lower than the Federal Upper Limit (FUL) for the drug. The FUL is a known, widely published price provided by CMS; and

(3) Distribute the list of state VMAC rates to pharmacy providers in a timely manner prior to the implementation of VMAC rates and subsequent modifications. DMAS shall publish on its website, each month, the information used to set the Commonwealth's prospective VMAC rates, including, but not necessarily limited to:

(a) The identity of applicable reference products used to set the VMAC rates;

(b) The Generic Code Number (GCN) or National Drug Code (NDC), as may be appropriate, of reference products;

(c) The difference by which the VMAC rate exceeds the appropriate WAC price; and

(d) The identity and date of the published compendia used to determine reference products and set the VMAC rate. The difference by which the VMAC rate exceeds the appropriate WAC price shall be at least or equal to 10% above the lowest-published wholesale acquisition cost for products widely available for purchase in the Commonwealth and shall be included in national pricing compendia.

b. Development of a VMAC rate that does not have a FUL rate shall not result in the use of higher-cost

innovator brand name or single source drugs in the Medicaid program.

c. DMAS or its designated contractor shall:

(1) Implement and maintain a procedure to add or eliminate products from the list, or modify VMAC rates, consistent with changes in the fluctuating marketplace. DMAS or its designated contractor will regularly review manufacturers' pricing and monitor drug availability in the marketplace to determine the inclusion or exclusion of drugs on the VMAC list; and

(2) Provide a pricing dispute resolution procedure to allow a dispensing provider to contest a listed VMAC rate. DMAS or its designated contractor shall confirm receipt of pricing disputes within 24 hours, via telephone or facsimile, with the appropriate documentation of relevant information, e.g., invoices. Disputes shall be resolved within three business days of confirmation. The pricing dispute resolution process will include DMAS' or the contractor's verification of accurate pricing to ensure consistency with marketplace pricing and drug availability. Providers will be reimbursed, as appropriate, based on findings. Providers shall be required to use this dispute resolution process prior to exercising any applicable appeal rights.

3. The provider's usual and customary charge to the public, as identified by the claim charge.

4. The Estimated Acquisition Cost (EAC), which shall be based on the published Average Wholesale Price (AWP) minus a percentage discount established by the General Assembly (as set forth in subdivision 8 of this section) or, in the absence thereof, by the following methodology set out in subdivisions a through c below.

a. Percentage discount shall be determined by a statewide survey of providers' acquisition cost.

b. The survey shall reflect statistical analysis of actual provider purchase invoices.

c. The agency will conduct surveys at intervals deemed necessary by DMAS.

5. Payment for pharmacy services will be as described above however, payment for legend drugs will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements. The dispensing fee for brand name and generic drugs is ~~\$4.00~~ \$3.75.

6. The Program pays additional reimbursement for unit dose dispensing systems of dispensing drugs. DMAS defines its unit dose dispensing system coverage consistent with that of the Board of Pharmacy of the Department of

Health Professions (18VAC110-20-420). This service is paid only for patients residing in nursing facilities. Reimbursements are based on the allowed payments described above plus the unit dose per capita fee to be calculated by DMAS' fiscal agent based on monthly per nursing home resident service per pharmacy provider. Only one service fee per month may be paid to the pharmacy for each patient receiving unit dose dispensing services. Multisource drugs will be reimbursed at the maximum allowed drug cost for specific multiple source drugs as identified by the state agency or CMS' upper limits as applicable. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency. The original per capita fee shall be determined by a DMAS analysis of costs related to such dispensing, and shall be reevaluated at periodic intervals for appropriate adjustment. The unit dose dispensing fee is \$5.00 per recipient per month per pharmacy provider.

7. Determination of EAC was the result of a report by the Office of the Inspector General that focused on appropriate Medicaid marketplace pricing of pharmaceuticals based on the documented costs to the pharmacy. An EAC of AWP minus 10.25% shall become effective July 1, 2002.

The dispensing fee for brand name and generic drugs of ~~\$4.00~~ \$3.75 shall remain in effect, creating a payment methodology based on the previous algorithm (least of 1 through 5 of this subsection above) plus a dispensing fee where applicable.

8. Home infusion therapy.

a. The following therapy categories shall have a pharmacy service day rate payment allowable: hydration therapy, chemotherapy, pain management therapy, drug therapy, total parenteral nutrition (TPN). The service day rate payment for the pharmacy component shall apply to the basic components and services intrinsic to the therapy category. Submission of claims for the per diem rate shall be accomplished by use of the CMS 1500 claim form.

b. The cost of the active ingredient or ingredients for chemotherapy, pain management and drug therapies shall be submitted as a separate claim through the pharmacy program, using standard pharmacy format. Payment for this component shall be consistent with the current reimbursement for pharmacy services. Multiple applications of the same therapy shall be reimbursed one service day rate for the pharmacy services. Multiple applications of different therapies shall be reimbursed at 100% of standard pharmacy reimbursement for each active ingredient.

9. Supplemental rebate agreement. Based on the requirements in § 1927 of the Social Security Act, the Commonwealth of Virginia has the following policies for

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the supplemental drug rebate program for Medicaid recipients:

- a. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for legend drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract A and Amendment #2 to Contract A has been authorized by CMS.
- b. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract B and Amendment #2 to Contract B has been authorized by CMS.
- c. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract C, and Amendments #1 and #2 to Contract C has been authorized by CMS.
- d. Supplemental drug rebates received by the state in excess of those required under the national drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the national drug rebate agreement.
- e. Prior authorization requirements found in § 1927(d)(5) of the Social Security Act have been met.
- f. Nonpreferred drugs are those that were reviewed by the Pharmacy and Therapeutics Committee and not included on the preferred drug list. Nonpreferred drugs will be made available to Medicaid beneficiaries through prior authorization.
- g. Payment of supplemental rebates may result in a product's inclusion on the PDL.

VA.R. Doc. No. R09-1899; Filed May 5, 2009, 4:14 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exclusion from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC30-120. Waivered Services (amending 12VAC30-120-910).**

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

Effective Date: July 1, 2009.

Agency Contact: William Butler, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8886, FAX (804) 786-1680, or email william.butler@dmas.virginia.gov.

Background:

Virginia Medicaid covers many individuals whose level of medical need requires them to be placed in institutions such as nursing facilities or Intermediate Care Facilities for the Mentally Retarded. DMAS offers a number of home and community based waiver programs that permit individuals whose level of medical care requires institutionalization to remain in the home and receive all medically necessary services to address their needs. The Elderly or Disabled with Consumer Direction Waiver (EDCD) is one of the home care programs offered by DMAS. One of the unique aspects of the EDCD program is the availability of personal care services in the home through this waiver. Currently, individuals enrolled in EDCD who also receive hospice services may access personal care waiver services on a weekly basis, but only after the hospice care provider has provided 21 hours of personal care services through hospice.

Medicare, the federal health care program for the elderly, had a similar requirement for hospice services, however in 2008 the federal Centers for Medicare and Medicaid Services (CMS) removed this Medicare requirement for hospice provided personal care services. While Medicare requirements are not necessarily prescriptive for the Medicaid program, Virginia Medicaid follows the Medicare hospice rules much more closely than the Medicare rules regarding other health care services. The General Assembly has now required DMAS to remove this requirement for individuals in the EDCD waiver who receive hospice services.

Summary:

The amendment removes the 21-hour personal care requirement for individuals in the EDCD waiver who also receive hospice services. This change is needed to comply with Item 306 RRR of Chapter 781 of the 2009 Acts of Assembly.

12VAC30-120-910. General coverage and requirements for Elderly or Disabled with Consumer Direction Waiver services.

A. EDCC Waiver services populations. Home and community-based waiver services shall be available through a § 1915(c) of the Social Security Act waiver for the following Medicaid-eligible individuals who have been determined to

be eligible for waiver services and to require the level of care provided in a nursing facility:

1. Individuals who are elderly as defined by § 1614 of the Social Security Act; or
2. Individuals who are disabled as defined by § 1614 of the Social Security Act.

B. Covered services.

1. Covered services shall include: adult day health care, personal care (both consumer- and agency-directed), respite services (both consumer-directed, agency-directed, and facility-based), and PERS.
2. These services shall be medically appropriate and medically necessary to maintain the individual in the community and prevent institutionalization.
3. A recipient of EDCD Waiver services may receive personal care (agency- and consumer-directed), respite care (agency- and consumer-directed), adult day health care, and PERS services in conjunction with hospice services, regardless of whether the hospice provider receives reimbursement from Medicare or Medicaid for the services covered under the hospice benefit. ~~Services under this waiver will not be available to hospice recipients unless the hospice can document the provision of at least 21 hours per week of homemaker/home health aide services and that the recipient needs personal care type services that exceed this amount.~~
4. Under this § 1915(c) waiver, DMAS waives §§ 1902(a)(10)(B) and (C) of the Social Security Act related to comparability of services.

VA.R. Doc. No. R09-1902; Filed May 4, 2009, 3:24 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services has claimed an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Board of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-740).

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

Effective Date: July 1, 2009.

Agency Contact: Molly Carpenter, Project Manager, Department of Medical Assistance Services, 600 E. Broad

Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-1493, FAX (804) 786-1680, or email molly.carpenter@dmas.virginia.gov.

Summary:

The amendment implements a mandate from the General Assembly (Item 305 D of Chapter 781 of the 2009 Acts of Assembly) that the eligibility for the FAMIS MOMS programs be expanded from those with an income up to 185% of the Federal Poverty Level (FPL) to those with an income up to 200% of the FPL.

12VAC30-141-740. Eligibility requirements.

A. This section shall be used to determine eligibility of pregnant women for FAMIS MOMS.

B. FAMIS MOMS shall be in effect statewide.

C. Eligible pregnant women must:

1. Be determined ineligible for Medicaid due to excess income by a local department of social services or by DMAS eligibility staff co-located at the FAMIS CPU;
2. Be a pregnant woman at the time of application;
3. Be a resident of the Commonwealth;
4. Be either a U.S. citizen, U.S. national or a qualified noncitizen;
5. Be uninsured, that is, not have comprehensive health insurance coverage;
6. Not be a member of a family eligible for subsidized dependent coverage, as defined in 42 CFR 457.310(c)(1)(ii) under any Virginia state employee health insurance plan on the basis of the family member's employment with a state agency; and
7. Not be an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility.

D. Income.

1. Screening. All applications for FAMIS MOMS coverage received at the FAMIS central processing unit must be screened to identify applicants who are potentially eligible for Medicaid. Pregnant women screened and found potentially eligible for Medicaid cannot be enrolled in FAMIS MOMS until there has been a finding of ineligibility for Medicaid. Pregnant women who do not appear to be eligible for Medicaid due to excess income shall have their eligibility for FAMIS MOMS determined and, if eligible, will be enrolled in the FAMIS MOMS program. Applications for FAMIS MOMS received at a local department of social services shall have a full Medicaid eligibility determination completed. Pregnant women determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS

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MOMS determined and, if eligible, the local department of social services will enroll the pregnant woman in the FAMIS MOMS program.

2. Standards. Income standards for FAMIS MOMS are based on a comparison of countable income to ~~185%~~ 200% of the federal poverty level for the family size. Countable income and family size are based on the methodology utilized by the Medicaid program as defined in 12VAC30-40-100 e. Pregnant women who have income at or below ~~185%~~ 200% of the federal poverty level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS MOMS.

3. Spenddown. Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS MOMS. If the family income exceeds the income limits described in this section, the individual shall be ineligible for FAMIS MOMS regardless of the amount of any incurred medical expenses.

E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a pregnant woman is a resident of Virginia for purposes of eligibility for FAMIS MOMS. A child who is not emancipated and is temporarily living away from home is considered living with her parents, adult relative caretaker, legal guardian, or person having legal custody if the absence is temporary and the child intends to return to the home when the purpose of the absence (such as education, medical care, rehabilitation, vacation, visit) is completed.

F. Qualified noncitizen. The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for noncitizens set out in subdivisions 3 b and c of 12VAC30-40-10 will be used when determining whether a pregnant woman is a qualified noncitizen for purposes of FAMIS MOMS eligibility.

G. Coverage under other health plans.

1. Any pregnant woman covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS MOMS.

2. No substitution for private insurance.

a. Only uninsured pregnant women shall be eligible for FAMIS MOMS. A pregnant woman is not considered to be insured if the health insurance plan covering the pregnant woman does not have a network of providers in the area where the pregnant woman resides. Each application for FAMIS MOMS coverage shall include an inquiry about health insurance the pregnant woman has at the time of application.

b. Health insurance does not include Medicare, Medicaid, FAMIS or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium

Payment (HIPP) Program or under Title XXI through the SCHIP premium assistance program.

VA.R. Doc. No. R09-1947; Filed May 5, 2009, 2:56 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final 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>

Title of Regulation: **14VAC5-43. Rules Governing Use of Senior-Specific Certifications and Professional Designations in Sale of Life or Accident and Sickness Insurance or Annuities (adding 14VAC5-43-10, 14VAC5-43-20, 14VAC5-43-30).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: May 15, 2009.

Agency Contact: Scott White, Associate General Counsel, State Corporation Commission, Office of General Counsel, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9671, FAX (804) 371-9240, or email scott.white@scc.virginia.gov.

Summary:

The regulation is based on a National Association of Insurance Commissioners Model Regulation and sets forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and designations in the sale or purchase of, or advice made in connection with, a life or accident and sickness insurance or annuity product. There were no changes from the proposed version of the regulation.

AT RICHMOND, APRIL 23, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2008-00267

Ex Parte: In the matter of Adopting Rules Governing Use of Senior-Specific Certifications and Professional Designations

In the Sale of Life or Accident and Sickness Insurance or Annuities

ORDER ADOPTING RULES

By Order to Take Notice ("Order") entered herein February 24, 2009, all interested persons were ordered to take notice that subsequent to April 15, 2009, the State Corporation Commission ("Commission") would consider the entry of an order adopting proposed new rules by the Bureau of Insurance ("Bureau") entitled "Rules Governing Use of Senior-Specific Certifications and Professional Designations in the Sale of Life or Accident Sickness Insurance or Annuities," which are to be published in Chapter 43 of Title 14 of the Virginia Administrative Code as rules at 14 VAC 5-43-10 through 14 VAC 5-43-30, unless on or before April 15, 2009, any person objecting to the adoption of the proposed new rules filed a request for hearing with the Clerk of the Commission ("Clerk").

The Order also required all interested persons to file their comments in support of or in opposition to the proposed new rules on or before April 15, 2009.

No request for hearing was filed with the Clerk. Comments were filed on April 17, 2009, by the American Council of Life Insurers ("ACLI"). The ACLI supported adoption of the proposed new rules because they closely track the NAIC Model regulation and therefore help foster a consistent approach among the states in addressing this particular issue.¹

THE COMMISSION, having considered the proposed new rules and the comments filed, is of the opinion that the attached proposed new rules should be adopted.

THEREFORE IT IS ORDERED THAT:

(1) The proposed new rules entitled "Rules Governing Use of Senior-Specific Certifications and Professional Designations in Sale of Life or Accident Sickness Insurance or Annuities,"² which are to be published in Chapter 43 of Title 14 of the Virginia Administrative Code as rules at 14 VAC 5-43-10 through 14 VAC 5-43-30, and which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective May 15, 2009.

(2) AN ATTESTED COPY hereof, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Brian P. Gaudiose, who forthwith shall give further notice of the adoption of the new rules by mailing a copy of this Order, including a clean copy of the attached final new rules, to all insurers licensed by the Commission to sell accident and sickness insurance, life insurance, variable life insurance, annuities, or variable annuities in Virginia, as well as all interested parties.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, including a copy of the attached new rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the

Virginia Register of Regulations and shall make this Order and the attached new rules available on the Commission's website, www.scc.virginia.gov/case.

(4) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (2) of this Order.

¹ The Bureau considered these comments even though they were not timely filed.

² The word "the" that preceded the word "Sale" in the original title was dropped by the Virginia Register because of character length restrictions.

CHAPTER 43
RULES GOVERNING USE OF SENIOR-SPECIFIC
CERTIFICATIONS AND PROFESSIONAL
DESIGNATIONS IN SALE OF LIFE OR ACCIDENT AND
SICKNESS INSURANCE OR ANNUITIES

14VAC5-43-10. Applicability.

A. The purpose of this chapter is to set forth standards to protect consumers from misleading and fraudulent trade practices with respect to the use of senior-specific certifications and professional designations in the marketing, solicitation, sale or purchase of, or advice made in connection with, a life or accident and sickness insurance or an annuity product.

B. This chapter shall apply to any marketing, solicitation, sale or purchase of, or advice made in connection with, a life or accident and sickness insurance policy or annuity product by an insurance agent, whether issued on an individual or group basis. This includes, but is not limited to, fixed and variable annuities, long-term care insurance, including long-term partnership plans, Medicare Supplement, Medicare Part C, and Medicare Part D.

14VAC5-43-20. Senior-specific certifications and professional designations.

A. No insurance agent shall use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance agent has special certification or training in advertising or servicing seniors in connection with the marketing, solicitation, sale or purchase of a life or accident and sickness insurance policy or annuity product, or in the provision of advice as to the value of or the advisability of purchasing or selling a life or accident and sickness insurance policy or annuity product, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life or accident and sickness insurance policy or annuity product.

B. The prohibited use of senior-specific certifications or professional designations includes, but is not limited to, the following:

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1. Use of a certification or professional designation by an insurance agent who has not actually earned or is otherwise ineligible to use such certification or designation;

2. Use of a nonexistent or self-conferred certification or professional designation;

3. Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance agent using the certification or designation does not have; and

4. Use of a certification or professional designation that was obtained from a certifying or designating organization that:

a. Is primarily engaged in the business of instruction in sales or marketing;

b. Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;

c. Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

d. Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

C. There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subdivision B 4 of this section when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by: (i) the American National Standards Institute (ANSI); (ii) the National Commission for Certifying Agencies; or (iii) any organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

D. In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:

1. Use of one or more words such as "senior," "retirement," "elder," or like words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

2. The manner in which those words are combined.

E. For purposes of this section, a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency is not a certification or

professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title: (i) indicates seniority or standing within the organization; or (ii) specifies an individual's area of specialization within the organization.

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940 (15 USC § 80).

14VAC5-43-30. Severability.

If any section or a portion of this chapter, or the applicability thereof to any person or circumstance is held to be invalid by a court, the remainder of this chapter, or the applicability of such provisions to other persons shall not be affected thereby.

VA.R. Doc. No. R09-1799; Filed April 24, 2009, 12:11 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Proposed Regulation

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-10, 18VAC90-20-210).**

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

Public Hearing Information:

July 21, 2009 - 11:30 a.m. - 9960 Mayland Drive, Board Room 2, Second Floor, Richmond, VA

Public Comments: Public comments may be submitted until July 24, 2009.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4688, FAX (804) 524-4434, or email elaine.yeatts@dhp.virginia.gov.

Basis: Section 54.1-2400 provides the Board of Nursing the authority to promulgate regulations to administer the regulatory system.

In addition, there is statutory language specifying certain requirements for foreign-trained nurses. The provision in § 54.1-3017 B for the Commission on Graduates of Foreign Nursing Schools examination is permissive, giving the board the option to eliminate the requirement.

Purpose: The Board of Nursing received a petition for rulemaking requesting the elimination of the examination of

foreign-trained nurses by the Commission on Graduates of Foreign Nursing Schools (CGFNS) as a requirement for registered nurse licensure in Virginia. The signatories to the petitions and supporting letters requesting elimination of the CGFNS qualifying examination cite the current nursing shortage as an indication that the board should consider elimination of any barrier to licensure that is not necessary to ensure the competency of an applicant. Recruitment of nurses from other countries may help alleviate the shortage in Virginia if the barrier of CGFNS examination is removed. Since at least 22 other states currently do not require the CGFNS qualifying examination, foreign-trained nurses often choose to immigrate to those states instead.

Petitioners are not requesting elimination of the credentials review and the test of English proficiency; those coupled with a requirement for passage of National Council Licensing Examination (NCLEX), the national licensing examination that all nurses (RN or PN) must take, should assure that foreign-trained nurses have the basic nursing knowledge, clinical ability, and communication skills to practice with safety. Since NCLEX is more generally available in foreign countries than in the past, many nurses are able to come to the United States fully qualified for licensure. NCLEX is currently administered in Australia, Canada, England, Germany, Hong Kong, India, Japan, Mexico, Philippines, Puerto Rico, and Taiwan. For applicants from those countries, the CGFNS qualifying examination is viewed as an additional burden for licensure in Virginia.

Substance: Regulations eliminate the requirement for the CGFNS examination but maintain a requirement for the credentials review and test of English proficiency. Amendments also authorize acceptance of credentialing by an agency other than CGFNS if approved by the board.

Issues: The primary advantage to the public may be a very modest increase in the availability of foreign-educated nurses. Since a foreign-educated nurse must pass either the CGFNS qualifying examination or NCLEX prior to being given a visa, only applicants from countries where NCLEX is offered would benefit from elimination of the qualifying examination. There are no disadvantages; nurses from other countries would continue to be required to pass NCLEX, have educational credentials comparable to those required in the U.S., have some English proficiency, and have their foreign licenses verified as valid.

There are no advantages or disadvantages to the agency or the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to amend its standards for foreign-trained nurses to 1) eliminate the requirement that candidates applying for licensure as registered nurses pass the

Commission on Graduates of Foreign Nursing Schools (CGFNS) qualifying examination and 2) require candidates for licensure as practical nurses to pass an English proficiency examination.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Under current regulations, foreign-trained candidates applying for licensure as registered nurses must meet several requirements, including the requirement that they pass the CGFNS qualifying examination. Pursuant to a petition for rulemaking, which requested elimination of any requirements that are serving as an unnecessary barrier to licensure, the Board proposes to eliminate the regulatory requirement that candidates pass the CGFNS examination. These candidates will still have their education and current licensure evaluated by CGFNS and will have to prove proficiency in written and spoken English. In current regulations, foreign-trained registered (and practical) nurses have a 90 day window after licensure in which they can work while waiting to take, and pass, the National Council Licensing Examination (NCLEX) if they have not already taken this exam in their country of origin. The Board believes that these remaining requirements for licensure are sufficient to ensure that foreign-trained registered nurses are competent to practice in Virginia.

Even though current Virginia regulations allow foreign-trained registered nurses several months (after the Board issues their licenses) to take the NXCEX, federal law requires that foreign nurses who want to work in the United States pass either the CGFNS exam or the NCLEX before they obtain a work visa. Because of federal work visa requirements, which requires passage of one of these exams before entrance into the U.S., this proposed regulatory change will likely only benefit foreign nurses who are able to take the NCLEX in their countries of origin. The Department of Health Professions (DHP) reports that the NCLEX is currently available in Australia, Canada, England, Germany, Hong Kong, India, Japan, Mexico, the Philippines, Puerto Rico and Taiwan.

Under these proposed regulations, registered nurses from these countries who wish to work in Virginia will be able take the NCLEX before they enter the United States and will be able to forego taking the CGFNS exam. DHP reports that the fee for sitting the CGFNS exam is \$15 (the CGFNS fee to complete other required verification and evaluation is \$403). Affected candidates for licensure will be able to save the \$15 fee plus any other costs (for study guide costs, time spent preparing for and taking the exam, etc.) that they may otherwise have incurred. This will decrease Virginia licensure costs slightly for these candidates. To the extent that decreasing these costs increases the number of foreign-trained nurses that seek Virginia licensure, citizens in Virginia will likely benefit from there being more licensed registered

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nurses working in the Commonwealth. Since DHP reports that there is currently a shortage of licensed registered nurses, any increase in emigration of these professionals to the state will likely improve health outcomes for patients.

Currently, Virginia regulations are silent on whether foreign-trained practical nurses have to be proficient in English before they are eligible for Virginia licensure. The Board proposes to require that these individuals pass an English proficiency exam or meet CGFNS criteria for an exemption. DHP reports that these candidates already have to prove proficiency in written and spoken English before they can obtain an occupational visa so the practical additional costs that candidates will accrue will likely only include copying costs for an additional copy of proof of English proficiency for the Board and, possibly, some additional postage costs. This proposed change will likely benefit English speaking patients of foreign-trained practical nurses as these patients will be able to better communicate their needs in their native tongue.

Businesses and Entities Affected. These proposed regulations will affect foreign-trained registered and practical nurses who wish to obtain Virginia licensure. DHP reports that the Board currently processes fewer than 100 applications from foreign trained nurses per year.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. To the extent that removing the requirement for CGFNS testing lowers the costs of obtaining Virginia licensure, a greater number of foreign-trained registered nurses may choose to obtain employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

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, § 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.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Nursing concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC90-20, Regulations Governing the Practice of Nursing.

Summary:

Amendments to the requirements for foreign-trained nurses are proposed to eliminate the qualifying examination requirement for registered nurses but retain the educational and licensure review for comparability and the requirement for a test of English proficiency. For practical nurses educated in other countries, the credentials review is retained and a test of English proficiency is included in regulations as it is now required for an occupational visa into the United States. For both professions, the Commission on Graduate of Foreign Nursing Schools is recognized in federal law and in Virginia regulation as the body that is approved to certify comparability and eligibility. However, the board may accept other agencies that provide a similar level of assurance and thoroughness in reviewing documents and tests for English proficiency.

Part I

General Provisions

18VAC90-20-10. Definitions.

In addition to words and terms defined in § 54.1-3030 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Accreditation" means having been accredited by the National League for Nursing Accrediting Commission (NLNAC) or by the Commission on Collegiate Nursing Education (CCNE).

"Approval" means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.

"Associate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by the State Council of Higher Education.

"Baccalaureate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or university and designed to lead to a baccalaureate degree with a major in nursing, provided that the institution is authorized to confer such degree by the State Council of Higher Education.

"Board" means the Board of Nursing.

"CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

"Clinical setting" means any location in which the clinical practice of nursing occurs as specified in an agreement between the cooperating agency and the school of nursing.

"Conditional approval" means a time-limited status which results when an approved nursing education program has failed to maintain requirements as set forth in Article 2 (18VAC90-20-70 et seq.) of Part II of this chapter.

"Cooperating agency" means an agency or institution that enters into a written agreement to provide learning experiences for a nursing education program.

"Diploma nursing program" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this state.

"NCLEX" means the National Council Licensing Examination.

"NCSBN" means the National Council of State Boards of Nursing.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area and is accredited by a national body recognized by NCSBN.

"Nursing education program" means an entity offering a basic course of study preparing persons for licensure as registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma or certificate.

"Nursing faculty" means registered nurses who teach the practice of nursing in nursing education programs.

"Practical nursing program" means a nursing education program preparing for practical nurse licensure that leads to a diploma or certificate in practical nursing, provided the school is authorized by the Virginia State Board of Education or the appropriate governmental credentialing agency.

"Preceptor" means a licensed health care provider who is employed in the clinical setting, serves as a resource person and role model, and is present with the nursing student in that setting.

"Primary state of residence" means the state of a person's declared fixed permanent and principal home or domicile for legal purposes.

"Program director" means a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege and who has been designated by the controlling authority to administer the nursing education program.

"Provisional approval" means the initial status granted to a nursing education program which shall continue until the first class has graduated and the board has taken final action on the application for approval.

"Recommendation" means a guide to actions that will assist an institution to improve and develop its nursing education program.

"Requirement" means a mandatory condition that a nursing education program must meet to be approved.

18VAC90-20-210. Licensure of applicants from other countries.

A. With the exception of applicants from Canada who are eligible to be licensed by endorsement, applicants whose basic nursing education was received in, and who are duly licensed under the laws of, another country, shall be scheduled to take the licensing examination provided they meet the statutory qualifications for licensure. Verification of qualification shall be based on documents submitted as required in ~~subsections~~ subsection B and D or C of this section.

B. Such applicants for registered nurse licensure shall:

1. Submit evidence of passing from the Commission on Graduates of Foreign Nursing Schools Qualifying Examination CGFNS that the secondary education, nursing education, and license are comparable to those required for registered nurses in the Commonwealth; and
2. Submit evidence of passage of an English language proficiency examination approved by the CGFNS, unless the applicant meets the CGFNS criteria for an exemption from the requirement; and

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~~2.~~ 3. Submit the required application and fee for licensure by examination.

C. Such applicants for practical nurse licensure shall:

1. Submit evidence from the CGFNS that the secondary education, nursing education, and license are comparable to those required for practical nurses in the Commonwealth;

2. Submit evidence of passage of an English language proficiency examination approved by the CGFNS, unless the applicant meets the CGFNS criteria for an exemption from the requirement; and

3. Submit the required application and fee for licensure by examination.

D. An applicant for licensure as a registered nurse who has met the requirements of subsections A and B of this section may practice for a period not to exceed 90 days from the date of approval of an application submitted to the board when he is working as a nonsupervisory staff nurse in a licensed nursing home or certified nursing facility.

1. Applicants who practice nursing as provided in this subsection shall use the designation "foreign nurse graduate" on nametags or when signing official records.

2. During the 90-day period, the applicant shall take and pass the licensing examination in order to remain eligible to practice nursing in Virginia.

3. Any person practicing nursing under this exemption who fails to pass the licensure examination within the 90-day period may not thereafter practice nursing until he passes the licensing examination.

~~D. Such applicants for practical nurse licensure shall:~~

~~1. Submit evidence from a recognized agency that reviews credentials of foreign educated nurses that the secondary education, nursing education, and license are comparable to those required for licensed practical nurses in the Commonwealth;~~

~~2. Request that the credentialing agency, in the country where licensed, submit the verification of licensure form directly to the board office; and~~

~~3. Submit the required application and fee for licensure by examination.~~

E. In addition to CGFNS, the board may accept credentials from other recognized agencies that review credentials of foreign-educated nurses if such agencies have been approved by the board.

VA.R. Doc. No. R08-04; Filed May 6, 2009, 9:59 a.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Final Regulation

REGISTRAR'S NOTICE: The amendments are exempt from the Administrative Process Act pursuant to § 2.2-4002 C of the Code of Virginia, which provides that minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act made by the Virginia Code Commission pursuant to § 30-150 shall be exempt from the Act.

Titles of Regulations: **18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators (amending 18VAC95-20-10, 18VAC95-20-175, 18VAC95-20-390).**

18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (amending 18VAC95-30-10).

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

Effective Date: June 24, 2009.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4413, or email lisa.hahn@dhp.virginia.gov.

Summary:

The amendments correct all references to the National Association of Boards of Long Term Care Administrators to the title used by that organization since November 2007. The corrected title is the National Association of Long Term Care Administrator Boards.

Part I

General Provisions

18VAC95-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the definitions ascribed to them in § 54.1-3100 of the Code of Virginia:

Board

Nursing home

Nursing home administrator

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

"Accredited institution" means any degree-granting college or university accredited by an accrediting body approved by the United States Department of Education or any diploma-granting program approved by the Virginia Board of Nursing.

"A.I.T." means a person enrolled in the administrator-in-training program in nursing home administration in a licensed nursing home.

"Administrator-of-record" means the licensed nursing home administrator designated in charge of the general administration of the facility and identified as such to the facility's licensing agency.

"Approved sponsor" means an individual, business or organization approved by the ~~National Association of Boards of Examiners for Long Term Care Administrators~~ National Association of Long Term Care Administrator Boards or by an accredited education institution to offer continuing education programs in accordance with this chapter.

"Continuing education" means the educational activities which serve to maintain, develop, or increase the knowledge, skills, performance and competence recognized as relevant to the nursing home administrator's professional responsibilities.

"Full time" means employment of at least 35 hours per week.

"Hour" means 60 minutes of participation in a program for obtaining continuing education.

"Internship" means a practicum or course of study as part of a degree or post-degree program designed especially for the preparation of candidates for licensure as nursing home administrators that involves supervision by an accredited college or university of the practical application of previously studied theory.

"National examination" means a test used by the board to determine the competence of candidates for licensure as administered by the ~~National Association of Boards of Examiners for Long Term Care Administrators~~ National Association of Long Term Care Administrator Boards or any other examination approved by the board.

"Preceptor" means a nursing home administrator currently licensed and registered or recognized by a nursing home administrator licensing board to conduct an administrator-in-training (A.I.T.) program.

"State examination" means a test used by the Board of Long-Term Care Administrators to determine competency of a candidate relevant to regulations and laws in Virginia governing nursing home administration.

18VAC95-20-175. Continuing education requirements.

A. In order to renew a nursing home administrator license, an applicant shall attest on his renewal application to completion of 20 hours of approved continuing education for each renewal year.

1. Up to 10 of the 20 hours may be obtained through Internet or self-study courses and up to 10 continuing

education hours in excess of the number required may be transferred or credited to the next renewal year.

2. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following initial licensure.

B. In order for continuing education to be approved by the board, it shall be related to health care administration and shall be approved by the ~~National Association of Boards of Examiners for Long Term Care Administrators~~ National Association of Long Term Care Administrator Boards or by an accredited institution.

C. Documentation of continuing education.

1. The licensee shall retain in his personal files for a period of three renewal years complete documentation of continuing education including evidence of attendance or participation as provided by the approved sponsor for each course taken.

2. Evidence of attendance shall be an original document provided by the approved sponsor and shall include:

- a. Date or dates the course was taken;
- b. Hours of attendance or participation;
- c. Participant's name; and
- d. Signature of an authorized representative of the approved sponsor.

3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of completion on forms provided by the board and evidence of attendance or participation as provided by the approved sponsor.

D. The board may grant an extension of up to one year or an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the administrator, such as a certified illness, a temporary disability, mandatory military service, or officially declared disasters.

18VAC95-20-390. Training plan.

Prior to the beginning of the A.I.T. program, the preceptor shall develop and submit for board approval a training plan that shall include and be designed around the specific training needs of the administrator-in-training. The training plan shall address the Domains of Practice approved by the ~~National Association of Boards of Examiners for Long Term Care Administrators~~ National Association of Long Term Care Administrator Boards that is in effect at the time the training program is submitted for approval. An A.I.T. program shall include training in each of the learning areas in the Domains of Practice.

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Part I
General Provisions

18VAC95-30-10. Definitions.

A. The following words and terms when used in this chapter shall have the definitions ascribed to them in § 54.1-3100 of the Code of Virginia:

"Assisted living facility"

"Assisted living facility administrator"

"Board"

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

"ALF AIT" means an assisted living facility administrator-in-training.

"Domains of practice" means the content areas of tasks, knowledge and skills necessary for administration of a residential care/assisted living facility as approved by the ~~National Association of Boards of Examiners of Long Term Care Administrators~~ National Association of Long Term Care Administrator Boards.

"NAB" means the ~~National Association of Boards of Examiners of Long Term Care Administrators~~ National Association of Long Term Care Administrator Boards.

VA.R. Doc. No. R09-1677; Filed May 6, 2009, 10:00 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Long-Term Care Administrators has claimed an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Board of Long-Term Care Administrators will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators (amending 18VAC95-20-70).**

18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (amending 18VAC95-30-30).

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

Effective Date: July 1, 2009.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone

(804) 367-4424, FAX (804) 527-4413, or email lisa.hahn@dhp.virginia.gov.

Summary:

Pursuant to Chapter 687 of the 2009 Acts of the Assembly, the Board of Long-Term Care Administrators has amended its regulations relating to the responsibility of the licensee, certificate holder, or registrant to provide current addresses. Chapter 687 requires that every regulant of the board must provide an address of record for use by the board and the department, but permits a person to provide a second address to be used as the public address. If a second address is not provided, the address of record becomes the public address. Regulations are amended to use the statutory terminology of address of record and to clarify that the regulant has a responsibility to notify the board if there is a change in the public address as well as the address of record (if there is a difference).

18VAC95-20-70. Accuracy of information.

A. All changes of ~~mailing in the~~ address of record or the public address, if different from the address of record, or the name of a licensee, trainee, or preceptor shall be furnished to the board within 30 days after the change occurs.

B. All notices required by law and by this chapter to be mailed by the board to any registrant or licensee shall be validly given when mailed to the latest address of record on file with the board and shall not relieve the licensee, trainee, or preceptor of the obligation to comply.

18VAC95-30-30. Accuracy of information.

A. All changes of ~~mailing in the~~ address of record or the public address, if different from the address of record, or the name of a licensee, trainee, or preceptor shall be furnished to the board within 30 days after the change occurs.

B. All notices required by law and by this chapter to be mailed by the board to any licensee shall be validly given when mailed to the latest address of record on file with the board and shall not relieve the licensee, trainee, or preceptor of the obligation to comply.

VA.R. Doc. No. R09-1932; Filed May 6, 2009, 10:00 a.m.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Final Regulation

Title of Regulation: **18VAC160-20. Board for Waterworks and Wastewater Works Operators Regulations (amending 18VAC160-20-10, 18VAC160-20-74, 18VAC160-20-76, 18VAC160-20-80, 18VAC160-20-90, 18VAC160-20-102, 18VAC160-20-104, 18VAC160-20-106, 18VAC160-20-109, 18VAC160-20-140, 18VAC160-20-150; adding**

18VAC160-20-82, 18VAC160-20-84, 18VAC160-20-94, 18VAC160-20-96, 18VAC160-20-97, 18VAC160-20-98, 18VAC160-20-145).

Statutory Authority: §§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Effective Date: July 1, 2009

Agency Contact: Justin Garofalo, Board Administrator, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2567, FAX (804) 527-4297, or email justin.garofalo@dpor.virginia.gov.

Summary:

The amendments establish a program for licensing individuals as onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators as mandated by § 54.1-2301 of the Code of Virginia. The amendments include requirements for minimum education and training, relevant work experience, demonstrated knowledge and skills, and fees to cover program costs.

Changes from the proposed include (i) amending definitions specific to alternative and conventional evaluators, installers, and operators to specify job scopes unique to each license type; (ii) changing language to specify that alternative licensees can also perform conventional work but not vice versa -- conventional licensees can still only perform conventional work; (iii) allowing evaluator, installer, and operator licensees the option to substitute education and training to meet some of the experience requirements -- this is consistent with what waterworks and wastewater works operators are currently allowed to do; (iv) creating an option for interim licensure as a conventional onsite soil evaluator for VDH employees who currently perform this type of work; (v) creating an option for VDH Alternative Onsite Soil Evaluators (AOSE) (AOSE's who meet the qualifications for an alternative onsite soil evaluator license and are current as of June 30, 2009; (vi) changing all interim licenses from a 24-month expiration (evaluators) or 36-month expiration (installers and operators) to a 48-month expiration; (vii) changing language for soil evaluators to allow each license to evaluate soils for any type of system but to only be able to design a system consistent with the type of evaluator license (conventional or alternative); (viii) amending entry requirements to include the acceptance of additional relevant degrees -- since onsite soil evaluators can also design systems, the entry requirements were changed to mandate that Certified Professional Soil Scientists (CPSS) demonstrate proof of system design experience; (ix) adding experience evaluating soils and designing systems for entry requirements as a VDH

employee; (x) changing onsite sewage system installer entry requirements by eliminating language that was restrictive to the prospective license applicant; (xi) changing language for installers to mandate that experience be verified by certain industry-specific professionals adding entry requirement options; (xii) prohibiting situations that could create potential conflicts of interest; and (xiii) removing self-assessment as a valid measurement technique for a student's completion of a training course.

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 20
BOARD FOR WATERWORKS AND WASTEWATER
WORKS OPERATORS AND ONSITE SEWAGE SYSTEM
PROFESSIONALS REGULATIONS

Part I
Definitions, Licensing and Classification Requirements

18VAC160-20-10. Definitions.

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

"Alternative onsite sewage system" means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.

"Alternative onsite sewage system installer" means an individual licensed by the board to construct, install, and repair [a treatment works that is not a] conventional [and alternative] onsite sewage [system and does not result in a point source discharge systems].

"Alternative onsite sewage system operator" means an individual licensed by the board to [(i) place into or take out of service a unit process or unit processes; (ii) make or cause adjustments in the operation of a unit process at a treatment works; or (iii) determine if a component or device is functional operate and maintain conventional and alternative onsite sewage systems].

"Alternative onsite soil evaluator" means an individual licensed by the board to [construct, install, and repair a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge evaluate soils and soil properties in relationship to the effect of these properties on the use and management of these soils as the locations for conventional and alternative onsite sewage systems, to certify in accordance with applicable state regulations and local ordinances that sites are suitable for conventional and alternative onsite sewage systems, and to design conventional and alternative onsite sewage systems suitable for the soils].

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"Authorized onsite soil evaluator" or "AOSE" means an individual holding an authorized onsite soil evaluator certification issued by the Virginia Department of Health that ~~is was~~ valid on ~~the effective date of this chapter~~ June 30, 2009].

"Board" means the Board for Waterworks and Wastewater Works Operators ~~and Onsite Sewage System Professionals or any successor agency~~].

"Category" means ~~the two divisions of waterworks and wastewater works operators' licenses, one being waterworks and the second being wastewater works~~ waterworks operator, wastewater works operator, onsite soil evaluator, onsite sewage system installer, and onsite sewage system operator.

"Classification" means the divisions of each category of waterworks and wastewater works operators' licenses into classes where Class "I" represents the highest classification.

"Classified facility" means a waterworks that has been granted a classification by the Virginia Department of Health or a wastewater works that has been granted a classification by the Virginia Department of Environmental Quality.

"Contact hour" means 50 minutes of participation in a structured training activity.

"Continuing Professional Education (CPE)" means participation in a structured training activity that enables a ~~licensed waterworks operator licensee~~ licensee to maintain and increase the competence required to assure the public's protection.

"Conventional onsite sewage system" means a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drain field.

"Conventional onsite sewage system installer" means an individual licensed to construct, install, and repair conventional onsite sewage systems.

"Conventional onsite sewage system operator" means an individual licensed by the board to ~~(i) place into or take out of service a unit process or unit processes; or (ii) make or cause adjustments in the operation of a unit process at a conventional onsite sewage system; and (iii) determine whether a component or device is functional~~ operate and maintain a conventional onsite sewage system].

"Conventional onsite soil evaluator" means an individual licensed by the board to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for conventional ~~and alternative~~ onsite sewage systems ~~to certify in accordance with applicable state regulations and local ordinances that sites are suitable for conventional and alternative onsite sewage systems, and to design conventional onsite sewage systems suitable for the soils~~].

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Direct supervision" means being responsible for the compliance with ~~the this~~ chapter by any ~~unlicensed~~ individual who ~~for the purpose of obtaining the necessary competence to qualify for licensure,~~ is engaged in activities requiring an operator, installer, or evaluator license ~~but who is not licensed to perform those duties, for the purpose of obtaining the competence necessary to qualify for licensure~~].

"Direct supervisor" means a licensed operator, installer, or evaluator who undertakes the supervision of an unlicensed individual engaged in activities requiring a license for the purpose of obtaining the competence necessary to qualify for licensure and who shall be responsible for the unlicensed individual's full compliance with this chapter.

"Experience" means time spent learning how to physically and theoretically operate the waterworks ~~or~~ wastewater works, or onsite sewage system as an operator-in-training or time spent operating a waterworks or wastewater works for which the operator is currently licensed ~~for the purpose of obtaining the necessary competence to qualify for a specific license.~~ Experience also means the time spent under the direct supervision of an authorized onsite soil evaluator, onsite soil evaluator licensee, onsite sewage system installer licensee or onsite site sewage system operator licensee for the purpose of obtaining the necessary competence to qualify for a specific license.

"Interim license" means a method of regulation whereby the board authorizes an unlicensed individual to engage in activities requiring a specific license provided for in this chapter for a limited time to obtain the necessary competence to qualify for that specific license.

"Interim licensee" means an individual holding a valid interim license.

"Licensed operator" means an operator with a license in the category ~~and with a~~ of onsite sewage systems operator, waterworks operator, or wastewater works operator. For waterworks operators and wastewater works operators, the license classification must be equal to or higher than the classification of the waterworks or wastewater works being operated.

"Licensee" means an individual holding a valid license issued by the board.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without a license.

"Maintenance [" or "maintain"] means performing adjustments to equipment and controls and in-kind replacement of normal wear and tear parts such as light bulbs.

fuses, filters, pumps, motors, or other like components. Maintenance includes pumping the tanks or cleaning the building sewer on a periodic basis. Maintenance shall not include replacement of tanks, drain field piping, distribution boxes, or work requiring a construction permit and a licensed onsite sewage system installer.

"Nonclassified facility" means a facility located in Virginia that has not been classified by the Virginia Department of Health or a facility that has not been classified by the Virginia Department of Environmental Quality.

"Onsite sewage system" means a conventional onsite sewage system or an alternative onsite sewage system.

"Operate" means any act of an individual, ~~which that~~ may impact on the finished water quality at a waterworks [☉] the plant effluent at a wastewater works [, or the effluent at an onsite sewage system].

"Operating staff" means individuals employed or appointed by an owner to work at a waterworks or wastewater works.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks [☉] wastewater works operations [,] or to operate onsite sewage systems. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

"Operator-in-training" means an individual employed by an owner to work under the direct supervision and direction of an operator holding a valid license in the proper category and classification for the purpose of gaining experience and knowledge in the duties and responsibilities of an operator of a waterworks [☉] wastewater works [, or onsite sewage system]. An operator-in-training is not an operator.

"Owner" means the Commonwealth of Virginia, or any political subdivision thereof, any public or private institution, corporation, association, or any other entity organized or existing under the laws of this Commonwealth or of any other state or nation, or any person or group of persons acting individually or as a group, who own, [propose to own], manage, or maintain waterworks [☉] wastewater works [, or onsite sewage systems].

"Provisional licensee" means an individual holding a valid provisional license issued by the board.

"Provisional licensure" or "provisional license" means a method of regulation whereby the Commonwealth recognizes an individual as having met specific standards but who is not authorized to operate a classified facility until he has met the

remaining requirements for licensure and has been issued a license.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Responsible charge" means the designation by the owner of any individual to have the duty and the authority to operate a waterworks [☉] wastewater works [, or onsite sewage system].

"Sewage" means water-carried and nonwater-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes separately or together with such underground, surface, storm or other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sewage handler" means any person who removes or contracts to remove and transports by vehicle the contents of any septic tank, sewage treatment plant, privy, holding tank, portable toilet [, or other treatment or holding device,] or any sewage, septage or sewage sludges [~~that have been processed to meet acceptable treatment standards of~~ and who is permitted under the Sewage Handling and Disposal Regulations (12VAC5-610) [or successor regulation].

"Sewerage system" means pipelines or conduits, pumping stations and force mains, and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal, as defined in the Sewage Handling and Disposal Regulations (12VAC5-610).

"Structured training activity" means a formal educational process designed to permit a participant to learn a given subject or subjects through interaction with an instructor in a course, seminar, conference, distance learning, or other performance-oriented format.

"Transportation" means the vehicular conveyance of sewage, as defined in § 32.1-163 of the Code of Virginia.

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes including, but not limited to, pumping, power and other equipment and appurtenances, septic tanks and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluent resulting from such treatment [~~as defined in the Sewage Handling and Disposal Regulations (12VAC5-610)~~].

"VDH" means Virginia Department of Health.

"Wastewater works" means a system of (i) sewerage systems or sewage treatment works serving more than 400 persons, as set forth in § 62.1-44.18 of the Code of Virginia; (ii) sewerage systems or sewage treatment works serving fewer than 400 persons, as set forth in § 62.1-44.18 of the

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Code of Virginia, if so certified by the State Water Control Board; and (iii) facilities for discharge into state waters of industrial wastes or other wastes, if certified by the State Water Control Board.

"Wastewater works operator" means any individual employed or appointed by any owner, who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control wastewater works operations. Superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of wastewater works are not included in this definition.

"Waterworks" means a system that serves piped water for drinking or domestic use to (i) at least 15 connections or (ii) at least 25 of the same individuals for more than six months out of the year. The term waterworks shall include all structures, equipment, and appurtenances used in the storage, collection, purification, treatment and distribution of pure water, except the piping and fixtures inside the building where such water is delivered.

"Waterworks operator" means any individual employed or appointed by any owner, who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks operations. Superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks are not included in this definition.

Part II License Requirements

18VAC160-20-74. License required.

A. To serve as an operator of a waterworks or wastewater works, it shall be necessary to hold a valid license issued by the board for a classification equal to or greater than the classification of the waterworks or wastewater works to be operated and in the appropriate category. Issuance of a new classification of license shall void all previously issued licenses in the same category. No licensee shall hold two licenses of different classifications in the same category. The board shall issue a license only after an individual has met all experience and examination requirements as set forth in this chapter.

B. Provisional licensure shall not authorize an individual to serve as the operator of a classified waterworks or waste waterworks facility.

C. No [~~person~~ individual] shall act as [~~an a~~] conventional onsite soil evaluator, alternative onsite soil evaluator, conventional onsite sewage system installer, alternative onsite

sewage system installer, conventional onsite sewage system operator, or alternative onsite sewage system operator without possessing a valid license issued by the board. Issuance of an alternative license shall void [~~all the~~] previously issued conventional [~~licenses~~ license and shall authorize the alternative licensee to perform duties on both conventional and alternative onsite sewage systems consistent with the license category]. [~~No licensee shall hold both a conventional and an alternative license simultaneously.~~] The board shall issue a license only after an individual has met all experience and examination requirements as set forth in this chapter.

D. No [~~person~~ individual] shall act as an alternative onsite sewage system operator of an alternative onsite sewage system that exceeds 10,000 gallons per day design flow without possessing the appropriate class of wastewater works operator license in addition to an alternative onsite sewage system operator license.

18VAC160-20-76. Application.

A. Application shall be made as follows:

1. Individuals desiring to sit for the board's examination shall apply on forms made available by the board or by an examination vendor approved by the board.
2. Individuals who have passed the board's examination shall apply for a license on forms made available by the board or by an examination vendor approved by the board.
3. All applications shall be completed in accordance with the accompanying instructions and shall have all required documentation attached.
4. The examination fee established in 18VAC160-20-102 shall accompany each examination application and the application fee established in 18VAC160-20-102 shall accompany each license application.

B. The receipt of an application and the deposit of fees in no way indicates approval of an application.

C. All fees shall be nonrefundable.

D. Individual applicants shall be at least 18 years of age.

E. ~~Each applicant for a license shall have passed the board's examination and shall disclose the following information about himself:~~

- ~~1. Any conviction by a court in any jurisdiction of any felony or of any misdemeanor involving lying, cheating or stealing, or of any misrepresentation while engaged in waterworks or wastewater works activities. Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree~~

~~or case decision shall be prima facie evidence of such conviction or discipline.~~

~~2. Any disciplinary action taken by the board or another jurisdiction in connection with the applicant's activities as a waterworks or wastewater works operator, including but not limited to, monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action.~~

~~3. His physical address. A post office box shall not be accepted in lieu of a physical address.~~

E. Each applicant shall disclose his physical home address. A post office box shall not be accepted in lieu of a physical address.

F. Each applicant for a license shall have passed the appropriate board-approved examination.

G. Each applicant [shall be in good standing holding a license] as a [licensed] waterworks operator, wastewater works operator, onsite soil evaluator, onsite sewage system operator, or onsite sewage system installer [shall be in good standing] in every jurisdiction where licensed; and the applicant shall not have had a license as a waterworks operator, wastewater works operator, onsite soil evaluator, onsite sewage system operator, or onsite sewage system installer that was suspended, revoked or surrendered in connection with a disciplinary action or that has been the subject of disciplinary action in any jurisdiction prior to applying for licensure in Virginia.

H. Each applicant shall not have been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of any misdemeanor involving lying, cheating, or stealing; of any misdemeanor directly related to the practice of a waterworks operator, a wastewater works operator, an onsite soil evaluator, an onsite sewage system operator, or an onsite sewage system installer; or of any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this [subdivision subsection] . The record of conviction, authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted, shall be admissible as prima facie evidence of such conviction or guilt. Review of prior criminal convictions shall be subject to the provisions of § 54.1-204 of the Code of Virginia.

I. Applicants for licensure who do not meet the requirements set forth in subsections G and H of this section may be approved for licensure following consideration by the board in accordance with § 54.1-204 of the Code of Virginia.

J. Examinations. A board-approved examination shall be administered by the board or by an examination vendor approved by the board.

1. Each individual applying to sit for the examination shall satisfy the licensure requirements established by this chapter before being approved to sit for the examination. Individuals approved to sit for the examination shall be provided with written instructions for examination registration.

2. Examinees will be given specific instructions as to the conduct of the examination at the examination site. Examinees shall follow these instructions during the course of the examination. Misconduct may result in removal from the examination site, voided examination scores, the denial of the application, or any combination of the foregoing.

3. Upon submission of an application for reexamination and payment of the examination fee established in 18VAC160-20-102, an applicant who is unsuccessful in passing the examination shall be allowed to retake the examination an unlimited number of times within one year after the date that the application to sit for the examination was approved. If the one-year period elapses, then the applicant shall submit a new application to sit for the examination establishing that he meets the then-current requirements of this chapter and the examination fee established in 18VAC160-20-102.

[K. Any applicant relying on experience with VDH to meet the minimum requirements for licensure shall provide an endorsement from the applicant's direct supervisor at VDH stating that the applicant's job performance has been satisfactory.]

[~~K. L.~~] Licensure. Individuals who have passed the board-approved examination shall apply for licensure and shall satisfy the licensure requirements established in this chapter.

18VAC160-20-80. Individuals certified or licensed in other jurisdictions.

Any applicant holding a valid license or certificate in another jurisdiction who meets the requirements of this chapter, including experience and education, ~~may take shall~~ pass the appropriate Virginia examination in the Virginia category and classification comparable to the license or certificate held in the other jurisdiction to become licensed.

18VAC160-20-82. Interim licensure of [certain] individuals [holding an authorized onsite soil evaluator certificate issued employed] by the Virginia Department of Health (VDH).

A. [~~The board shall issue~~ Applicants for] an interim onsite soil evaluator license [~~to any individual who possessed a valid authorized onsite soil evaluator (AOSE) certification issued by the VDH on the effective date of this chapter, provided that the interim license application is received by the department no later than six months after the effective date of this chapter. AOSE certified individuals who fail to have their~~

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application in the department's possession within six months after the effective date of this chapter shall not be eligible for an interim onsite soil evaluator license and shall apply for a license pursuant to 18VAC160-20-96. who are employees of the Virginia Department of Health and whose duties include onsite soil evaluation and onsite septic system design shall meet the following standards:

1. Submit a complete application form documenting at least the minimum combination of education and experience required for licensure as a conventional onsite soil evaluator required by this chapter; and
2. Include an endorsement from the applicant's direct supervisor stating that the applicant's job performance has been satisfactory.]

B. An interim onsite soil evaluator licensee shall be authorized to act as a conventional onsite soil evaluator [~~and as an alternative onsite soil evaluator~~ solely for the purpose of performing his duties as an employee of VDH].

C. Each interim onsite soil evaluator license shall expire on the last day of the month that is [~~36~~ 48] months after the date of issuance by the department [or on the date that the employee is no longer performing onsite soil evaluation duties for VDH, whichever occurs first,] and shall not be subject to renewal.

D. Each applicant for an interim onsite soil evaluator license shall make application in accordance with 18VAC160-20-76 [~~and shall provide evidence that he possessed a valid AOSE certification issued by the VDH on the effective date of this chapter~~].

[E. Virginia Department of Health employees who fail to have their application for the interim onsite soil evaluator license in the department's possession by December 31, 2009, shall not be eligible for an interim onsite soil evaluator license and shall apply for a license pursuant to 18VAC160-20-96.]

18VAC160-20-84. Interim license, onsite sewage system installer and operator.

A. The board may issue an interim onsite sewage system [installer] license [or an interim onsite sewage system operator license] to any individual who makes application in accordance with 18VAC160-20-76, and who meets the specific entry requirements of this section, provided that the application is received by the department no later than [~~12 months after the effective date of this chapter~~ June 30, 2010]. Individuals who fail to have their application in the department's possession [~~within 12 months after the effective date of this chapter~~ by June 30, 2010,] shall not be eligible for an interim license and shall apply for a license pursuant to 18VAC160-20-97 or 18VAC160-20-98 as appropriate.

B. Each interim onsite sewage system [installer] license [and interim onsite sewage system operator license] shall

expire on the last day of the month that is [~~24~~ 48] months after the date of issuance by the department and shall not be subject to renewal.

C. To maintain licensure, each interim onsite sewage system license holder shall apply for and be issued a license under the provisions of 18VAC160-20-97 or 18VAC160-20-98, as appropriate, before the interim onsite sewage system [installer license or interim onsite sewage system operator] license expiration date.

D. Each applicant shall apply in accordance with 18VAC160-20-76 and shall meet the specific entry requirements provided for in this section.

E. Specific entry requirements - installer.

1. Interim conventional onsite sewage system installer applicants shall have six months of [documented] full-time experience [~~working with a firm holding a Sewage Handling and Disposal Permit (SHDP) issued by the Virginia Department of Health (VDH) installing alternative or conventional onsite sewage systems under the direct supervision of a properly licensed contractor holding a sewage disposal systems (SDS) specialty issued by the Virginia Board for Contractors or the applicant must have six months of documented full-time experience installing alternative or conventional onsite sewage systems as a properly licensed contractor holding a SDS specialty issued by the Virginia Board for Contractors~~].

2. Interim alternative onsite sewage system installer applicants shall have six months of [documented] full-time experience [~~working with a firm holding a Sewage Handling and Disposal Permit (SHDP) issued by the VDH installing alternative onsite sewage systems under the direct supervision of a properly licensed contractor holding a sewage disposal systems (SDS) specialty issued by the Virginia Board for Contractors or the applicant must have six months of documented full-time experience installing alternative onsite sewage systems as a properly licensed contractor holding a SDS specialty issued by the Virginia Board for Contractors~~].

F. Specific entry requirements - operator.

1. Interim conventional onsite sewage system operator applicants shall have 12 months of [documented] full-time experience [~~as a conventional onsite sewage system operator providing operation and maintenance services for conventional onsite sewage systems or as a sewage handler permitted by VDH~~].

2. Interim alternative onsite sewage system operator applicants shall have 12 months of [documented] full-time experience [~~as an alternative onsite sewage system operator providing operation and maintenance services for alternative onsite sewage systems~~].

18VAC160-20-90. ~~Licensure by experience and examination.~~ Qualifications for licensure of waterworks operators and wastewater works operators.

~~Licensure~~ A. Waterworks operator and wastewater works operator licensure is based upon having applicable experience and demonstrating minimum required knowledge, skills and abilities through an examination. Education, training, and experience in the other category may be substituted for the required experience as specified in this section.

~~A. B.~~ Experience. For purposes of this ~~chapter~~ section, experience requirements are expressed in terms of calendar periods of full-time employment as an operator or as an operator-in-training at a waterworks or wastewater works in the same category as the license being applied for. All experience claimed on the application for licensure must be certified by the individual's immediate supervisor.

1. A year of full-time employment is defined as a minimum of 1,760 hours during a 12-month period or a minimum of 220 workdays in a 12-month period. A workday is defined as attendance at a waterworks or wastewater works to the extent required for proper operation. More than 1,760 hours or 220 work days during a 12-month period will not be considered as more than one year of full-time employment.

2. Experience gained as an operator-in-training must be obtained under the [direct] supervision of an operator holding a valid license of the same category and of a classification equal to or higher than the classification of the waterworks or wastewater works at which the experience is gained. The supervising operator shall certify the experience on the application form as accurate and relevant to the classification and category of license for which the application is being submitted.

3. Partial credit may be given for actual hours of work or workdays experience if the applicant works as an operator or as an operator-in-training less than full time.

4. Experience solely limited to the operation and maintenance of wastewater collection systems and water distribution systems, laboratory work, plant maintenance, and other nonoperating duties shall not be counted as experience as an operator or as an operator-in-training.

5. Experience limited to water distribution system operation and maintenance shall be considered only when applying for a Class V or Class VI waterworks operator license.

~~B. C.~~ Specific requirements for licenses.

1. Specific requirements for a Class VI license. Applicants for licensure as a Class VI waterworks operator shall meet one of the following requirements and pass a board-approved examination:

a. Have (i) a high school diploma or GED and (ii) at least six months of experience as an operator-in-training in a Class VI, Class V, Class IV, Class III, Class II, or Class I waterworks; or

b. Have (i) no high school diploma and (ii) at least one year of experience as an operator-in-training in a Class VI, Class V, Class IV, Class III, Class II, or Class I waterworks.

2. Specific requirements for a Class V license. Applicants for licensure as a Class V waterworks operator shall meet one of the following requirements and pass a board-approved examination:

a. Have (i) a high school diploma or GED and (ii) at least six months of experience as an operator-in-training in a Class V, Class IV, Class III, Class II, or Class I waterworks; or

b. Have (i) no high school diploma and (ii) at least one year of experience as an operator-in-training in a Class V, Class IV, Class III, Class II, or Class I waterworks.

3. Specific requirements for a Class IV license. Applicants for licensure as either a Class IV waterworks or wastewater works operator shall meet one of the following requirements and pass a board-approved examination:

a. Have (i) a high school diploma or GED and (ii) at least six months of experience as an operator-in-training in a Class IV, Class III, Class II, or Class I waterworks or wastewater works (as appropriate); or

b. Have (i) no high school diploma and (ii) at least one year of experience as an operator-in-training in a Class IV, Class III, Class II, or Class I waterworks or wastewater works (as appropriate).

Experience obtained as a licensed alternative onsite sewage system operator may substitute for the wastewater works [~~operator-in-training~~ operator-in-training] experience requirements established under [~~subdivisions~~ subparts] a and b of this subdivision [~~3~~].

4. Specific requirements for a Class III license. Applicants for licensure as either a Class III waterworks or wastewater works operator shall meet one of the following requirements and pass a board-approved examination:

a. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; and (ii) at least one year of experience as an operator-in-training in a Class IV, Class III, Class II, or Class I waterworks or wastewater works (as appropriate); ~~or~~

b. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; (ii) a Class IV license; and (iii) a total of at least one year of experience as an operator or

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operator-in-training in a Class IV waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class III, Class II, or Class I waterworks or wastewater works (as appropriate); ~~or~~

c. Have (i) a high school diploma or GED and (ii) at least two years of experience as an operator-in-training in a Class IV, Class III, Class II, or Class I waterworks or wastewater works (as appropriate); ~~or~~

d. Have (i) a high school diploma or GED, (ii) a Class IV license, and (iii) a total of at least two years of experience as an operator or operator-in-training in a Class IV waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class III, Class II, or Class I waterworks or wastewater works (as appropriate); or

e. Have (i) no high school diploma, (ii) a Class IV license, and (iii) a total of at least four years of experience as an operator or operator-in-training in a Class IV waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class III, Class II, or Class I waterworks or wastewater works (as appropriate).

5. Specific requirements for a Class II license. Applicants for licensure as either a Class II waterworks or wastewater works operator shall meet one of the following requirements and pass a board-approved examination:

a. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; and (ii) a total of at least 1-1/2 years of experience, of which at least six months without substitutions shall be as an operator-in-training in a Class III, Class II or Class I waterworks or wastewater works (as appropriate); ~~or~~

b. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; (ii) a Class IV license; and (iii) a total of at least 1-1/2 years of experience, of which at least six months without substitutions shall be as an operator-in-training in a Class III, Class II or Class I waterworks or wastewater works (as appropriate); ~~or~~

c. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; (ii) a Class III license; and (iii) a total of at least 1-1/2 years of experience, of which at least six months, without substitutions shall be as an operator or operator-in-training in a Class III waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class II or Class I waterworks or wastewater works (as appropriate); ~~or~~

d. Have (i) a high school diploma or GED, (ii) a Class III license, and (iii) a total of at least four years of experience of which at least two years without

substitutions shall be as an operator or operator-in-training in a Class III waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class II or Class I waterworks or wastewater works (as appropriate); or

e. Have (i) no high school diploma, (ii) a Class III license, and (iii) a total of at least seven years of experience of which at least three years without substitutions shall be as an operator or operator-in-training in a Class III waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class II or Class I waterworks or wastewater works (as appropriate).

6. Specific requirements for a Class I license. Applicants for licensure as either a Class I waterworks or wastewater works operator shall meet one of the following requirements and pass a board-approved examination:

a. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; (ii) a Class II license; and (iii) a total of at least 2-1/2 years of experience, of which at least one year without substitutions shall be as an operator or operator-in-training in a Class II waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class I waterworks or wastewater works (as appropriate); ~~or~~

b. Have (i) a high school diploma or GED, (ii) a Class II license and (iii) a total of at least six years of experience of which at least two years without substitutions shall be as an operator or operator-in-training in a Class II waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class I waterworks or wastewater works (as appropriate); or

c. Have (i) no high school diploma, (ii) a Class II license, and (iii) a total of at least 10 years of experience of which at least three years without substitutions shall be as an operator or operator-in-training in a Class II waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class I waterworks or wastewater works (as appropriate).

[~~C.~~ D.] Substitutions for required experience. For the purpose of meeting the experience requirements for Class III, Class II, and Class I licenses, experience in the other category, relevant training in waterworks and wastewater works operation, and formal education may be substituted for actual hands-on experience in the category being applied for.

1. Category experience substitution. One half of the actual experience gained in the other category may be substituted for required experience in the category of the license being applied for.

2. Education substitution. Education may be substituted for part of the required experience in the category of the license being applied for, subject to the following limitations:

a. Education used to meet the educational requirements for any class of license may not be substituted for experience.

b. Formal education courses at a post-secondary level in physical, biological or chemical science; engineering or engineering technology; waterworks or wastewater works operation; or public health may be substituted for part of the required experience.

(1) All education substituted for experience must be relevant to the category and classification of the license being applied for.

(2) Education may be substituted for experience at a rate of up to one month experience for each semester hour of college credit approved by the board. One quarter hour of college credit will be considered equal to two thirds of a semester hour.

(3) Substitution of formal education experience will be approved by the board only for applicants who submit a transcript from the institution where the course was taken.

c. Training substitution. Waterworks or wastewater works operator training courses, seminars, workshops, or similar training, specifically approved by the board, may be substituted for part of the required experience.

(1) All training substituted for experience must be relevant to the category and classification of the license being applied for.

(2) Training may be substituted for experience at a rate of one month experience for each training credit approved by the board. Up to one training credit is awarded for each 10 hours of classroom contact time or for each 20 hours of laboratory exercise and field trip contact time. No credit towards training credits is granted for breaks, meals, receptions, and time other than classroom, laboratory and field trip contact time.

(3) All courses used for substitution must be approved by utilizing the criteria set forth in Part VI [~~(18VAC160-20-160)~~ (18VAC160-20-150)] of this chapter.

(4) Substitution of training for experience will be approved by the board only for applicants who submit a copy of an appropriate certificate identifying the subject matter of the course and the training credit value, and signed by a representative of the organization sponsoring the training.

3. Limitations on substitution.

a. Under no circumstances shall category experience, education, and training substitutions exceed 50% of the total experience required under this subsection.

b. No category experience, education, or training substitutions are permitted for the experience required to obtain a Class VI, Class V or a Class IV license as specified in subsection [~~B C~~] of this section.

~~D. Examination. A board approved examination shall be administered by the board or by an examination vendor approved by the board.~~

~~1. Each individual applying to sit for the examination shall satisfy the experience standards established in this section before being approved to sit for the examination. Individuals approved to sit for the examination shall be provided with written instructions for examination registration.~~

~~2. Examinees will be given specific instructions as to the conduct of the examination at the examination site. Examinees shall follow these instructions during the course of the examination. Misconduct may result in removal from the examination site, voided examination scores, the denial of the application or any combination of the foregoing.~~

~~3. Upon submission of an application for reexamination and payment of the fee established in 18VAC160-20-102, an applicant who is unsuccessful in passing the examination shall be allowed to retake the examination an unlimited number of times within one year after the date the application to sit for the examination was approved. If the one year period elapses, then the applicant shall submit a new application to sit for the examination establishing that he meets the then current requirements of this chapter and the fee established in 18VAC160-20-102.~~

~~4. Each application for reexamination shall be accompanied by the fee established in 18VAC160-20-102.~~

~~E. Licensure. Individuals who have passed the board approved examination shall apply for licensure and shall satisfy the application requirements established in 18VAC160-20-76.~~

[18VAC160-20-94. Qualifications for licensure - individuals holding authorized onsite soil evaluator certifications.

Individuals holding a valid authorized onsite soil evaluator certification issued by VDH that was valid on June 30, 2009, may apply for an alternative onsite soil evaluator license and shall be deemed to have met the specific entry requirements of 18VAC160-20-96 C 2 and to have passed a board-approved examination for alternative onsite soil evaluator, provided that the application is received by the department by December 31, 2009. Each applicant shall make application in accordance with 18VAC160-20-76.]

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18VAC160-20-96. Qualifications for licensure - onsite soil evaluators.

A. Each applicant shall make application in accordance with 18VAC160-20-76 and shall meet the specific entry requirements provided for in this section.

[B. Each applicant holding a valid interim onsite soil evaluator license shall submit documentation of compliance with the continuing professional education requirements provided for in this chapter at the time of application.]

[~~B. C.~~] Specific entry requirements.

1. Conventional onsite soil evaluator [~~(conventional onsite sewage system only)~~]. Each individual applying for an initial conventional onsite soil evaluator license shall [pass a board-approved examination and shall] have a valid interim onsite soil evaluator license or meet one of the following requirements: [~~and pass a board approved examination.~~]

a. [~~A~~ Possess a] valid certificate as a Virginia certified professional soil scientist from the Board for Professional Soil Scientists and Wetland Professionals and one year of full-time onsite soil evaluation [~~and conventional onsite sewage system design~~] experience;

b. [~~Two~~ Possess a bachelor's degree with a major in soil science, biology, chemistry, engineering, environmental science, geology, agronomy, earth science, or environmental health and have two] years of full-time experience evaluating site and soil conditions [~~and designing conventional onsite sewage systems~~] in compliance with this chapter under the direct supervision of [~~a licensed conventional onsite soil evaluator or of a licensed alternative onsite soil evaluator, and a bachelor's degree with a major in soil science, biology, chemistry, engineering or environmental science;~~ any of the following:

(1) An authorized onsite soil evaluator certified by VDH before July 1, 2009;

(2) An interim licensed onsite soil evaluator;

(3) A licensed conventional onsite soil evaluator; or

(4) A licensed alternative onsite soil evaluator;

c. Possess a bachelor's degree with a major in soil science, biology, chemistry, engineering, environmental science, geology, agronomy, earth science, or environmental health and have two years of full-time experience evaluating site and soil conditions and designing conventional onsite sewage systems in compliance with this chapter as a VDH employee prior to July 1, 2009;]

[~~e. Three~~ d.] Possess an associate's degree in waterworks, wastewater works, environmental science,

or engineering technology and have three] years of full-time experience evaluating site and soil conditions [~~and designing conventional onsite sewage systems~~] in compliance with this chapter under the direct supervision [~~of a licensed conventional onsite soil evaluator or of a licensed alternative onsite soil evaluator and an associate's degree in waterworks, wastewater works, environmental science, or engineering technology;~~ or of any of the following:]

(1) An authorized onsite soil evaluator certified by VDH before July 1, 2009;

(2) An interim licensed onsite soil evaluator;

(3) A licensed conventional onsite soil evaluator; or

(4) A licensed alternative onsite soil evaluator;]

e. Possess an associate's degree in waterworks, wastewater works, environmental science, or engineering technology and have three years of full-time experience evaluating site and soil conditions and designing conventional onsite sewage systems in compliance with this chapter as a VDH employee prior to July 1, 2009;

f. Have satisfactorily completed the VDH onsite sewage system training program and have four years of full-time experience evaluating site and soil conditions and designing conventional onsite sewage systems in compliance with this chapter under the direct supervision of any of the following:

(1) An authorized onsite soil evaluator certified by VDH before July 1, 2009;

(2) An interim licensed onsite soil evaluator;

(3) A licensed conventional onsite soil evaluator; or

(4) A licensed alternative onsite soil evaluator;

[~~d. Eight~~ g. Have eight] years of full-time experience evaluating site and soil conditions [~~and designing conventional onsite sewage systems~~] in compliance with this chapter under the direct supervision of [~~a licensed conventional onsite soil evaluator or of a licensed alternative onsite soil evaluator;~~ any of the following:

(1) An authorized onsite soil evaluator certified by VDH before July 1, 2009;

(2) An interim licensed onsite soil evaluator;

(3) A licensed conventional onsite soil evaluator; or

(4) A licensed alternative onsite soil evaluator; or

h. Have eight years of full-time experience evaluating site and soil conditions and designing conventional onsite sewage systems in compliance with this chapter as an employee of VDH prior to July 1, 2009.]

2. Alternative onsite soil evaluator [~~(alternative onsite sewage system only)~~]. Each individual applying for an initial alternative onsite soil evaluator license [~~for alternative onsite sewage systems~~] shall possess a valid interim onsite soil evaluator license or a valid conventional onsite soil evaluator license, pass a board-approved examination, and meet one of the following requirements:

a. [~~Two~~ Have two] years of full-time experience in evaluating [soils] and designing [alternative] onsite sewage systems obtained during the last four years under [the direct supervision of either an authorized onsite soil evaluator certified by VDH before July 1, 2009, a currently licensed interim onsite soil evaluator, or] a currently licensed alternative onsite soil evaluator [~~licensee~~];

[b. Have two years of full-time experience in evaluating soils and designing onsite sewage systems, including the review of alternative onsite sewage system designs, as either an employee of VDH or a local government;]

[~~b. Three~~ c. Have three] years of full-time experience as an authorized onsite soil evaluator certified by the Virginia Department of Health (VDH) [~~, regardless of the date of certification expiration,~~] and evidence of completing the soil evaluation and system design work on a total of at least 36 onsite sewage systems (12 of which must be alternative [system permits systems] approved by the VDH [through the issuance of a permit or a certification]); or

[~~e. Four~~ d. Have four] years of full-time experience as [an authorized onsite soil evaluator certified by VDH (regardless of the date of expiration), an interim onsite soil evaluator licensee,] a conventional onsite soil evaluator licensee [~~, an employee of VDH (whose duties included onsite soil evaluation and onsite septic system design prior to July 1, 2009), or any combination thereof~~].

[D. Education and training substitution. Each individual applying for a conventional or an alternative onsite soil evaluator license may receive credit for up to half of the experience required by this section for:

1.] Satisfactory completion of postsecondary courses in wastewater, biology, [chemistry, geology,] hydraulics, hydrogeology, or soil science [~~may substitute for up to half of the above experience requirement~~] at the rate of one month per semester hour or two-thirds of a month per quarter hour [; or

2. Satisfactory completion of board-approved onsite soil evaluator training courses at the rate of one month for each training credit earned. Up to one training credit is awarded for each 10 hours of classroom contact time or for each 20 hours of laboratory exercise and field trip contact time. No credit towards training credits is granted for breaks, meals,

receptions, and time other than classroom, laboratory and field trip contact time.]

18VAC160-20-97. Qualifications for licensure - onsite sewage system installers.

A. Each applicant shall make application in accordance with 18VAC160-20-76 and shall meet the specific entry requirements provided for in this section for the license desired.

[B. Each applicant holding a valid interim onsite sewage system installer license shall submit documentation of compliance with the continuing professional education requirements of this chapter at the time of application.]

[~~B. C.~~] Specific entry requirements.

1. Conventional onsite sewage system installer. Each individual applying for an initial conventional onsite sewage system installer license shall pass a board-approved examination and shall meet one of the following requirements:

a. [~~Two~~ Have two] years [of full-time] experience [~~obtained~~ installing alternative or conventional onsite sewage systems] during the last four years under [the direct supervision of] a [properly licensed contractor holding a] sewage disposal system (SDS) [~~contractor licensed specialty issued~~] by the Virginia Board for Contractors [installing alternative onsite sewage systems or conventional onsite sewage]; or

[b. Have two years of full-time experience installing alternative or conventional onsite sewage systems during the last four years as a properly licensed contractor holding a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors; or]

[~~b. Certification by three authorized onsite soil evaluators (AOSE) or professional engineers~~ c. Have documentation certifying] that the applicant is competent to install conventional onsite sewage systems. [Certification must be provided by any combination of three of the following individuals:

- (1) VDH Authorized Onsite Soil Evaluators (AOSE) for work performed prior to July 1, 2009;
- (2) Licensed interim onsite soil evaluators;
- (3) Licensed conventional or alternative onsite soil evaluators;
- (4) Licensed conventional or alternative onsite sewage system installers; or
- (5) Virginia licensed professional engineers.]

2. Alternative onsite sewage system installer. Each individual applying for an initial alternative onsite sewage system installer license shall pass a board-approved

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examination and shall meet one of the following requirements:

a. Provide contractor completion statements and associated operation permits issued by the VDH ~~[which shall be certified by a licensed individual]~~ for work performed after ~~[the effective date of this chapter June 30, 2009.]~~ The statements and permits must verify that the applicant had successfully installed 36 onsite sewage systems during the preceding three years, six of which must be alternative systems ~~[three of which must include absorption field designs other than a gravity subsurface drainfield; or. All contractor completion statements and associated VDH operation permits shall be certified by either a licensed alternative onsite soil evaluator, a licensed conventional or alternative onsite sewage system installer, or a Virginia licensed professional engineer]~~;

b. Provide contractor completion statements and associated operation permits issued by the VDH ~~[which shall be certified by a licensed individual.]~~ for work performed ~~[before the effective date of this chapter on or before June 30, 2009.]~~ ~~[verifying~~ The statements and permits must verify ~~] that the applicant successfully installed 12 alternative onsite sewage systems [six of which must include absorption field designs other than a gravity subsurface drainfield.] during the past three years. [All contractor completion statements and associated VDH operation permits shall be certified by either an authorized onsite soil evaluator or a Virginia licensed professional engineer]~~;

~~[c. Have two years of full-time experience installing sewage systems as a properly licensed contractor holding a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors and provide certification by at least three interim or alternative onsite soil evaluator licensees, Virginia-licensed professional engineers, or any combination thereof, that the applicant is competent to install alternative onsite sewage systems;~~

d. Have two years of full-time experience installing sewage systems under the direct supervision a properly licensed contractor holding a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors and provide certification by at least three interim or alternative onsite soil evaluator licensees, Virginia-licensed professional engineers, or any combination thereof, that the applicant is competent to install alternative onsite sewage systems; or

e. Have two years of full-time experience as a licensed or interim licensed conventional onsite sewage system installer and provide certification by at least three interim or alternative onsite soil evaluator licensees, Virginia-licensed professional engineers, or any combination

thereof, that the applicant is competent to install alternative onsite sewage systems.]

If ~~[an individual the applicant]~~ is not listed on the completion statement but did perform the installation, then the individual named on the contractor's completion statement and associated operation permit issued by the VDH may certify ~~[an individual's the applicant's]~~ work performed on an alternative onsite sewage system that was installed prior to ~~[the effective date of this chapter June 30, 2009.]~~ provided that the application is received by the department no later than ~~[12 months after the effective date of this chapter June 30, 2010]~~ .

[D. Education and training substitution. Each individual applying for a conventional or an alternative onsite sewage system installer license may receive credit for up to half of the experience required by this section for:

1. Satisfactory completion of postsecondary courses in wastewater, biology, chemistry, geology, hydraulics, hydrogeology, or soil science at the rate of one month per semester hour or two-thirds of a month per quarter hour; or

2. Satisfactory completion of board-approved onsite sewage system installer training courses at the rate of one month for each training credit earned. Up to one training credit is awarded for each 10 hours of classroom contact time or for each 20 hours of laboratory exercise and field trip contact time. No credit towards training credits is granted for breaks, meals, receptions, and time other than classroom, laboratory and field trip contact time.]

18VAC160-20-98. Qualifications for licensure - onsite sewage system operators.

A. Each applicant shall make application in accordance with 18VAC160-20-76 and shall meet the specific entry requirements provided for in this section.

[B. Each applicant holding a valid interim onsite sewage system operator license shall submit documentation of compliance with the continuing professional education requirements of this chapter at the time of application.]

[B- C.] Specific entry requirements.

1. Conventional onsite sewage [system] operator. Each individual applying for an initial conventional onsite sewage system operator license shall pass a board-approved examination and shall ~~[meet one of the following requirements: a. Have no high school diploma. at]~~ have at least one year of full-time experience as a sewage handler or one year of full-time experience working under the direct supervision of ~~[a licensed conventional onsite sewage system operator or of a licensed alternative onsite sewage system operator either an interim conventional, interim alternative, conventional, or alternative onsite sewage system operator licensee]~~ .

[~~b. Have a high school diploma or GED.~~]

2. Alternative onsite sewage system operator. Each individual applying for an initial alternative onsite sewage system operator license shall possess a valid [interim onsite sewage system operator license or a valid] conventional onsite sewage system operator license, shall pass a board-approved examination, and shall meet one of the following requirements:

a. Have no high school diploma and 24 months of full-time experience working under the direct supervision of an alternative onsite sewage system operator licensee [or an interim alternative onsite sewage system operator licensee];

b. Have a high school diploma or GED and 12 months of full-time experience working under the direct supervision of an alternative onsite sewage system operator licensee [or an interim alternative onsite sewage system operator licensee]; or

c. Possess a valid Class IV or higher wastewater works operator license and have satisfactorily completed an onsite sewage system operator course approved by the board or have six months of full-time experience working under the direct supervision of an alternative onsite sewage system operator licensee [or an interim alternative onsite sewage system operator licensee] .

[D. Education and training substitution. Each individual applying for a conventional or an alternative onsite sewage system operator license may receive credit for up to half of the experience required by this section for:

1. Satisfactory completion of postsecondary courses in wastewater, biology, chemistry, geology, hydraulics, hydrogeology, or soil science at the rate of one month per semester hour or two-thirds of a month per quarter hour; or

2. Satisfactory completion of board-approved onsite sewage system operator training courses at the rate of one month for each training credit earned. Up to one training credit is awarded for each 10 hours of classroom contact time or for each 20 hours of laboratory exercise and field trip contact time. No credit towards training credits is granted for breaks, meals, receptions, and time other than classroom, laboratory and field trip contact time.]

18VAC160-20-102. Fees.

- A. All fees ~~are~~ shall be nonrefundable.
- B. The date of receipt of the fee by the board or its agent is the date that shall be used to determine whether the fee is timely received.
- C. The following fees shall apply:

- 1. The license application fee shall be \$100.
- 2. The license renewal fee shall be \$80.
- 3. The license renewal late penalty fee shall be \$25, in addition to the license renewal fee.
- 4. The fee for examination or reexamination is subject to charges to the department by an outside vendor based on a contract entered into in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.

~~D. A fee of \$25 will be charged, in addition to the fees established in this section, for submitting a check to the board which is dishonored by the institution upon which it is drawn.~~

18VAC160-20-104. Maintenance of license.

A. The licensee ~~or~~ provisional licensee, or interim licensee shall notify the board in writing within 30 days of any change of name or address.

B. All licensees ~~and~~ provisional licensees, and interim licensees shall operate under the name in which the license is issued.

Part III
Renewal

18VAC160-20-106. Renewal.

A. Licenses and provisional licenses for waterworks operators shall expire on the last day of February of each odd-numbered year. Licenses and provisional licenses for wastewater works operators shall expire on the last day of February of each even-numbered year. Licenses for onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators shall expire 24 months from the last day of the month wherein issued. [Interim licenses shall expire 48 months from the last day of the month wherein issued.]

B. Interim licenses shall not be renewed.

~~B. C.~~ C. The Department of Professional and Occupational Regulation shall mail a renewal notice to the licensee and the provisional licensee outlining the procedures for renewal. Renewal notices shall be mailed to the licensee and to the provisional licensee at the last known address of record. Failure to receive written notice shall not relieve the licensee or the provisional licensee of the obligation to renew and pay the required fee outlined in 18VAC160-20-102.

~~C. D.~~ D. Each licensee and provisional licensee applying for renewal shall return the renewal notice, and fee, and, in the case of waterworks licensees and provisional licensees only, a statement that the applicant for license renewal has met the CPE requirement established in 18VAC160-20-109 prior to the expiration date shown on the license. If the licensee or provisional licensee fails to receive the renewal notice, a copy

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of the expired license or provisional license may be submitted in place of the renewal notice along with the required fee ~~and, in the case of waterworks licensees and provisional licensees only, a statement that the licensee or provisional licensee has met the CPE requirement in 18VAC160-20-109.~~

~~E.~~ E. By submitting the renewal fee, an applicant for license renewal is certifying his continued compliance with this chapter and compliance with the continuing professional education requirements of this chapter.

~~D.~~ F. The date on which the renewal fee and any required forms are actually received by the board or its agent shall determine whether an additional fee is due.

~~E.~~ G. If the requirements of subsection ~~C~~ D of this section are met more than 30 days but less than 12 months after the expiration date on the license or provisional license, a late penalty fee shall be required as established in 18VAC160-20-102. The date on which the renewal application, any required documentation and the required fees are actually received by the board or its agent shall determine whether the licensee or provisional licensee is eligible for renewal and whether an additional fee is due.

~~F.~~ H. Any individual who fails to renew his license or provisional license within 12 months after the expiration date printed on the license or the provisional license, as appropriate, shall apply for a new license by examination or for a new provisional license in accordance with Part II (18VAC160-20-74 et seq.) of this chapter. Such individual shall be deemed to be eligible to sit for the examination for the same category and class of license as the expired license or provisional license.

~~G.~~ I. The board may deny renewal of a license or provisional license for the same reasons as it may refuse initial licensure or provisional licensure or discipline a licensee or provisional licensee.

18VAC160-20-109. ~~Waterworks operator continuing profession~~ Continuing professional education (CPE).

~~A. Each licensed and provisionally licensed waterworks operator licensee [and,] provisionally licensee [, and interim licensee] shall have completed the following number of CPE contact hours required for his class of license during each renewal cycle:~~

1. Class I, II, and III waterworks operators shall obtain a minimum of 20 contact hours ~~during each license renewal cycle.~~
2. Class IV waterworks operators shall obtain a minimum of 16 contact hours ~~during each license renewal cycle.~~
3. Class V waterworks operators shall obtain a minimum of eight contact hours ~~during each license renewal cycle.~~
4. Class VI waterworks operators shall obtain a minimum of four contact hours ~~during each license renewal cycle.~~

5. Conventional onsite soil evaluators, conventional onsite sewage system installers, and conventional onsite sewage system operators shall obtain a minimum of 10 contact hours.

6. Alternative onsite soil evaluators, alternative onsite sewage system installers, and alternative onsite sewage system operators shall obtain a minimum of 20 contact hours.

[7. All interim licensees shall obtain a minimum of 10 contact hours during the first 24 months that the interim license is valid and shall obtain a minimum of 10 contact hours during the second 24 months that the interim license is valid.]

CPE provisions do not apply for the renewal of waterworks [and wastewater works] operator licenses or provisional licenses that were held for less than two years on the date of expiration.

B. The subject matter addressed during CPE contact hours shall be limited to the content areas covered by the board's examination appropriate to the license for which renewal is sought.

C. Any course approved by the board for substitution as training credits or formal education semester hours, as provided for in [~~18VAC160-20-160~~ 18VAC160-20-150], shall also be acceptable on an hour-for-hour basis for CPE contact hours. One semester hour of college credit shall equal 15 CPE contact hours, and one quarter hour of college credit shall equal 10 CPE credit hours.

D. The following evidence shall be maintained to document completion of the hours of CPE specified in subsection A of this section:

1. Evidence of completion of a structured training activity which shall consist of the name, address and telephone number of the sponsor;
2. The dates the applicant participated in the training;
3. Descriptive material of the subject matter presented; and
4. A statement from the sponsor verifying the number of hours completed.

E. Each licensee and provisional licensee shall maintain evidence of the satisfactory completion of CPE for a period of at least one year following the end of the license renewal cycle for which the CPE was taken. Such documentation shall be in the form required by subsection D of this section and shall be provided to the board or its duly authorized agents upon request.

F. The licensee or provisional licensee shall not receive CPE credit for the same training course or structured training activity more than once during a single license renewal cycle to meet the CPE requirement unless the same training course

or structured training activity is an annual requirement established by Virginia or federal regulations.

G. The licensee or provisional licensee may receive CPE credit for a training course or structured training activity which has been mandated by Virginia or federal regulation towards fulfilling the CPE requirement.

H. The licensee or provisional licensee may petition the board for additional time to meet the CPE requirement. However, CPE hours earned during a license renewal cycle to satisfy the CPE requirement of the preceding license renewal cycle shall be valid only for that preceding license renewal cycle.

Part V
Standards of Practice

18VAC160-20-140. Discipline.

The board has the power to discipline and fine any licensee, interim licensee, or provisional licensee and to suspend or revoke or refuse to renew or reinstate any license, interim license, or provisional license as well as the power to deny any application for a license, interim license, or provisional license under the provisions of Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia and this chapter for any of the following:

1. Obtaining or renewing a license, interim license, or provisional license through fraudulent means or misrepresentation;
2. Having been convicted or found guilty by a court in any jurisdiction of any felony or of any misdemeanor involving lying, cheating, or stealing; ~~or for activities carried out while engaged in waterworks or wastewater works activities, related to the performance of the licensee's or interim licensee's duties,~~ there being no appeal pending therefrom or the time for appeal having lapsed. Any plea of nolo contendere shall be considered a conviction for purposes of this [~~subsection~~ subdivision]. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision shall be prima facie evidence of such conviction or discipline. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;
3. Not demonstrating reasonable care, judgment, or application of the required knowledge, skill and ability in the performance of the ~~operating~~ licensee's or interim licensee's duties;
4. Violating or inducing another person to violate any provisions of Chapter 1, 2, 3 or 23 of Title 54.1 of the Code of Virginia [, the provisions of any other relevant

Virginia or federal regulation.] or of any provision of this chapter;

5. Having been found guilty by the board, an administrative body or by a court of any activity ~~in the course of performing his operating duties~~ related to the performance of the licensee's or interim licensee's duties that resulted in the harm or the threat of harm to human health or the environment;

6. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication, of any felony which resulted in the harm or the threat of harm to human health or the environment. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted of or found guilty, regardless of adjudication, of any felony or of any misdemeanor ~~for activities carried out while engaged in waterworks or wastewater works activities~~ related to the performance of the licensee's or interim licensee's duties or involving lying, cheating, or stealing; ~~or~~

7. Negligence, or a continued pattern of incompetence, in the practice ~~as a waterworks or wastewater works operator~~ of a licensee or interim licensee; or

8. Having undertaken to perform or performed a professional assignment that the licensee or interim licensee is not qualified to perform by education, experience, or both.

[18VAC160-20-145. Conflicts of interest.

Individuals holding any evaluator, installer, or operator license shall:

1. Promptly and fully inform an employer or client of any business association, interest, or circumstance that may influence the regulant's judgment or the quality of service.
2. Not accept compensation, financial or otherwise, from more than one party for services on or pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to by, all interested parties in writing.
3. Neither solicit nor accept financial or other valuable consideration from material or equipment suppliers for specifying their products or services.
4. Not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with a client or employer in connection with work for which the regulant is responsible.]

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Part VI
Approval of Training

18VAC160-20-150. Approval of training.

A. ~~Waterworks and wastewater works operator training for all licenses~~ Training courses may be substituted for some of the experience required for Waterworks and Wastewater Works Class III, Class II, and Class I licenses; and for onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators subject to the limitations in this section. Training courses that may be substituted for required experience must be approved by the board except those provided by federal or state agencies, institutions, schools and universities approved by the State Council of Higher Education for Virginia, for which continuing education units are awarded. Training courses requiring board approval shall be approved by the board prior to commencing in accordance with the following:

B. Training courses for which experience credit may be granted must be conducted in general conformance with the guidelines of the International Association for Continuing Education and Training (Association). The board reserves the right to waive any of the requirements of the association's guidelines on a case-by-case basis. Only classroom, laboratory and field trip contact time will be used to compute training credits. No credit will be given for breaks, meals, or receptions.

1. Organization. The board will only approve training offered by a sponsor who is an identifiable organization with a mission statement outlining its functions, structure, process and philosophy, and that has a staff of one or more persons with the authority to administer and coordinate a training credit (TC) program.

2. TC records. The board will only approve training offered by a sponsor who maintains TC records for all participants for a minimum of seven years, and who has a written policy on retention and release of TC records.

3. Instructors. The board will only approve training conducted by personnel who have demonstrated competence in the subject being taught, an understanding of the learning objective, a knowledge of the learning process to be used, and a proven ability to communicate.

4. Objectives. The board will only approve courses that have a series of stated objectives that are ~~consistent with the job requirements of waterworks and wastewater works operators~~ pertinent to the tasks performed by a licensee. The training course content must be consistent with those objectives.

5. Course completion requirements. For successful completion of a training course, participants must attend 90% or more of the class contact time and must demonstrate their learning through written examinations,

completion of a project, [~~self-assessment,~~] oral examination, or other assessment technique.

C. The board shall consider the following information, to be submitted by the course sponsor or instructor on forms provided by the board, at least 45 days prior to the scheduled training course:

1. Course information.

- a. Course title;
- b. Planned audience;
- c. Name of sponsor;
- d. Name, address, phone number of contact person;
- e. Scheduled presentation dates;
- f. Detailed course schedule, hour-by-hour;
- g. List of planned breaks;
- h. Scheduled presentation location; and
- i. Relevancy of course to ~~waterworks or wastewater works operator licensing~~ [the category of] licensure.

2. Instructor qualifications.

- a. Name of instructor;
- b. Title, employer; and
- c. Summary of qualifications to teach this course.

3. Training materials.

- a. Course objectives. A listing of the course objectives stated in terms of the skills, knowledge, or attitude the participant will be able to demonstrate as a result of the training.
- b. Course outline. A detailed outline showing the planned activities that will occur during the training course, including major topics, planned presentation sequence, laboratory and field activities, audio-visual presentation, and other major activities.
- c. Course reference materials. A list of the name, publisher and publication date for commercially available publications. For reference materials developed by the course sponsor or available exclusively through the course, a copy of the reference.
- d. Audio-visual support materials. A listing of any commercially available audio-visual support material that will be used in the program. A brief description of any sponsor or instructor generated audio-visual material that will be used.
- e. Handouts. Identification of all commercially available handout materials that will be used; as well as copies of all other planned handouts.

4. Determination of successful completion. A description of the means that will be used to assess the learning of each participant to determine successful completion of the training program, such as examinations, projects, personal evaluations by the instructor, or other recognized evaluation techniques.

D. Recurring training programs. If there are plans to present the same course of instruction routinely at multiple locations with only minor modifications and changes, the board may approve the overall program rather than individual presentations if so requested by the sponsor.

1. The board shall consider all of the information listed above except those items related to specific offerings of the course.
2. Board approval may be granted for a specific period of time or for an indefinite period.
3. Board approval will apply only to those specific offerings certified by the sponsoring organization as having been conducted by instructors meeting the established criteria and in accordance with the board-approved course outlines and objectives.
4. To maintain approval of the program, changes made to the program since its approval must be submitted.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (18VAC160-20)

Continuing Professional Education (CPE) Certificate of Completion, 19CPE (eff. 3/01) [~~rev. 12/08~~ (rev. 05/09)]

Application for Training Course Approval, 19CRS (rev. 7/01) [~~10/08~~ 05/09]

Experience Verification Form, 19EXP (eff. 07/09)

Education & Training Substitution Form, 19ET SUB (eff. 07/09)

Licensure Fee Notice, 19FEE (eff. 07/09)

Interim Onsite Soil Evaluator - VDH Employees Only License Application, 1930LIC (eff. 07/09)

Interim Onsite Sewage System Installer License Application, 1931 32LIC (eff. 07/09)

Interim Onsite Sewage System Operator License Application, 1933 34LIC (eff. 07/09)

Onsite Soil Evaluator Exam & License Application, 1940 41EXLIC (eff. 07/09)

Onsite Sewage System Installer Exam & License Application, 1944 45EXLIC (eff. 07/09)

Onsite Sewage System Operator Exam & License Application, 1942 43EXLIC (07/09)]

VA.R. Doc. No. R08-791; Filed May 6, 2009, 11:40 a.m.



TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

Title of Regulation: **22VAC40-35. Virginia Independence Program (amending 22VAC40-35-10, 22VAC40-35-20, 22VAC40-35-40 through 22VAC40-35-120, 22VAC40-35-130; repealing 22VAC40-35-5, 22VAC40-35-125, 22VAC40-35-126, 22VAC40-35-127, 22VAC40-35-128).**

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: July 1, 2009.

Agency Contact: Mark L. Golden, TANF Program Manager, Department of Social Services, Division of Benefit Programs, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7385, FAX (804) 726-7356, TTY (800) 828-1120, or email mark.golden@dss.virginia.gov.

Summary:

The amendments eliminate references to the obsolete Virginia Targeted Jobs Grant (VTJG) program and corresponding statutory citations, and replace applicable references to the Aid to Families with Dependent Children (AFDC) with Temporary Assistance for Needy Families (TANF). The amendments also (i) update statutory references, (ii) reduce the allowable processing time for TANF applications from 45 days to 30 days, (iii) revise the definition of "job search" to reflect a federal requirement that states count hours spent searching for jobs rather than number of job searches, (iv) align exemptions from the Virginia Initiative for Employment Not Welfare (VIEW) with those listed in state code, (v) expand opportunities for hardship exceptions in the TANF program, (vi) allow greater participation in educational activities when participating in community work experience, and (vii) set limits on the number of paternity tests (per child) for which the Division of Child Support Enforcement (DCSE) will pay.

Changes from the proposed include clarifying language in 22VAC40-35-100 to reflect the intent that educational activities can substituted for community work experience hours during the participants' initial six-month placement in community work experience.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's

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response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Part I General Provisions

22VAC40-35-5. Federal waivers. (Repealed.)

~~The provisions of this regulation requiring additional federal waivers (22VAC40-35-20 A 6, 22VAC40-35-100 B 1 d and D 2 e, and 22VAC40-35-110) shall become effective only upon the receipt of such waivers and completion of the promulgation of these regulations.~~

22VAC40-35-10. Definitions.

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

"Actively seeking employment" means satisfactorily participating in any assigned job-seeking activity while in the program.

"Adult portion" means the TANF amount paid on behalf of the parent or other caretaker-relative with whom the TANF child resides, including a minor parent. This amount is the difference in the standard of assistance for a family size which includes the adult and the standard of assistance for a family size of one less person.

~~"AFDC Foster Care" means a federal program authorized under § 472 of the Social Security Act (42 USC § 672) and administered by the Virginia Department of Social Services, which provides financial assistance on behalf of qualifying children.~~

"Agreement" means the written individualized agreement of personal responsibility required by § 63.2-608 of the Code of Virginia.

"Allotment" means the monthly food stamp benefit given to a household.

"Applicant" means a person who has applied for TANF or TANF-UP benefits and the disposition of the application has not yet been determined.

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive assistance.

"Caretaker-relative" means the natural or adoptive parent or other relative, as specified in 45 CFR 233.90(c)(1)(v), who is responsible for supervision and care of the needy child.

"Case management" means the process of assessing, coordinating, monitoring, delivering or brokering activities and services necessary for VIEW participants to enter employment or employment-related activities as quickly as possible.

"Case management services" means services which include, but are not limited to, job development and job placement, community work experience, education, skills training, and support services.

"Case manager" means the worker designated by the local department of social services, a private-sector contractor or a private community-based organization including nonprofit entities, churches, or voluntary organizations that provide case management services.

"Child day care" means those services for which a participant is eligible pursuant to child day care services policy.

"Child day care services/program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of children under the age of 13 (or children up to 18 years of age if they are physically or mentally incapable of caring for themselves or subject to court supervision) for less than a 24-hour period.

"Community work experience" means work for benefits in a public or private organization that serves a community/public function.

"Department" means the Virginia Department of Social Services.

"Diversionary cash assistance" means a one-time lump sum payment to an individual or third-party vendor to prevent long-term receipt of TANF.

"Division of Child Support Enforcement" or "DCSE" means that division of the Virginia Department of Social Services which is responsible under Title IV-D of the Social Security Act (42 USC §§ 651-669) to locate noncustodial parents, establish paternity, establish child support and health care orders, enforce payment of delinquent support, and collect and distribute support payments.

"Employer tax credit" means a tax credit available to an employer pursuant to § 58.1-439.9 of the Code of Virginia.

"Family" means a TANF assistance unit.

"Food Stamp Program" means the program administered through the Virginia Department of Social Services through which a household can receive food stamps with which to purchase food products.

"Full Employment Program" or "FEP" means subsidized, training-oriented, employment which replaces the TANF and food stamp benefits of a participant. This component of VIEW is designed to train the recipient for a specific job, increase his self-sufficiency and improve his competitiveness in the labor market.

~~"Full time unsubsidized employment" means employment which is considered by the employer to be full time, but in no case less than 30 hours per week, and for which no JOBS, VIEW, TANF, or food stamp funds are used to pay the individual's salary.~~

"Grant" means the monthly TANF benefit payment.

"Hardship exceptions" means prescribed reasons which, if applicable, would allow an extension of receipt of TANF benefits.

"He" means a male or female, as applicable.

"Hiring authority" means an individual with the authority to hire employees for a business.

"In loco parentis" means an adult relative or other adult who is acting in place of a parent.

"Incapacitated" means a medically verified condition which renders an individual unable to work.

~~"Job Opportunities and Basic Skills Training Program (JOBS)" means the program authorized by Title IV F of the Social Security Act (42 USC §§ 681-687). This program provides education, training and work experience to enhance employment opportunities for TANF recipients who are not exempt from participation.~~

~~"Job finding" means identification of available jobs.~~

~~"Job matching" means matching a participant's minimum skills or prior work experience to available job openings.~~

~~"Job placement" means placing a participant in an unsubsidized or subsidized job. Job placement is the result of job finding and job matching.~~

~~"Job search" means a structured, time-limited period in which the participant is required to search for employment. To complete the job search, the participant must search and apply for a set number of jobs. The participant must complete a set number of hours searching for employment.~~

"Job skills training" means training in technical job skills or required knowledge in a specific occupational area in the labor market.

"Local agency" or "local department" means any one of the local social services or welfare agencies throughout the Commonwealth which administers the VIP program.

"Minor parent" means any parent under 18 years of age.

"On-the-job training" means training which is provided by an employer during routine performance of a job.

"Parent" means a mother or father, married or unmarried, natural, or adoptive following entry of an interlocutory order. The parent may be a minor parent.

"Participant" means a TANF or TANF-UP recipient who is participating in the VIEW program.

"Participating family" means an assistance unit including a parent who participates in the Virginia Initiative for Employment not Welfare (VIEW) Program.

"Part-time unsubsidized employment" means employment of at least ~~eight~~ 10 hours but less than 30 hours per week and for which no JOBS, VIEW, TANF, or food stamp funds are used to pay the individual's salary.

"Post-secondary education" means formal instruction at an institution of higher education or vocational school leading to the attainment of a certificate, an associate degree, or a baccalaureate degree.

~~"Qualified business employer" means an employer whose business employed not more than 100 employees at the time that the employer first hired a qualified employee.~~

~~"Qualified employee" means an employee who is a Virginia resident and is a recipient of Temporary Assistance for Needy Families (TANF).~~

~~"Qualified employer" means an employer who may participate in the Virginia Targeted Jobs Grant Program by virtue of meeting all of the program criteria for employers.~~

~~"Qualified participant" means a Virginia Initiative for Employment not Welfare participant who meets all of the program criteria and may be hired by a qualified employer.~~

"Recipient" means an individual who is presently receiving a TANF assistance payment or whose eligibility exists even though the assistance payment is zero.

"Recipient family" means an assistance unit in which the caretaker-relative is a parent of the eligible child and the parent's needs may or may not be included on the grant.

"Relative" means spouse, child, grandchild, parent, or sibling of a qualified employer.

"Sanction" means to reduce or suspend a participant's TANF grant or food stamp allotment or both, where applicable, for noncompliance with these regulations or the statute.

"School" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within this Commonwealth or (ii) any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12.

"Support services" means services such as child care or transportation provided to program participants to enable the participant to work or to receive training or education which are intended to lead to employment.

"Temporary Assistance for Needy Families" or "TANF" means the program authorized in § 406 of the Social Security Act (42 USC § 606) and administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

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"Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the program authorized in § 63.2-602 of the Code of Virginia and administered by the Virginia Department of Social Services, which provides aid to two-parent families with dependent children who are in financial need.

"Time limitations" means a specified period of time, under the statute, to receive TANF.

"Transitional support services" means child care, transportation, medical assistance or employment and training services provided to working participants whose TANF has been terminated either voluntarily, although still eligible for TANF, or involuntarily, due to time limitations.

"Truant" means a child who (i) fails to report to school for three consecutive school days, or for a total of five scheduled school days per month or an aggregate of seven scheduled school days per school calendar quarter, whichever occurs sooner, and no indication has been received by school personnel that the child's parent or guardian is aware of the child's absence, and a reasonable effort by school personnel to notify the parent or guardian has failed; or (ii) is not enrolled in school at any time during the month.

"Underemployed" means working at a job for less than the federal hourly minimum wage.

"Unsubsidized employment" means employment in which no government funds are used to subsidize directly the wages earned by a participant.

"Virginia Independence Program" or "VIP" means the program in the Commonwealth of Virginia which is made up of the TANF Program and the Virginia Initiative for Employment not Welfare.

"Virginia Initiative for Employment not Welfare" or "VIEW" means the ~~Job Opportunities and Basic Skills Training Program as implemented in the Commonwealth employment program for TANF recipients.~~

~~"Virginia Targeted Jobs Grant" or "VTJG" means a grant paid to an employer in accordance with § 63.1-25.3 of the Code of Virginia.~~

"Work activity" means participation in unsubsidized employment, FEP, part-time work, community work experience, on-the-job training, job search, job readiness, community service, job skills training directly related to employment, satisfactory attendance at secondary school, or in a course of study leading to a certificate of general equivalence.

Part II Eligibility Requirements

22VAC40-35-20. Cooperation in obtaining support.

A. As a condition of eligibility, each applicant for or recipient of ~~AFDC~~ TANF shall be required to cooperate (unless good cause for refusing to do so is determined to exist in accordance with federal regulations at 45 CFR 232.40 through 232.43). Cooperation shall mean all of the following actions necessary for the identification and location of noncustodial parents and the establishment and collection of child support owed to the person applying for or receiving public assistance:

1. Identifying the parent of a child for whom aid is requested. The applicant or recipient shall provide, under penalty of perjury, the first and last name of the individual against whom paternity or an obligation to provide support is sought to be established, modified, or enforced. If the applicant or recipient is not certain of the child's paternity, he shall identify all individuals with whom the mother had sexual intercourse who may be the father.

2. Providing, under penalty of perjury, additional informational items sufficient to verify the parent's identity including, at a minimum, three of the following: the noncustodial parent's social security number; race; date of birth; place of birth; telephone number; address; schools attended; occupation; employer; driver's license number; make and model of motor vehicle; motor vehicle license plate number; places of social contact; banking institutions utilized; and names, addresses or telephone number of parents, friends, or relatives.

3. Appearing at an office of the local social services agency or the Division of Child Support Enforcement as necessary to provide verbal or written information or documentary evidence known to, possessed by, or reasonably attainable by the applicant.

4. Appearing as a witness at judicial or administrative hearings or proceedings.

~~5. Providing information, or attesting to the lack of information, under penalty of perjury.~~

~~6. 22VAC40-35-20 A 5 shall be repealed upon receipt of appropriate waiver or other authorization from the federal government.~~

B. If the caretaker-relative is not a parent of the child for whom aid is requested or received, subdivisions A 1 and 2 of this section shall not be required.

C. If the parent is unsure of the identity of the father of the child, she is to name all potential persons who may be the father of the child. The Division of Child Support Enforcement will provide paternity testing for up to five potential fathers at its expense. After five potential fathers

have been tested, the parent must assume full responsibility for any additional testing. If the parent fails or refuses to pay for further paternity testing, this will be considered to be noncooperation.

22VAC40-35-40. Diversionary assistance program eligibility criteria.

A. An assistance unit shall be eligible to receive diversionary cash assistance if:

1. Verification is provided to the local department of social services that the assistance unit has a temporary loss of income or delay in starting to receive income resulting in an emergency;
2. The assistance unit meets AFDC requirements specified in ~~§ 63.1-105~~ § 63.2-617 of the Code of Virginia; and
3. The local department of social services determines that diversionary assistance will resolve the emergency.

B. The amount of assistance provided shall be up to the maximum AFDC TANF amount for 120 days that the family would otherwise be eligible to receive. The amount of the payment is based on immediate needs of the applicant. Local agencies shall strive to provide the most cost-effective solution to the one-time emergency.

C. If an assistance unit receives a diversionary assistance payment, all assistance unit members shall be ineligible for AFDC TANF for 1.33 times the number of days for which assistance is granted, beginning with the date that the diversionary assistance is issued.

D. An assistance unit shall be eligible to receive diversionary assistance once in a 60-month period.

E. Receipt of diversionary assistance is voluntary.

F. Local social services agencies shall determine eligibility for diversionary assistance within five working days of the receipt of the final verification that substantiates eligibility, or within ~~45~~ 30 days of the date of the receipt of the signed application, whichever occurs first.

22VAC40-35-50. School attendance.

A. The Virginia Department of Social Services shall develop procedures with the Department of Education to receive notification from local school divisions of any student who is truant. If notification is received from another source, the local department shall verify such truancy by contacting the school.

B. When verified by the school of such truancy, the local social services department shall do the following:

1. The local department shall send a written notice to the caretaker-relative advising him that the truant recipient is in jeopardy of losing eligibility for AFDC TANF benefits. The caretaker-relative must contact the local department

within five days of the notice to cooperate in developing a plan to achieve compliance with compulsory school attendance laws. The notice must also specify that failure to contact the local department may result in the truant recipient's ineligibility for AFDC TANF due to noncooperation.

2. If the caretaker-relative fails to respond within five days of the notice, the local department shall make a personal contact which may include a direct telephone contact with the caretaker-relative to explain the requirement to develop a plan to return the child to school and the result of not cooperating with the requirement.

3. If the local department is unable to make personal contact, the local department shall mail a written advance notice of proposed action to the caretaker-relative advising that AFDC TANF benefits will be reduced if the caretaker-relative fails to contact the local department to develop a plan to return the child to school.

C. If the local department of social services denies or terminates AFDC TANF for noncompliance, the caretaker-relative shall notify the local department in writing of the truant individual's compliance with this section and file a new application for AFDC TANF. The local department shall verify compliance by contacting the school.

22VAC40-35-60. Minor parent residency requirement.

A. To be eligible to receive AFDC TANF, a minor parent shall reside in the home maintained by his parent or person standing in loco parentis unless he meets the good cause exception outlined in subsection B of this section. The local department shall ensure that the following priority order for the minor parent's living arrangements is considered: in a home maintained by a parent, other adult relative, legal guardian, or other adult determined by the department to be acting in place of a parent.

B. The minor parent residency requirement shall not apply if the local department of social services determines, by clear and convincing evidence, that the physical or emotional health or safety of the minor parent or his dependent child would be jeopardized if the minor parent and dependent lived in the same residence with the minor parent's parent or person standing in loco parentis. Such a claim shall be corroborated by evidence such as court, medical, criminal, child protective services, psychological, or law-enforcement records.

C. The local department of social services shall maintain a list of available housing to be used to refer a minor parent who is in need of an adult-supervised supportive living arrangement. If the local department of social services makes a referral, it will be deemed that the local department has made diligent efforts to locate such housing.

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D. As a condition of eligibility, the minor parent shall reside at the local housing to which he is referred by the local department.

22VAC40-35-70. Limitation on AFDC TANF benefits.

A. A recipient family is not entitled to an increase in AFDC TANF benefits if the mother of such recipient family gives birth to an additional child during the period of the family's eligibility for financial assistance.

B. Applicants for AFDC TANF financial assistance shall receive notice of the provisions of this section at the time of application. At application or redetermination, such applicant or recipient shall sign a notification acknowledging that they have read and understand the notice.

C. The provisions of this section shall not apply to a child born or adopted during the 10 months following the implementation effective date nor to a child born or adopted during the 10 full calendar months following the month in which the initial assistance check is issued.

D. The provisions of this section shall apply equally to recipient families who adopt a child except that the provision shall be applied using the date of entry of the interlocutory order instead of the child's birthdate.

Part III

Virginia Initiative for Employment Not Welfare (VIEW)

22VAC40-35-80. Participant eligibility.

A. Individuals The following individuals shall be exempt from mandatory participation in VIEW:

1. Any individual, including all minor caretakers, under 16 years of age;

2. Any individual at least 16 but no more than 19 years of age who is enrolled full time in elementary or secondary school, including career and technical education programs. The career and technical education program must be equivalent to secondary school. Whenever feasible, such recipients should participate in summer work.

3. Any individual unable to participate because of a temporary medical condition that prevents entry into employment or training, as determined by a physician. Such individuals must provide to the local department a written statement from a physician to specify that he is incapacitated, the nature and scope of the incapacity, and the duration of the incapacity. The worker must reevaluate the participant's incapacity at the time prescribed by the medical statement or every 60 days, whichever comes first. The recipient must provide verification that he continues to be incapacitated.

4. Any individual who is receiving Social Security Disability Benefits or Supplemental Security Income.

~~B. 5. Any individual who is the sole caregiver of another member of the household who is incapacitated, and whose presence is essential for the care of the other member on a substantially continuous basis, shall be exempt from participation in VIEW. Incapacity is determined by receipt of Social Security Disability Benefits or Supplemental Security Income. The sole other condition under which an individual may be determined incapacitated is by, or a written medical statement from a physician.~~

6. Any individual who is age 60 or older.

~~C. AFDC recipients who meet an exemption from participation in VIEW may volunteer for the program.~~

~~D. 7. A parent of a child under 12 months of age who personally provides care for the child. A parent of a child not considered part of the TANF public assistance unit due to the provisions listed in § 63.2-604 of the Code of Virginia may be granted a temporary exemption of not more than six weeks after the birth of such child.~~

~~E. B. Nonparents who receive TANF shall participate in VIEW if not otherwise exempt.~~

~~F. C. Pregnant women shall participate in VIEW if not otherwise exempt. Pregnant women shall be assigned to job readiness, training, and educational activities during the last trimester of pregnancy.~~

D. TANF recipients who meet an exemption from participation in VIEW may volunteer for the program.

22VAC40-35-90. Services.

A. The participant shall have the primary responsibility to arrange transportation to be employed or participate in activities required by the Agreement of Personal Responsibility. Transportation shall be provided only when the participant is unable to make the necessary arrangements.

~~B. The local department shall provide transitional medical assistance in accordance with the Department of Medical Assistance Services State Plan and regulations.~~

~~C. B. The local departments may provide those services itemized in § 63.2-611 B of the Code of Virginia.~~

~~D. C. Transitional employment and training services shall be through the VIEW program to certain individuals.~~

1. Transitional employment and training services can be provided if the following criteria are met:

a. The individual is already employed or the provisions of the employment and training services would allow the individual to become reemployed within 60 days.

b. The activities are designed to maintain employment income, increase employment income or prevent the loss of employment income by the participant.

- c. The individual had been enrolled in the VIEW program.
 - d. The TANF case of which the individual was a member is closed.
 - e. The case had not been in a VIEW sanction at the time of closure.
 - f. The individual has not completed an associate degree or four-year degree.
2. The individual can only receive up to 12 months of transitional employment and training services available through the VIEW program.
 3. The individual shall enroll in an activity which can be completed within the 12-month time period.
 4. An individual can only be enrolled in an activity if approved by a VIEW employment services worker.
 5. Individuals may be enrolled only in education and training activities for which there are jobs in the community or jobs are projected to become available in the community.
 6. Continued enrollment in education and skills training activities is dependent upon meeting the satisfactory progress requirements for participation in these activities.
 - a. For education below the post-secondary level (Adult Basic Education and General Equivalency Diploma), the individual must obtain one grade level increase every three months.
 - b. For certificate and job skills training activities, the participant must meet the satisfactory progress requirements of the institution providing the training.
 7. Participants shall not be assigned to FEP (Full Employment Program).

~~E. D.~~ A VIEW participant shall be eligible for a transitional job retention assistance payment of \$50 per month for up to one year after the end of TANF cash assistance. To qualify the participant shall:

1. Be employed at the end of TANF cash assistance;
2. Maintain employment of at least 30 hours per week; and
3. Provide verification of earnings and continued employment of at least 30 hours per week.

22VAC40-35-100. VIEW activities.

A. VIEW recognizes that parents have the obligation to support their children through ~~work/employment~~ employment.

B. VIEW shall recognize clearly defined responsibilities and obligations on the part of public assistance recipients. VIEW shall require an Agreement of Personal Responsibility and the

obligation to seek and obtain employment. Refusal to sign the Agreement of Personal Responsibility shall result in termination of ~~AFDC and food stamps~~ TANF. The Agreement of Personal Responsibility shall be written for each nonexempt participant specifying, among other applicable requirements, the following:

1. The participant's obligations and responsibilities:
 - a. That it is the participant's responsibility to seek employment to support his own family.
 - b. That it is the participant's responsibility to participate in assignments made by the case manager.
 - c. That it is the participant's responsibility to notify the case manager of any change in the participant's circumstances which would impact the participant's ability to satisfactorily participate in the program.
 - d. That it is the participant's responsibility to accept offers of suitable employment. Refusal to accept offers of suitable employment will result in the loss of the participant household's ~~AFDC and food stamps. Loss of food stamps for refusal to accept offers of suitable employment will result in the entire household's food stamp allotment being terminated when the participant is the head of household. If the participant is not the head of the household, only the participant's prorata share shall be removed from the allotment~~ TANF.
 - e. That it is the participant's responsibility to arrange and find transportation and day care. The agency will provide for transportation and day care, to the extent funding is available, only when the participant is unable to make his own arrangements.

2. Explanation of the two-year time limit.

C. Modification of the Agreement of Personal Responsibility shall not impact or change the two-year time limit for receipt of ~~AFDC~~ TANF benefits.

D. A VIEW participant who does not meet an exemption shall be required to participate in a work activity. The department shall ensure that participants are assigned to one of the following employment categories ~~not less than 90 days~~ after AFDC TANF eligibility determination and entry into the VIEW program:

1. Unsubsidized private sector employment (full-time, part-time or temporary) is the preferred employment category. A participant shall be required to accept any offers of suitable employment as defined in § 60.2-618 of the Virginia Unemployment Compensation Act.
2. Subsidized employment as follows:
 - a. The department shall conduct a work activity which shall be known as the Full Employment Program (FEP),

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which shall replace ~~AFDC and food stamp~~ TANF benefits with subsidized employment.

b. The local department, employer and the full employment participant shall sign a written agreement. At the expiration of this full employment agreement or when the participant leaves FEP, he will be reassessed and a modified Activity and Service Plan will be developed to reassign the participant to an appropriate employment category.

c. The employer is reimbursed for the wages paid to the participant up to the ~~combined~~ value of the participant's ~~AFDC and food stamps~~ TANF benefits as contained in the agreement signed between the department and the employer.

(1) The employer subsidy will be based on the actual hours the participant works.

(2) The value of the participant's ~~AFDC and food stamp~~ TANF benefits will be based on the benefits received over the period of assignment to a Full Employment Program placement.

3. Community work experience.

a. The participant can be placed into community work experience. Job placements shall serve a useful public purpose as provided in § 482 (f) of the Social Security Act (42 USC § 682 F).

b. The department and local departments shall work with other state, regional, and local agencies and governments in developing job placements. Placements shall be selected to provide skills that will make the participant more employable and serve a public function. Participation in community work experience shall be for an initial period of six months. Program participants shall not displace regular workers.

c. At the expiration of the community work experience assignment or when the participant leaves community work experience, he will be reassessed and a modified Activity and Service Plan will be developed to reassign the participant to an appropriate employment category.

d. There shall be no sick leave benefit attached to this component since participants work in exchange for their ~~AFDC TANF~~ and food stamp benefits. Participants who are ill or incapacitated will continue to receive their benefits.

4. In order to be considered a work activity in VIEW, on-the-job training must be provided by an employer. This is typically employer-required unpaid training by an employer which must be completed before an individual will be hired.

E. Other VIEW activities include:

1. Education.

a. Education may only be provided in conjunction with work-related activities during the participant's two-year time period.

(1) ~~Only eight [Assigned hours per week of Educational activities can be substituted for]~~ community work experience hours ~~[can be]~~ provided ~~[substituted for educational activities]~~ during the participant's initial six-month placement in community work experience ~~[. as long as The participant [is must be] engaged in community work experience for at least 20 hours per week [in addition to the educational activities]~~ . After six months of participation in community work experience, the number of hours required in the work activity can be reduced to allow participation in education to further the participant's employability.

(2) Participants who enroll into education or training programs prior to coming in VIEW shall be required to meet the requirements of the program.

b. Post-secondary education. Participants assigned to post-secondary education should have demonstrated the capability to successfully complete the educational activity in the prescribed time period in an occupational area for which there is demand in the community.

2. Job skills training may only be provided in conjunction with work-related activities during the participant's two-year time period. The choice of occupational skills training offered will vary in each jurisdiction depending upon local labor market conditions. However, skills training must be related to the types of jobs which are available or are likely to become available in the community.

3. Job search and job readiness.

4. Community service.

5. Vocational education.

22VAC40-35-110. Sanctions.

Local departments of social services shall be authorized to sanction participants in the ~~Food Stamp Program as allowed pursuant to 7 CFR 273.7(g) and in the AFDC TANF Program~~ up to the full amount of the ~~AFDC TANF~~ grant for noncompliance, without good cause as defined by the ~~JOBS~~ State Plan, as follows:

1. A participant assigned to the Full Employment Program who does not work the required hours will only be paid for the actual hours worked. Participants that are terminated from FEP by the employer due to problems with attendance or performance or both will be sanctioned the full amount of the ~~AFDC and food stamp benefits~~ TANF grant.

2. A recipient assigned to VIEW who is determined to be in noncompliance with the VIEW Program shall be sanctioned as follows:

- a. For the first offense, the full amount of ~~AFDC TANF~~ benefits for the family shall be suspended for at least one calendar month or until the individual complies with the program requirements, whichever is longer.
- b. For the second offense, the full amount of ~~AFDC TANF~~ benefits for the family shall be suspended for at least three calendar months or until the individual complies with the program requirements, whichever is longer.
- c. For the third or subsequent offenses, the full amount of ~~AFDC TANF~~ benefits for the family shall be suspended for at least six calendar months or until the individual complies with the program requirements, whichever is longer.

22VAC40-35-120. Hardship exceptions.

A. In certain circumstances, hardship exceptions may be made to the time limitations for receipt of ~~AFDC TANF~~ benefits. A request for a hardship exception may be made by an individual who is either a current VIEW participant in the 60-day period prior to the closure of the TANF case due to the receipt of 24 months of TANF benefits or a former VIEW participant in the period of ineligibility following the receipt of 24 months of TANF benefits. If the participant requests a hardship exception, the local department shall make an evaluation of participation while in VIEW and, if applicable, the period of ineligibility after VIEW participation. This evaluation will determine if a hardship exception may be granted to allow the participant to continue receiving ~~AFDC TANF~~ and to continue to participate in VIEW after the receipt of 24 months of TANF benefits. Once a participant has exhausted the time limit extended to him under a hardship exception, he may not apply for another extension based upon the same hardship.

A participant is not eligible for a hardship exception unless he has complied with the requirements of the program, which are satisfactory participation in assigned program activities, not having been sanctioned more than once during the two-year period for failing to comply with the requirements of the program, and not leaving a job, without good cause as defined by the ~~JOBS~~ State Plan, at any time during the program. Former participants will not be eligible for a hardship exception unless the individual has complied with the requirements of the program while in VIEW and has not lost employment as a result of factors unrelated to his job performance since entering the period of ineligibility. Factors unrelated to job performance are defined as those situations in which the Virginia Employment Commission would determine that the individual would be eligible for

unemployment compensation if the participant had worked sufficient hours to qualify.

B. If the above criteria are met, a hardship exception may be granted by the local agency for up to one year if one of the following conditions exists:

1. If the unemployment rate in the participant's locality for the two most recent quarters for which data is available from the Virginia Employment Commission prior to the individual's ~~two-year time limit elapsed~~ request for a hardship exception was 10% or greater. In order to qualify for this exception the participant must also be actively seeking employment as defined in § 60.2-612 of the Code of Virginia.
2. If extension of benefits for up to one year will enable a participant to complete employment-related education or training and the participant had been making satisfactory progress per program requirements.

Participants granted a hardship exception under this subsection shall be reevaluated at least every 90 days to determine if a basis for the hardship exception continues to exist. If a hardship exception is granted, the participant must continue to participate in the program and work activities.

C. A hardship exception shall be granted, if the local department determines that the participant meets all criteria, for up to 90 days if the following conditions exist:

1. If the participant has been actively seeking employment by engaging in job-seeking activities required pursuant to § 60.2-612 of the Code of Virginia and is unable to find employment that would, in combination with any other income sources of assistance that the individual is receiving, pay an amount equal to or exceeding the case's ~~AFDC TANF~~ cash benefits and standard work deduction. The local department may extend benefits for up to ~~three months~~ 90 days to allow the participant to find employment.
2. If the program participant loses his job as a result of factors unrelated to his job performance. Factors unrelated to job performance are defined as those situations in which the Virginia Employment Commission would determine that the individual would be eligible for unemployment compensation if the participant had worked sufficient hours to qualify. The local department may extend benefits for up to ~~three months~~ 90 days to allow the participant to find employment.

Extensions of hardship exceptions will be granted in this subsection in very limited circumstances and only to those persons who demonstrate an extreme hardship. The local department shall refer the case to ~~a panel composed of the Commissioner of the Virginia Department of Social Services, the Commissioner of the Virginia Employment Commission, and the Executive Director of the Governor's Employment~~

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~~and Training Department or designee. The panel commissioner or designee shall evaluate each request individually and grant or deny the request for an extension. The panel commissioner or designee will reevaluate the individual's case as it determines necessary, but at least every 90 days, in order to determine whether the conditions justifying the exception continue to exist.~~

22VAC40-35-125. The Virginia Targeted Jobs Grant Program. (Repealed.)

~~A. In order to enhance the employment opportunities of participants, the VIEW program shall administer a grant program called the Virginia Targeted Jobs Grant Program (VTJG):~~

~~1. The Virginia Targeted Jobs Grant Program shall pay a grant not to exceed \$1,000 to participating qualified employers. For the purpose of this section, a qualified employer may not claim a grant if the qualified employee was employed within one year of the date of the current hiring.~~

~~2. Participating employers shall sign an agreement with the Virginia Department of Social Services which will outline the program requirements for both the employer and the Commonwealth.~~

~~B. In order to be a qualified employee, the individual must have been a recipient of TANF for at least nine months prior to hiring.~~

~~1. The employee must be unemployed or underemployed at the time he is hired by the employer.~~

~~2. The employee shall not be a relative of the hiring authority. For the purpose of this section, a relative means a spouse, child, grandchild, parent or sibling of the employer.~~

~~3. The employee must have worked for the employer for at least 1,000 hours during the taxable year.~~

~~4. The employee must have been placed with the employer as a result of his participation in the Department of Social Services' VIEW Program.~~

~~C. In order to make application for the Virginia Targeted Jobs Grant Program grant, a participating employer shall complete the application form supplied by the Department of Social Services. The application form shall be submitted to the Virginia Department of Social Services, Division of Financial Management with certification of the participant's employment for the period in question. The application must be filed no later than the last day of the third month following the close of the taxable year for which the grant is claimed. Grants will be awarded by May 30 of each year. If funds are not sufficient to cover the cost of the VTJGs to which each employer is entitled, each employer will be authorized a credit proportionate to his share of the available funding.~~

~~Grants for applications received after April 15 will not be awarded until the following fiscal year. A VTJG Certification of Participant Placement must accompany the application.~~

~~D. The Commissioner of the Department of Social Services, or his designee, may examine the books, records, and other applicable documents to determine that the employer has satisfied the above requirements and is eligible for a VTJG.~~

Part IV Employer Tax Credit

22VAC40-35-126. Employer eligibility. (Repealed.)

~~A. For taxable years beginning on and after January 1, 1999, a qualified business employer shall be allowed a credit imposed against taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia in an amount equal to 5.0% of the annual salary paid during the taxable year to a qualified employee; however, in no case shall the credit exceed \$750 per qualified employee.~~

~~B. For the purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business.~~

~~C. Any credit not usable for a taxable year may be carried over to the next three taxable years. The amount of any credit allowed shall not exceed the tax imposed for the taxable year. A credit may not be carried back to a prior taxable year. If a qualified business that is subject to the tax limitation is allowed another credit under another provision of the Code of Virginia, or has a credit carryover from a preceding taxable year, such employer must first utilize any credit which does not have a carry-over provision, and then any credit which is carried forward from a prior taxable year, prior to using a credit allowed under this section.~~

~~D. The amount of tax credits available, when added to the amount of grants made to employers under the Virginia Targeted Jobs Grant Program for the fiscal year, shall not exceed the amount appropriated to the Virginia Targeted Jobs Grant Fund as provided in the general appropriation act.~~

~~E. No qualified business employer shall be eligible to claim a credit for any taxable year that the employer is the recipient of a grant for the same qualified employee under the Virginia Targeted Jobs Grant Program.~~

Part V

Procedures for Claiming a Virginia Targeted Jobs Grant or Employer Tax Credit

22VAC40-35-127. Procedures for claiming a Virginia Targeted Jobs Grant. (Repealed.)

A. No later than three months following the close of a taxable year, but no later than April 15 of each year, any employer who hires a qualified employee during the taxable year must submit an application for a Virginia Targeted Jobs Grant (VTJG) to the Virginia Department of Social Services, Division of Financial Management, pursuant to 22VAC40-35-125.

B. The employer will include on the application:

1. The taxable year for which the qualified employee was hired;
2. The employee name and SSN;
3. The date the qualified employee was hired;
4. Total wages paid to the qualified employee during the taxable year;
5. Total hours worked by the employee during the taxable year;
6. The employer federal ID number;
7. A statement that the qualified employee was not previously employed by the employer within 12 months of the date the qualified employee was hired; and
8. A certification that the employee is not a relative and has worked for more than 1,000 hours at a rate of pay which is at least the minimum wage during the taxable year for which the employer is claiming the VTJG.

C. By May 15 of each year the total amount of VTJGs will be calculated and grants will be issued by the DSS in accordance with 22VAC40-35-125-C.

D. Unused balances for a fiscal year will be issued to qualifying employers as an employer tax credit.

22VAC40-35-128. Procedures for claiming an employer tax credit. (Repealed.)

A. By April 15 of each year, any qualified business employer who hires a qualified employee during a taxable year beginning on or after January 1, 1999, must submit a Virginia Employer Tax Credit Application Form to the Virginia Department of Social Services, Division of Financial Management.

B. The request will include:

1. A certification that the company meets the definition of a qualified business employer as defined in § 58.1-439.9 of the Code of Virginia;

2. The employee name and SSN;

3. The taxable year for which the qualified employee was hired;

4. The date the qualified employee was hired;

5. Total wages paid to the qualified employee during the taxable year;

6. Total hours worked by the employee during the taxable year; and

7. The employer federal ID number.

C. After the department calculates and issues VTJG payments, the unexpended VTJG appropriation, as set forth in 22VAC40-35-127-D, will be used to determine each qualified employer's entitlement to a employer tax credit. Based upon the number of employer tax credit requests received and the balance of VTJG funds, the department will determine the maximum employer tax credits (MTC) allowed, not to exceed \$750 per qualified employee. If funds are not sufficient to cover the cost of the MTC to which each employer is entitled, each employer will be authorized a credit proportionate to his share of the available funding. The department will notify each qualified employer of the employer tax credit allowable for the taxable year which will be the MTC or a lesser amount based upon wages paid or maximum funding available. By June 15 of each year, the department will issue certifications of allowable employer tax credits to each qualified employer. The employer may amend their tax return for the taxable year for which the credit was earned or may apply the credit to a future year pursuant to § 58.1-439.9 of the Code of Virginia.

D. The department will notify the Virginia Department of Planning and Budget of the combined VTJG issued and MTC certified in the fiscal year by June 30 of each year.

Part VI IV
Appeals

22VAC40-35-130. Appeals process.

A participant aggrieved by the decision of a local board granting, denying, changing, or discontinuing assistance may appeal such decision pursuant to § 63.1-116 § 63.2-517 of the Code of Virginia. A participant cannot appeal the provisions of the Agreement of Personal Responsibility which was mutually developed by the participant and the local agency.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia

FORMS (22VAC40-35)

View Agreement of Personal Responsibility.

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View Activity and Service Plan.

View Full Employment Agreement.

~~Virginia Employer Tax Credit Application Form.~~

VA.R. Doc. No. R07-732; Filed May 4, 2009, 12:05 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Board of Social Services will receive, consider and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-72. Standards for Licensed Assisted Living Facilities (amending 22VAC40-72-10, 22VAC40-72-160, 22VAC40-72-210, 22VAC40-72-660, 22VAC40-72-670).**

Statutory Authority: §§ 63.2-217 and 63.2-1732 of the Code of Virginia.

Effective Date: August 1, 2009.

Agency Contact: Judith McGreal, Program Development Consultant, Department of Social Services, Division of Licensing Programs, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7157, FAX (804) 726-7132, TTY (800) 828-1120, or email judith.mcgregal@dss.virginia.gov.

Summary:

The amendment is necessary to implement a recent amendment to § 54.1-3042 of the Code of Virginia by Chapter 133 of the 2009 Acts of Assembly, which allows an applicant for registration as a medication aide to act as a medication aide on a provisional basis if the person has provided to the Virginia Board of Nursing evidence of successful completion of the education or training course required for registration. The applicant may not act as a medication aide on a provisional basis for more than 120 days before successful completion of any required competency evaluation. However, upon notification that the applicant has failed to successfully complete the written examination after three attempts, the person must immediately cease acting as a medication aide.

Part I General Provisions

22VAC40-72-10. Definitions.

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

"Activities of daily living (ADLs)" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Administer medication" means to open a container of medicine or to remove the ordered dosage and to give it to the resident for whom it is ordered.

"Administrator" means the licensee or a person designated by the licensee who is responsible for the general administration and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Advance directive" means, as defined in § 54.1-2982 of the Code of Virginia, (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia. The individual or his legal representative can rescind the document at any time.

"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by 13VAC5-63, the Virginia Uniform Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

"Assisted living facility" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or

marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

Assuming responsibility for the well-being of residents, either directly or through contracted agents, is considered "general supervision and oversight."

"Behavioral health authority" means the organization, appointed by and accountable to the governing body of the city or county that established it, that provides mental health, mental retardation, and substance abuse services through its own staff or through contracts with other organizations and providers.

"Building" means a structure with exterior walls under one roof.

"Cardiopulmonary resuscitation (CPR)" means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed and has no pulse and has stopped breathing; and attempts to restore circulation of the blood and prevent death or brain damage due to lack of oxygen.

"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms or symptoms from mental illness or mental retardation, that prohibits an individual from reaching his highest level of functioning.

"Commissioner" means the commissioner of the department, his designee or authorized representative.

"Community services board" or "CSB" means a citizens' board established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, mental retardation and substance abuse programs and services within the political subdivision or political subdivisions participating on the board.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes a local or regional program designated by the Department for the Aging as a public conservator pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 of the Code of Virginia.

"Continuous licensed nursing care" means around-the-clock observation, assessment, monitoring, supervision, or provision of medical treatments provided by a licensed nurse. Residents requiring continuous licensed nursing care may include:

1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or
2. Individuals with a health care condition with a high potential for medical instability.

"Department" means the State Department of Social Services.

"Department's representative" means an employee or designee of the State Department of Social Services, acting as an authorized agent of the Commissioner of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary ingredient(s), i.e., vitamins, minerals, amino acid, herbs or other botanicals, dietary substances (such as enzymes), and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients. Dietary supplements may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other employees of a facility who assist residents in the performance of personal care or daily living activities. Examples are likely to include nursing staff, activity staff, geriatric or personal care assistants, medication aides, and mental health workers but are not likely to include waiters, chauffeurs, cooks, and dedicated housekeeping, maintenance and laundry personnel.

"Discharge" means the movement of a resident out of the assisted living facility.

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"Emergency" means, as it applies to restraints, a situation that may require the use of a restraint where the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by denying entry into the facility until the requirements for admission have been met.

"Good character and reputation" means findings have been established and knowledgeable, reasonable, and objective people agree that the individual (i) maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability; and (ii) has a history and pattern of behavior that demonstrates the individual is suitable and able to administer a program for the care, supervision, and protection of adults. Relatives by blood or marriage and persons who are not knowledgeable of the individual, such as recent acquaintances, may not act as references.

"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the person, managing his property and protecting the rights of the person who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the person in need of a guardian has been determined to be incapacitated.

"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent avoidable additional deformity or dysfunction.

"Health care provider" means a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services such as a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization. This list is not all inclusive.

"Household member" means any person domiciled in an assisted living facility other than residents or staff.

"Imminent physical threat or danger" means clear and present risk of sustaining or inflicting serious or life threatening injuries.

"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer or employee or as an independent contractor with the facility.

"Independent living environment" means one in which the resident or residents perform all activities of daily living and instrumental activities of daily living for themselves without requiring the assistance of another person and take medication without requiring the assistance of another person.

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living for himself without requiring the assistance of another person and is assessed as capable of taking medications without the assistance of another person. (If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity, this policy shall not be considered in determining independent status.)

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Individualized service plan (ISP)" means the written description of actions to be taken by the licensee, including coordination with other services providers, to meet the assessed needs of the resident.

"Instrumental activities of daily living (IADLs)" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Intermittent intravenous therapy" means therapy provided by a licensed health care professional at medically predictable intervals for a limited period of time on a daily or periodic basis.

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, trustee, or other person expressly named by a court of competent jurisdiction or the resident as his agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the function or functions for which he has legal authority to act.

A resident is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect his life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the resident in a properly executed and signed document. A resident may have different legal representatives for different functions.

For any given standard, the term legal representative applies solely to the legal representative with the authority to act in

regard to the function or functions relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a nurse practitioner, registered nurse, licensed practical nurse, (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist.

Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

"Licensee" means any person, association, partnership, corporation, company or public agency to whom the license is issued.

"Manager" means a designated person who serves as a manager pursuant to 22VAC40-72-220 and 22VAC40-72-230.

"Mandated reporter" means the following persons acting in their professional capacity who have reason to suspect abuse, neglect or exploitation of an adult:

1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503 of the Code of Virginia, with the exception of persons licensed by the Board of Veterinary Medicine;
2. Any mental health services provider as defined in § 54.1-2400.1 of the Code of Virginia;
3. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5 of the Code of Virginia;
4. Any guardian or conservator of an adult;
5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;
6. Any person providing full, intermittent or occasional care to an adult for compensation, including but not limited to companion, chore, homemaker, and personal care workers; and
7. Any law-enforcement officer.

This is pursuant to § 63.2-1606 of the Code of Virginia.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

An individual who can participate in any way with performance of the activity is not considered to be totally dependent.

"Medication aide" means a staff person who has current registration with the Virginia Board of Nursing to administer drugs that would otherwise be self-administered to residents in an assisted living facility in accordance with the Regulations Governing the Registration of Medication Aides (18VAC90-60). This definition also includes a staff person who is an applicant for registration as a medication aide as provided in 22VAC40-72-660.

"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental retardation" means disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Minimal assistance" means dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.

"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument.

"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Nonemergency" means, as it applies to restraints, circumstances that may require the use of a restraint for the purpose of providing support to a physically weakened resident.

"Physical impairment" means a condition of a bodily or sensory nature that reduces an individual's ability to function or to perform activities.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove

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easily, which restricts freedom of movement or access to his body.

"Physician" means an individual licensed to practice medicine or osteopathic medicine in any of the 50 states or the District of Columbia.

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.

"Private pay" means that a resident of an assisted living facility is not eligible for benefits under the Auxiliary Grants Program.

"Psychopharmacologic drug" means any drug prescribed or administered with the intent of controlling mood, mental status or behavior. Psychopharmacologic drugs include not only the obvious drug classes, such as antipsychotic, antidepressants, and the antianxiety/hypnotic class, but any drug that is prescribed or administered with the intent of controlling mood, mental status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by the United States Food and Drug Administration.

"Public pay" means that a resident of an assisted living facility is eligible for benefits under the Auxiliary Grants Program.

"Qualified" means having appropriate training and experience commensurate with assigned responsibilities; or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training or experience. There are specific definitions for "qualified assessor" and "qualified mental health professional" below.

"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument (UAI). For private pay individuals, a qualified assessor is an employee of the assisted living facility trained in the completion of the UAI or an independent private physician or a qualified assessor for public pay individuals.

"Qualified mental health professional" means a behavioral health professional who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including and limited to (i) a physician licensed in Virginia; (ii) a psychologist: an individual with a master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience; (iii) a social worker: an individual with at least a master's degree in human services or related field (social work, psychology, psychiatric rehabilitation,

sociology, counseling, vocational rehabilitation, or human services counseling) from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (iv) a Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRs); (v) a clinical nurse specialist or psychiatric nurse practitioner licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vi) any other licensed mental health professional; or (viii) any other person deemed by the Department of Mental Health, Mental Retardation and Substance Abuse Services as having qualifications equivalent to those described in this definition. Any unlicensed person who meets the requirements contained in this definition shall either be under the supervision of a licensed mental health professional or employed by an agency or organization licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Rehabilitative services" means activities that are ordered by a physician or other qualified health care professional that are provided by a rehabilitative therapist (physical therapist, occupational therapist or speech-language pathologist). These activities may be necessary when a resident has demonstrated a change in his capabilities and are provided to restore or improve his level of functioning.

"Resident" means any adult residing in an assisted living facility for the purpose of receiving maintenance or care.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument. This definition includes the services provided by the facility to individuals who are assessed as capable of maintaining themselves in an independent living status.

"Respite care" means services provided for maintenance and care of aged, infirm or disabled adults for temporary periods of time, regularly or intermittently. Facilities offering this type of care are subject to this chapter.

"Restorative care" means activities designed to assist the resident in reaching or maintaining his level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

"Safe, secure environment" means a self-contained special care unit for individuals with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. Means of egress that lead to unprotected areas must be monitored or secured through devices that conform to applicable building and fire safety standards, including but not limited to door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices or perimeter fence gates. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia.

"Sanitizing" means treating in such a way to remove bacteria and viruses through using a disinfectant solution (e.g., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat).

"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring or long-term nature that affects areas such as thought processes, problem-solving, judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to acute or episodic conditions, nor conditions arising from treatable metabolic or chemical imbalances or caused by reactions to medication or toxic substances.

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Skilled nursing treatment" means a service ordered by a physician or other prescriber that is provided by and within the scope and practice of a licensed nurse.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Staff" or "staff person" means personnel working at a facility who are compensated or have a financial interest in the facility, regardless of role, service, age, function or duration of employment at the facility. Staff or staff person also includes those individuals hired through a contract to provide services for the facility.

"Substance abuse" means the use, without compelling medical reason, of alcohol or other legal or illegal drugs that results in psychological or physiological dependency or danger to self or others as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

"Systems review" means a physical examination of the body to determine if the person is experiencing problems or distress, including cardiovascular system, respiratory system, gastrointestinal system, urinary system, endocrine system, musculoskeletal system, nervous system, sensory system and the skin.

"Transfer" means movement of a resident to a different assigned living area within the same licensed facility.

"Uniform assessment instrument (UAI)" means the department designated assessment form. There is an alternate version of the form that may be used for private pay residents. Social and financial information that is not relevant because of the resident's payment status is not included on the private pay version of the form.

Part III Personnel

22VAC40-72-160. Personnel policies and procedures.

A. The facility shall develop and keep current a written job description for each position in the facility. The job description shall include:

1. Job title;
2. Duties and responsibilities required of the position;
3. Job title of the immediate supervisor; and
4. Minimum knowledge, skills and abilities, experience, or educational or professional qualifications required for entry level.

B. Each staff person shall be given a copy of his current job description and of the facility's current organizational chart.

C. The facility shall develop and implement procedures for verifying current professional licensing, registration, provisional status of medication aides, or certification and training of staff.

D. The facility shall develop and implement procedures for annually evaluating staff performance.

E. Individual training needs and plans shall be a part of the performance evaluation.

22VAC40-72-210. Administrator training.

A. For facilities licensed for residential living care only, the administrator shall attend at least 20 hours of training related to management or operation of a residential facility for adults

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or relevant to the population in care within 12 months from the date of employment and annually thereafter from that date. When adults with mental impairments reside in the facility, at least five of the required 20 hours of training shall focus on topics related to residents' mental impairments. Documentation of attendance shall be retained at the facility and shall include title of course, name of the entity that provided the training, date and number of hours.

EXCEPTION: If the administrator is licensed as an assisted living facility administrator or nursing home administrator by the Virginia Board of Long-Term Care Administrators, subsection B of this section applies rather than subsection A of this section.

B. For facilities licensed for both residential and assisted living care, the administrator shall meet the continuing education requirements for licensure as an assisted living facility or nursing home administrator, whichever is applicable.

C. Any administrator who has not previously undergone the training specified in 22VAC40-72-50 D shall be required to complete that training within two months of employment as administrator of the facility. The training may be counted toward the annual training requirement for the first year, except that for licensed administrators, whether the training counts toward continuing education and for what period of time depends upon the administrator licensure requirements.

EXCEPTION: Administrators employed prior to December 28, 2006, are not required to complete this training.

D. If medication is administered to residents by medication aides as allowed in 22VAC40-72-660 1 b and 2, the administrator shall successfully complete a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for administrators who supervise medication aides, but are not registered medication aides themselves, must include a minimum of 68 hours of student instruction and training, but need not include the prerequisite for the program or the written examination for registration. The training shall be completed within four months of employment as an administrator and may be counted toward the annual training requirement for the first year, except that for licensed administrators, whether the training counts toward continuing education and for what period of time depends upon the administrator licensure requirements. The following exceptions apply:

1. The administrator is licensed by the Commonwealth of Virginia to administer medications; or
2. Medication aides are supervised by an individual employed full time at the facility who is licensed by the Commonwealth of Virginia to administer medications.

22VAC40-72-660. Qualifications and supervision of staff administering medications.

When staff administers medications to residents, the following standards shall apply:

1. Each staff person who administers medication shall be authorized by § 54.1-3408 of the Virginia Drug Control Act. All staff responsible for medication administration shall:

- a. Be licensed by the Commonwealth of Virginia to administer medications; or
- b. Be registered with the Virginia Board of Nursing as a medication aide, except as specified in subdivision 2 of this section.

2. Any applicant for registration as a medication aide who has provided to the Virginia Board of Nursing evidence of successful completion of the education or training course required for registration may act as a medication aide on a provisional basis for no more than 120 days before successfully completing any required competency evaluation. However, upon notification of failure to successfully complete the written examination after three attempts, an applicant shall immediately cease acting as a medication aide.

~~2.~~ 3. Medication aides shall be supervised by:

- a. An individual employed full time at the facility who is licensed by the Commonwealth of Virginia to administer medications;
- b. The administrator who is licensed by the Commonwealth of Virginia to administer medications or who has successfully completed a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for administrators who supervise medication aides, but are not registered medication aides themselves, must include a minimum of 68 hours of student instruction and training, but need not include the prerequisite for the program or the written examination for registration; or
- c. For facilities licensed for residential living care only, the designated assistant administrator, as specified in 22VAC40-72-201 D, who is licensed by the Commonwealth of Virginia to administer medications or who has successfully completed a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for designated assistant administrators who supervise medication aides, but are not registered medication aides themselves, must include a minimum of 68 hours of student instruction and training, but need not include the prerequisite for the program or the written examination for registration.

22VAC40-72-670. Administration of medications and related provisions.

A. Staff who are licensed, ~~or~~ registered, or acting as a medication aide on a provisional basis as specified in 22VAC40-72-660 shall administer drugs to those residents who are dependent in medication administration as documented on the UAI.

B. All medications shall be removed from the pharmacy container by a staff person licensed, ~~or~~ registered, as a medication aide on a provisional basis as specified in 22VAC40-72-660 and administered by the same staff person not earlier than one hour before and not later than one hour after the facility's standard dosing schedules, except those drugs that are ordered for specific times, such as before, after or with meals. Pre-pouring for later administration is not permitted.

C. All medications shall be administered in accordance with the physician's or other prescriber's instructions and consistent with the standards of practice outlined in the current registered medication aide curriculum approved by the Virginia Board of Nursing.

D. All medications shall remain in the pharmacy issued container, with the legible prescription label or direction label attached, until administered.

E. Sample medications shall remain in the original packaging, labeled by a physician or other prescriber or pharmacist with the resident's name, the name of the medication, the strength, dosage, route and frequency of administration, until administered.

F. Over-the-counter medication shall remain in the original container, labeled with the resident's name, or in a pharmacy-issued container, until administered.

G. In the event of an adverse drug reaction or a medication error:

1. First aid shall be administered as directed by a physician, pharmacist or the Virginia Poison Control Center.
2. The resident's physician of record shall be notified as soon as possible.
3. The direct care staff person shall document actions taken in the resident's record.

H. The facility shall document on a medication administration record (MAR) all medications administered to residents, including over-the-counter medications, and dietary supplements. The MAR shall include:

1. Name of the resident;
2. Date prescribed;
3. Drug product name;

4. Strength of the drug;
5. Dosage;
6. Diagnosis, condition, or specific indications for administering the drug or supplement;
7. Route (for example, by mouth);
8. How often medication is to be taken;
9. Date and time given and initials of direct care staff administering the medication;
10. Dates the medication is discontinued or changed;
11. Any medication errors or omissions;
12. Description of significant adverse effects suffered by the resident;
13. For PRN medications:
 - a. Symptoms for which medication was given;
 - b. Exact dosage given; and
 - c. Effectiveness; and
14. The name, signature and initials of all staff administering medications.

I. The performance of all medical procedures and treatments ordered by a physician or other prescriber shall be documented and the documentation shall be retained in the resident's record.

J. The use of PRN (as needed) medications is prohibited, unless one or more of the following conditions exist:

1. The resident is capable of determining when the medication is needed;
2. Licensed health care professionals are responsible for medication administration and management; or
3. The facility has obtained from the resident's physician or other prescriber detailed written instructions or a staff person as allowed in 22VAC40-72-640 D has telephoned the physician or other prescriber prior to administering the medication, explained the symptoms and received a documented oral order to assist the resident in self-administration. The physician's or other prescriber's instructions shall include symptoms that might indicate the use of the medication, exact dosage, the exact time frames the medication is to be given in a 24-hour period, and directions as to what to do if symptoms persist.

K. Medications ordered for PRN administration shall be available, properly labeled for the specific resident and properly stored at the facility.

L. Stat-drug boxes may only be used when the following conditions are met:

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1. There is an order from the prescriber for any drug removed from the stat-drug box; and
2. The drug is removed from the stat-drug box and administered by a nurse, pharmacist or prescriber licensed to administer medications.

A stat-drug box may be prepared by a pharmacy prior to the receipt of ordered drugs from the pharmacy. Stat-drug boxes are subject to the conditions specified in 18VAC110-20-550 of the Virginia Board of Pharmacy.

VA.R. Doc. No. R09-1852; Filed May 4, 2009, 12:11 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Board of Social Services will receive, consider and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-170. Voluntary Registration of Family Day Homes - Requirements for Contracting Organizations (repealing 22VAC40-170-10 through 22VAC40-170-230).**

Statutory Authority: §§ 63.2-217, 63.2-1704, and 63.2-1734 of the Code of Virginia.

Effective Date: July 1, 2009.

Agency Contact: L. Richard Martin, Jr., Manager, Department of Social Services, Office of Legislative and Regulatory Affairs, 7 North Eighth Street, Room 5214, Richmond, Virginia 23219, telephone (804) 726-7902, FAX (804) 726-7906, TTY (800) 828-1120, or email richard.martin@dss.virginia.gov.

Summary:

The amendments are necessary to implement Chapter 29 of the 2009 Acts of Assembly where the General Assembly amended § 63.2-1704 of the Code of Virginia (Code) to eliminate the requirement for a regulation to govern the actions of Voluntary Registration (VR) Contracting Organizations that certify family day homes as eligible for registration. The Code still requires the Department of Social Services to contract with any organization performing the duties and responsibilities of a VR Contracting Organization.

VA.R. Doc. No. R09-1859; Filed May 4, 2009, 12:07 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

Titles of Regulations: **24VAC30-280. Revenue Sharing Program (repealing 24VAC30-280-20 through 24VAC30-280-70).**

24VAC30-281. Revenue-Sharing Program Policy (adding 24VAC30-281-10).

Statutory Authority: §§ 33.1-23.05 and 33.1-72.1 of the Code of Virginia.

Effective Date: July 1, 2009.

Agency Contact: Hugh Adams, Department of Transportation, Local Assistance Division, VDOT Annex Bldg, 1401 East Broad Street, 4th Floor, Richmond, VA 23219, telephone (804) 786-2744, FAX (804) 786-2603, or email hugh.adams@vdot.virginia.gov.

Summary:

This regulation establishes the policies and procedures the Virginia Department of Transportation (VDOT) will follow in providing funding under the Revenue-Sharing Program, as established by the Code of Virginia and administered by the Commonwealth Transportation Board (CTB). Chapter 608 (SB99) of the 2008 Acts of Assembly significantly modifies the Revenue-Sharing Program. Due to the extent of changes, it was deemed expedient to repeal the existing detailed regulation and replace it with a new regulation with less detail and supplemented by a revised guidance document.

In a resolution passed by the CTB addressing the legislative modification of the program, the Commissioner was granted authority to establish administrative procedures to assure compliance with program provisions. Pursuant to this authority, text appearing in 24VAC30-280 relating to definitions, eligible work, implementation, etc., is contained in a guidance document, similar to that which was used for the repealed regulation.

The new regulation specifies the amount of matching funds available (up to \$1 million); the purposes for which the funds can be used (improvement, construction, or reconstruction of highways within a locality); the statute under which revenue-sharing funds will be

prioritized and allocated; requirements and conditions under which localities may request funds; conditions affecting how funds may be transferred administratively; time limitations concerning the use of revenue sharing funds; and conditions under which the CTB may grant additional allocations if funds have not been fully allocated.

**CHAPTER 281
REVENUE-SHARING PROGRAM POLICY**

24VAC30-281-10. Policy.

A. Pursuant to § 33.1-23.05 of the Code of Virginia, the Commonwealth Transportation Board adopts the following policy concerning administration of revenue-sharing funds for systems in certain counties and towns of the Commonwealth:

1. The Revenue-Sharing Program shall provide a matching allocation up to \$1 million to any county, city, or town for projects designated by the locality for improvement, construction, or reconstruction of highway systems within such locality.
2. Revenue-sharing funds shall be prioritized and allocated in accordance with the provisions of § 33.1-23.05 B of the Code of Virginia.
3. Application for program funding must be made by resolution of the governing body of the jurisdiction requesting the funds. A locality may request funds for a project located within its own jurisdiction or in an adjacent jurisdiction, with concurrence from the governing body of the other locality. Towns not maintaining their own streets are not eligible to receive Revenue-Sharing Program funds directly; their requests must be included in the application of the county in which they are located. All requests must include a priority listing of projects.
4. Funds may be administratively transferred from one revenue-sharing project to another existing revenue-sharing project. If approved by this board, revenue-sharing funds may also be transferred to an existing project in the Six-Year Improvement Program or Secondary Six-Year Plan if needed to meet the approved federal obligation schedule or to ensure that a scheduled advertisement date can be met or accelerated. Requests for all such transfers must be made in writing by the county administrator or city/town manager. Such requests must include the reasons for the request and the status of both projects.
5. The Revenue-Sharing Program is intended to provide funding for relatively small, immediately needed improvements or to supplement funding for existing projects. Larger new projects may be considered, provided the locality identifies the additional funding needed to implement the project. Revenue-sharing funds are normally expected to be used within the fiscal year following their allocation. If a project having funds

allocated under this program has not been initiated so that a portion of such funds have been expended within two subsequent fiscal years of allocation, the funds may be reallocated at the discretion of this board.

6. No more than three months prior to the end of any fiscal year in which less than the full program allocation has been allocated by this board to specific governing bodies, those localities initially requesting the maximum allocation as defined in § 33.1-23.05 of the Code of Virginia may be allowed an additional allocation.

7. The Commonwealth Transportation Commissioner is directed to establish administrative procedures to assure the provisions of this policy and legislative directives are adhered to and complied with.

VA.R. Doc. No. R09-1898; Filed April 29, 2009, 9:26 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

Titles of Regulations: **24VAC30-300. Recreational Access Guide (repealing 24VAC30-300-10).**

24VAC30-301. Recreational Access Fund Policy (adding 24VAC30-301-10, 24VAC30-301-20).

Statutory Authority: §§ 33.1-12 and 33.1-223 of the Code of Virginia.

Effective Date: April 29, 2009.

Agency Contact: Hugh Adams, Department of Transportation, Local Assistance Division, VDOT Annex Building, 1401 East Broad Street, 4th Floor, Richmond, VA 23219, telephone (804) 786-2744, FAX (804) 371-0847, or email hugh.adams@vdot.virginia.gov.

Summary:

Chapters 25 and 453 of the 2005 Acts of Assembly modified the provisions of the Recreational Access Program to provide for access roads and bikeways to public recreational areas and historical sites. The existing regulation on recreational access fund policy is repealed and is replaced with a new regulation. The new regulation (i) is a simpler, less detailed discussion of statutory requirements for participation in the program, including a new role for the Director of the Department of Historic Resources in determining whether a site or area is historic, and therefore eligible for an access road or bikeway to be provided or maintained to that area; and (ii) includes new provisions concerning access roads and bikeways to public recreational areas and historical sites. Information previously included in the repealed regulation, such as a

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description of eligible projects, details on the application process, contact information, sample resolutions, etc. is moved to a guidance document.

CHAPTER 301 RECREATIONAL ACCESS FUND POLICY

24VAC30-301-10. Purpose.

The policies and procedures set forth in this chapter govern the use of recreational access funds pursuant to § 33.1-223 of the Code of Virginia. This statute provides that the concept of access be applicable to facilities for motor vehicles and bicycles, whether in separate physical facilities or combined in a single facility. In the event independent bikeway access is deemed appropriate and justified, the access will be established on a separate right of way independent of motor vehicle traffic and specifically designated to provide for bicycle access to the recreational area or historical site as a connecting link to an existing bikeway or otherwise recognized bicycle route.

24VAC30-301-20. General provisions.

A. The use of recreational access funds shall be limited to the purpose of providing proper access to or within publicly owned or operated recreational areas or historical sites where compliance with the full provisions of § 33.1-223 of the Code of Virginia has been achieved.

B. Recreational access funds shall not be used for the acquisition of right of way or adjustment of utilities. These funds are to be used only for the actual engineering and construction of a road or bikeway access facility adequate to serve traffic generated by the public recreational area or historical site.

C. The identified need or demand for the road or bikeway access facilities will be analyzed and mutually agreed upon between the Commonwealth Transportation Board and the Director of the Department of Conservation and Recreation for access to a public recreational area or the Director of the Department of Historic Resources for access to a public historical site. The decision to construct or improve an access facility to a public recreational area or historical site will be based upon verification by the Department of Transportation of sufficient public demand and justification for connection with similar public motor vehicle or bikeway access facilities to support the construction of the planned access facilities.

D. Recreational access funds will not be considered for providing adequate recreational road or bikeway access until such time as adequate assurance has been given that the recreational area or historical site is already in operation or will be developed and operational at the approximate time of the completion of the road or bikeway.

E. Motor vehicle access and bikeway access may be considered as either combined facilities or separate entities.

Funding limitations have been established by statute for qualified projects as follows:

1. Not more than \$400,000 of recreational access funds may be allocated for an access road to any recreational area or historical site operated by a state agency and not more than \$250,000 for an access road to any recreational area or historical site operated by a locality or an authority, with an additional \$100,000 if supplemented on a dollar-for-dollar basis by the locality or authority from other than highway sources.

2. Not more than \$75,000 of recreational access funds may be allocated for a bikeway to any recreational area or historical site operated by a state agency and not more than \$60,000 for a bikeway to any recreational area or historical site operated by a locality or an authority, with an additional \$15,000 if supplemented on a dollar-for-dollar basis by the locality or authority from other than highway sources.

F. Prior to the formal request for the use of recreational access funds to provide access to a public recreational area or historical site, the location of the access road or bikeway shall be submitted for approval by the Department of Transportation and to either the Director of the Department of Conservation and Recreation or to the Director of the Department of Historic Resources, as relevant to the type of area or site to be accessed. In making recommendations, personnel of the Department of Transportation and the Department of Conservation and Recreation or the Department of Historic Resources shall take into consideration the cost of the access road or bikeway as it relates to the location, the possibility of any future extension to serve other public recreational areas or historical sites, and the anticipated future development of the area traversed. The Recreational Access Program is not intended to facilitate the development of any land use other than public recreational or historical facilities.

G. The use of recreational access funds shall be limited to the construction or reconstruction of motor vehicle access roads or bikeway access to publicly owned or operated recreational areas or historical sites, as designated by the appropriate agency.

The beginning and termination of the recreational access facility shall be at logical locations. Termination of the access shall be one of the following: the recreational area or historical site entrance, or a location within the recreational area or historical site. If termination of access is located within the recreational area or historical site, the main focal point of interest shall be construed as the termination at which "adequate access" is judged to be provided for the facility. This may be an administration building, information center, auditorium, stadium, parking lot, picnic area, camping area, etc., depending upon the character of the recreational area. Generally, "termination of access" is interpreted as the first

point at or within the recreational area or historical site that visitors would leave their automobiles or bikes and commence to utilize some feature of the facility.

H. It is the intent of the Commonwealth Transportation Board that recreational access funds not be anticipated from year to year.

VA.R. Doc. No. R09-1901; Filed April 29, 2009, 9:29 a.m.

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order - Foster Fuels, Inc.

An enforcement action has been proposed for Foster Fuels, Inc. for an alleged violation in Giles County, Virginia. The special order by consent will address and resolve an alleged violation of environmental law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jerry Ford, Jr. will accept comments by email at jerry.ford@deq.virginia.gov or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from May 26, 2009, to June 24, 2009.

Proposed Consent Order - Liberty University, Inc.

An enforcement action has been proposed for Liberty University, Inc. for alleged violations at the University's campus located in the City of Lynchburg, Virginia. The Department of Environmental Quality (DEQ) proposes to issue a consent order as a settlement to resolve compliance deficiencies of the Virginia Water Control Law. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. G. Marvin Booth, III will accept comments by email at marvin.booth@deq.virginia.gov, FAX (434) 582-5125 or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502, from May 25, 2009, to June 25, 2009.

Total Maximum Daily Load - Four Mile Run

Announcement of a total maximum daily load (TMDL) study to restore water quality in the bacteria impaired portion of tidal Four Mile Run.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation announce the second technical advisory committee (TAC) meeting for the tidal Four Mile Run bacteria TMDL study.

Technical advisory committee meeting: Monday, June 15, 2009, 10:30 a.m. to Noon, Shirlington Branch Library, Campbell Meeting Room, 4200 Campbell Avenue, Arlington, VA 22206.

Meeting description: This is the second technical advisory committee meeting for this project. The purpose of the TAC will be to provide technical input and insight for the project, and to assist with stakeholder and public participation.

Description of study: The tidal portion of Four Mile Run has been identified as impaired on the Clean Water Act § 303(d) list for not supporting the primary contact recreation use due to elevated levels of *E. coli* bacteria. Virginia agencies are

working to identify the sources of bacteria contamination in this stream segment. The impaired segment of tidal Four Mile Run is located in Arlington County and the City of Alexandria. Below is a description of the impaired portion of Four Mile Run that will be addressed in this study:

Stream Name	Localities	Impairments	Area (miles ²)	Upstream Limit	Downstream Limit
Four Mile Run (Tidal Waters)	Arlington County City of Alexandria	Recreational use Impairment due to <i>E. coli</i> bacteria	0.0516	Tidal waters of Four Mile Run, approximately 1.46 rivermiles upstream from the mouth of the river	Confluence with the Potomac River

This study will focus on the tidal portion of Four Mile Run. A bacteria TMDL for the nontidal portion of Four Mile Run was completed in 2002. During this study, DEQ will develop a total maximum daily load, or a TMDL, for the impaired stream segment. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the TAC meeting will extend from June 15, 2009, to July 14, 2009. 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. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, or email mkconaway@deq.virginia.gov.

Total Maximum Daily Load - Mill and Powhatan Creek Watersheds

The Department of Environmental Quality (DEQ), the Department of Conservation and Recreation, the Hampton Roads Planning District Commission, and James City County invite citizens to a public meeting to discuss the development of an implementation plan (IP) to address fecal bacteria impairments in the Mill and Powhatan Creek Watersheds. Water quality monitoring indicates that bacteria levels in Mill and Powhatan Creeks violate Virginia's water quality standards for primary contact recreation. A total maximum daily load (TMDL) study for the impairments was approved by EPA in 2009 and is available on DEQ's website at <http://www.deq.virginia.gov/tmdl/drftmdls/millpowec.pdf>.

The implementation plans will identify ways to meet the pollutant reductions outlined in the TMDL study.

The first public meeting to begin development of the TMDL implementation plan will be held on Thursday, June 18, 2009, at 6:30 p.m., James City/Williamsburg Community Center, Meeting Rooms A & B, 5301 Longhill Road, Williamsburg, VA 23188.

The purpose of the meeting is to discuss the proposed reductions in bacteria needed in the affected watersheds and to solicit public participation for the IP development.

The IPs will include the corrective actions needed to reduce bacteria and the associated costs, benefits, and environmental impacts. The IPs will also provide measurable goals and a timeline of expected achievement of water quality objectives. A fact sheet on the development of the IPs is available upon request.

How to comment: The public comment period on the development of the IP will end on July 17, 2009. Oral comments will be accepted and addressed at the public meeting. Additional questions or information requests should be addressed to Jennifer Howell. Written comments and inquires should include the name, address, and telephone number of the person submitting the comments and should be sent to Jennifer Howell at Department of Environmental Quality, 5636 Southern Blvd., Virginia Beach, VA 23262, telephone (757) 518-2111, FAX (757) 518-2003 or email jshowell@deq.virginia.gov or Jennifer Tribo at Hampton Roads Planning District Commission, 723 Woodlake Dr., Chesapeake, VA 23320, telephone (757) 366-4344, FAX (757) 523-4881, or email jtribo@hrpdc.org.

DEPARTMENT OF HEALTH

Notice of Public Comment Period on the America Recovery and Reinvestment Act of 2009 (ARRA) Funds through Virginia's Drinking Water State Revolving Fund (DWSRF) Program

Introduction – ARRA Funds

Section 1452(b)(1) of the Safe Drinking Water Act Amendments (SDWA) of 1996 (P.L. 104-182), establishes the Drinking Water State Revolving Fund (DWSRF) program through a capitalization grant and requires the Commonwealth of Virginia develop an intended use plan (IUP). This IUP proposes the utilization of Safe Drinking Water Act State Revolving Funds and provides a draft list of projects targeted for financial assistance through this program. This draft IUP and the list of projects are made available to the public for review and comment at:

www.vdh.virginia.gov/drinkingwater/financial/economicstimulusfunds.htm.

In accordance with the federal SDWA of 1996, the Virginia Department of Health (VDH) Office of Drinking Water is making application for a federal funding capitalization grant

for the DWSRF program under the American Recovery and Reinvestment Act (ARRA) of 2009.

The ARRA grant application consists of the IUP, the Project Priority List and the Comprehensive Project List. The Virginia Drinking Water State Revolving Fund Program - Program Design Manual, dated January 12, 2009, is part of the IUP and outlines the program's overall goal, the set-aside and construction aspects of the program, entities eligible for funding, interest rates and terms, and criteria used to establish a project priority list.

In compliance with the requirement in SDWA § 1452(b)(1), the ARRA IUP (in draft form) is being made available to the public for review and comment.

The annual 2010 DWSRF list will be developed and made public at a later date.

Available Funding

The federal allotment to Virginia from the federal ARRA stimulus package for Drinking Water State Revolving Fund Program projects is \$20,761,000. According to the federal requirements for acceptance of these funds, a minimum of 50% of the funds must be distributed as principal forgiveness loans, and an additional 20% of the funds should be utilized for projects that include green infrastructure, water efficiency, energy efficiency, or other environmental innovative activities.

ARRA Project Solicitation

On January 12, 2009, the Virginia Department of Health issued a request for applications for Source Water Initiatives, Construction Funds, and Set-aside tasks. This request included solicitation for projects to be considered for construction funding under the ARRA. The VDH accepted applications through March 27, 2009. The VDH – Office of Drinking Water received 255 applications requesting \$416,636,360. A listing of the applications received by VDH is included in the IUP as Attachment A.

The applications were evaluated using the EPA-approved criteria used for DWSRF applications. The ARRA guidance includes an additional requirement for "readiness to proceed" and this was also used during the project evaluation.

The criteria used for the ARRA evaluation included: acute, chronic, and public health risk of the applying project, the cost of the public water to the users relative to the state average, the mean household income of the affected public, the impact on regionalization of the waterworks, additional funding utilized for the project, the cost of the project per connection, and readiness to proceed.

The prioritization of the projects is based on scores from these criteria, weighted to the public health criteria. A draft list of the projects to receive ARRA funds is included in the IUP as Attachment B.

General Notices/Errata

The Department of Health is presenting this draft list of ARRA projects for public review and comment. On May 20, 2009, at 9 a.m., a public meeting to solicit comments on the IUP and the draft list of projects for funding will be held at the Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060. For directions, call (804) 864-7500 or go to: www.deq.state.va.us/regions/piedmont.html.

Public Comment

The public comment and review period will end June 8, 2009 at 5 p.m. Written comments or questions should be directed to Mr. Steven D. Pellei, P.E., Department of Health, Office of Drinking Water, James Madison Building, Room 622, Richmond, VA 23219, ATTN: ARRA Public Comment.

Contact Information: S. D. Pellei, Virginia Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7500, FAX (804) 864-7521, or email steven.pellei@vdh.virginia.gov.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Notice of Periodic Review

Review Announcement: The Board of Long-Term Care Administrators within the Department of Health Professions is preparing to conduct a periodic review of its general regulations governing the practice of nursing home administrators:

18VAC95-20, Regulations Governing the Practice of Nursing Home Administrators

The board is receiving comment on whether there is a need for amendments for clarification or for consistency with changes in practice.

Comment begins on May 25, 2009, and ends on June 24, 2009.

If any member of the public would like to comment on these regulations, please send comments by the close of the comment period to Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233. Comments may also be emailed to elaine.yeatts@dhp.virginia.gov or FAX (804) 527-4434.

Regulations for the practice of nursing home administrators may be viewed online at www.townhall.virginia.gov or www.dhp.virginia.gov or copies will be sent upon request.

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 May 5, 2009. The order may be viewed at the State Lottery Department, 900 East 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 Thirty-Six (09)

Virginia's On-Line Game; "Pick 3 With Boost" (effective 5/01/09)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Changes to Reimbursement Methodology

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates—Inpatient Hospital Services; Methods and Standards for Establishing Payment Rates—Other Types of Care; and Methods and Standards for Establishing Payment Rates—Long Term Care. The department intends to implement a number of changes in reimbursement methodology July 1, 2009, pursuant to the Appropriation Act (Chapter 781) of the 2009 Session of the General Assembly. These are cost savings measures arising from the need for budget reductions statewide. These changes are being made pursuant to the department's authority under Title XIX of the Social Security Act, and are as follows:

Reimbursement Changes Affecting Hospitals (12VAC30-70)

-- Per Item 306 MMM, operating rates for all hospitals will not be increased for inflation. This action will lead to a total cost savings of \$44.3 million in state fiscal year 2010.

-- Per Item 306 GGG, capital reimbursement for all hospitals will be reduced from 80% of cost to 75% of cost. This action will lead to a total cost savings of \$8.7 million in state fiscal year 2010.

-- Per Item 306 BBB, reimbursement for long-stay hospitals will be modified to eliminate the incentive plan and to remove the additional 2.0% added to inflation for the escalator used to increase ceilings and inflate costs per day. This action will lead to a total cost savings of \$2 million in state fiscal year 2010.

-- Per Item 306 FFF, operating rates for freestanding psychiatric hospitals will be rebased to 100% of 2005 costs inflated forward (but subject to other limitations on operating rates including no inflation in FY10). This action will lead to a total cost savings of \$1.5 million in state fiscal year 2010.

Reimbursement Changes Affecting Other Providers (12VAC30-80)

-- Per Item 306 III, home health agencies will lose 50% of the inflation increase they received on January 1, 2009, and will not receive another inflation increase until July 1, 2010. This action will lead to a total cost savings of \$0.6 million in state fiscal year 2010.

-- Per Item 306 XX, reimbursement for outpatient rehabilitation agencies will be changed from prospective cost-based provider specific rates subject to a ceiling to a statewide fee schedule. This change will achieve savings of \$0.4 million equivalent to not receiving an inflation adjustment.

Pharmacy Dispensing Fee Reduction Per Item 306 WW, the agency is amending 12VAC30-80-40 (Fee-for-service providers: pharmacy) to reduce the dispensing fee for both brand name and generic drugs from \$4.00 to \$3.75, effective July 1, 2009. This action will lead to a total cost savings of \$925,332 in state fiscal year 2010.

Reimbursement Changes Affecting Nursing Facilities (12VAC30-90)

-- Per Item 306 VV, operating rates for nursing facilities shall not be reduced by 1.329%. This action will lead to a total cost increase of \$11.7 million in state fiscal year 2010.

-- Per Item 306 NNN, operating rates and ceilings for nursing facilities and specialized care facilities will not be increased for inflation. This action will lead to a total cost savings of \$28.4 million in state fiscal year 2010.

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall (www.townhall.com). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Lessard and such comments are available for review at the same address.

Contact Information: William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 225-4593, FAX (804)786-1680.

DEPARTMENT OF STATE POLICE

Notices of Periodic Review

The Department of State Police has submitted notices of periodic reviews for the following:

19VAC30-40, Standards and Specifications for the Stickers or Decals Used By Cities, Counties and Towns in Lieu of License Plates

19VAC30-130 Regulations Relating to Standards and Specifications for Warning Stickers or Decals for All-Terrain Vehicles

19VAC30-140, Regulations Relating to Standards and Specifications for Back-Up Audible Alarm Signals

19VAC30-150, Regulations Relating to Standards and Specifications for Overdimensional Warning Lights

19VAC30-160, Regulations Relating to Standards and Specifications for the Safety Lights for Farm Tractors in Excess of 108 Inches in Width

19VAC30-165, Regulations Relating to Standards and Specifications for Purple Warning Lights used by Vehicles Leading or Escorting Funeral Processions

The Virginia Department of State Police is conducting a periodic review of regulations listed above to ensure that they are current, comply with statutory mandates, and implement the provisions of the Code of Virginia. This review will be conducted beginning on Monday, June 8, 2009, through Friday, July 9, 2009.

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.

ERRATA

STATE CORPORATION COMMISSION

Titles of Regulations: **21VAC5-10. General Administration - Securities Act.**

21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer.

21VAC5-30. Securities Registration.

21VAC5-40. Exempt Securities.

21VAC5-45. Federal Covered Securities.

21VAC5-80. Investment Advisors.

Publication: 25:17 VA.R. 3026-3046 April 27, 2009

Correction to Final Regulation:

Page 3029, Order to Take Notice, column 1, line 3, change "SEC-2008-00026" to "SEC-2009-00022"

VA.R. Doc. No. R09-1797; Filed May 6, 2009, 3:20 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12VAC30-40. Eligibility Conditions and Requirements.**

Publication: 23:11 VA.R. 1673-1676 February 5, 2007

Correction to Final Regulation:

EDITOR'S NOTE: Subdivisions 7 b, 12 and 13 as published in 22:23 VA.R. 3376-3378 July 24, 2006, and effective August 23, 2006, were inadvertently omitted from 12VAC30-40-10. The section is amended as follows:

Page 1675, 12VAC30-40-10, subdivision 7 should read as follows:

7. a. Is required, as a condition of eligibility, to furnish his social security account number (or numbers, if he has more than one number) except for aliens seeking medical assistance for the treatment of an emergency medical condition under § 1903(v)(2) of the Social Security Act (§ 1137(f)).

b. Applicant or recipient is required, under § 1903(x) to furnish satisfactory documentary evidence of both identity and of U.S. citizenship upon signing the declaration of citizenship required by § 1137(d). Qualified aliens signing the declaration of satisfactory immigration status required by § 1137(d) must also present and have verified documents establishing the claimed immigration status under § 137(d). Exception: Nonqualified aliens seeking medical assistance for the treatment of an emergency medical condition under § 1903(v)(2) as described in § 1137(f).

Page 1675, 12VAC30-40-10, insert subdivisions 12 and 13 as follows:

12. Is required, as a condition of eligibility for Medicaid payment of long-term care services, to disclose at the time of application for or renewal of Medicaid eligibility, a description of any interest the individual or his spouse has in an annuity (or similar financial instrument as may be specified by the Secretary of Health and Human Services). By virtue of the provision of medical assistance, the state shall become a remainder beneficiary for all annuities purchased on or after February 8, 2006.

13. Is ineligible for Medicaid payment of nursing facility or other long-term care services if the individual's equity interest in his home exceeds \$500,000. This dollar amount shall be increased beginning with 2011 from year to year based on the percentage increase in the Consumer Price Index for all Urban Consumers rounded to the nearest \$1,000.

This provision shall not apply if the individual's spouse, or the individual's child who is under age 21 or who is disabled, as defined in § 1614 of the Social Security Act, is lawfully residing in the individual's home.

VA.R. Doc. No. R06-132; Filed May 1, 2009, 11:36 a.m.

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation.**

Publication: 23:12 VA.R. 1963-1967 February 19, 2007.

Correction to Fast-Track Regulation:

Page 1966, in 9VAC25-720-60 C, line 6, change "local" to "listed"

VA.R. Doc. No. R06-290