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Virginia Register of Regulations

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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.

PUBLICATION SCHEDULE AND DEADLINES

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*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Agency Decision

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend the regulations to require the reason documented for denying patient access to service records and criteria for removal to be consistent with the statement the physician is required to put into the service record in order to deny patient access to the same.

Agency Decision: Request denied.

Statement of Reason for Decision: The board determined that 12VAC35-115 provides adequate protections with respect to restrictions being placed on an individual access to his or her services record.

Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-04; Filed December 9, 2009, 3:55 p.m.

Agency Decision

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: The reinstatement of the requirement on limiting the timeframe of how long the provider can impose a restriction on the patient's access to their service records.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board determined that 12VAC35-115 has never included a requirement limiting the length of time that a restriction could be placed on a patient's access to his or her service record. The board determined that to do so would be to regulate a clinical practice issue.

Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-05; Filed December 9, 2009, 3:55 p.m.

Agency Decision

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Regulation governing amendment of the service records should be amended to require the reviewer of patient requests to amend/correct their services records to be neither the patient's treating clinician nor a person who wrote the particular note in the service record that the patient is requesting to be amended/corrected.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board determined that the existing provisions of 12VAC35-115 provide individuals receiving services with a clearly delineated right to have a statement of disagreement included in the record.

Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-06; Filed December 9, 2009, 3:55 p.m.

Agency Decision

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Regulation governing access to or amendment/correction of patients' service records should be amended to limit to 10 days from the date of the submission's request, (i) the physician's response to a patient's request for accessing his service record and (ii) the reviewer's

response to a patient's request for amending/correcting his service record.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board determined that 12VAC35-115 should not be changed to establish a specific timeframe within which a provider must respond to record access requests. Requirements regarding response timeframes are already established by state and federal laws and differ based on the type of provider.

Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-07; Filed December 9, 2009, 3:55 p.m.

Agency Decision

Title of Regulation: **None specified.**

Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Regulation governing different legal statuses of inpatient hospitalization and their discharge criteria should repeal the provision requiring or allowing a "provider" to wait until after 30 days from admission to inform the involuntarily, civilly committed patients' of their right to seek discharge from the facility director and their right to seek legal appeal of their civil commitment order to the Circuit Court pursuant to § 37.2-830 of the Code of Virginia.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board determined that 12VAC35-115-70 B 8 b neither requires nor allows a provider to wait for 30 days after admission to notify the individual receiving services of his right to appeal an order of involuntary commitment.

Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-08; Filed December 9, 2009, 3:55 p.m.

Agency Decision

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Regulations allowing the commissioner to suspend the applicability of the human rights regulation, through a written exemption, to people on forensic status or civilly committed as sexually violent predators should be repealed.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board determined that the authority granted under 12VAC35-115 to the commissioner to balance individual rights with the need for public safety is consistent with the provisions of § 37.2-400 of the Code of Virginia.

Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-09; Filed December 9, 2009, 3:55 p.m.

Agency Decision

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Regulation should be amended to prohibit the commissioner from suspending the applicability of provisions in the human rights regulations that apply to people on forensic status or civilly committed as sexually violent predators through a written exemption where there are duplicate provisions of the same rights in the statutes (§ 37.2-400 of the Code of Virginia).

Agency Decision: Request denied.

Statement of Reasons for Decision: The board determined that § 37.2-400 of the Code of Virginia does allow qualifications to the statutorily defined rights when such qualifications are consistent with reasonable limitations and sound therapeutic treatment.

Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-10; Filed December 9, 2009, 3:55 p.m.

Agency Decision

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Regulation should be amended to require the commissioner to specify the section codes and provisions as apart of the written exemptions for suspending the applicability of the human rights regulation to people on forensic status and civilly committed as sexually violent predators.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board determined that the subject of this petition is adequately addressed in departmental policy guidance and does not require regulatory action.

Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-11; Filed December 9, 2009, 3:55 p.m.

Initial Agency Notice

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Adjust the complaint resolution process to remove the director or director's designee from handling the Human Rights Complaint when the director or director's designee's conduct, position, or circumstances renders them unable to perform an impartial review of the Human Rights Complaint. This includes prohibiting the director of appointing a designee for handling the Human Rights Complaint.

Agency's Plan for Disposition of the Request: The board will consider the petition and any comments received at its first meeting after the conclusion of the public comment period.

Comments may be submitted until January 25, 2010.

Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-30; Filed December 10, 2009, 4:38 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Soil and Water Conservation Board intends to consider amending the following regulations: **4VAC50-60, Virginia Stormwater Management Regulations.** The purpose of the proposed action is to establish water quality design criteria for new development activities within the Chesapeake Bay Watershed that are consistent with the pollutant loadings called for in the Environmental Protection Agency-approved Virginia Total Maximum Daily Load (TMDL) Implementation Plan for the Chesapeake Bay Nutrient and Sediment TMDL, and consider compliance methodologies and mechanisms associated with any new design criteria.

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

Statutory Authority: §§ 10.1-107 and 10.1-603.4 of the Code of Virginia.

Public Comment Deadline: February 3, 2010.

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

VA.R. Doc. No. R10-2265; Filed December 14, 2009, 3:23 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

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 Education intends to consider amending the following regulations: **8VAC20-120, Career and Technical Education Regulations.** Changes in both federal and state laws pertaining to career and technical education have made it necessary to revise the Career and Technical Education Regulations. The regulations will be examined in their entirety, including the requirements for general provisions, administration of career and technical education programs, and operation of career and technical education programs. The goals of this review are to (i) update the regulations to comply with new state and federal laws, such as an identification and clarification of the U.S. Department of Education's approved Virginia requirements for meeting the performance standards of the Perkins Act of 2006; (ii) update definitions for consistency with state and federal regulations dealing with similar issues such as a clarification of "career clusters," "career pathways," "sustained professional development," and other terms impacted by the Perkins Act of 2006; and (iii) eliminate any duplication of regulations.

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

Statutory Authority: §§ 22.1-16 and 22.1-227 of the Code of Virginia.

Public Comment Deadline: February 8, 2010.

Agency Contact: Anne Rowe, Career and Technical Education Coordinator, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2838, FAX (804) 371-2456, or email anne.rowe@doe.virginia.gov.

VA.R. Doc. No. R10-2244; Filed December 14, 2009, 2:01 p.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending the following regulations: **13VAC5-112, Enterprise Zone Grant Program Regulation.** The purpose of the proposed action is to enable the enterprise zone program to be administered in a more efficient and economical manner and to ensure that the regulations provide clear and understandable guidelines by addressing all issues concerning the performance of the program by (i) further clarifying the intent of the program and insuring that it is being met, (ii) providing additional guidance to program constituents, (iii) formalizing what has been common practice, and (iv) updating references to specific statutes and dates.

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

Statutory Authority: § 59.1-533 of the Code of Virginia.

Public Comment Deadline: February 3, 2010.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, 600 E. Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX

(804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R10-2174; Filed December 14, 2009, 2:02 p.m.

TITLE 1. ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

Final Regulation

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

Title of Regulation: **1VAC30-40. Regulations for the Certification of Laboratories Analyzing Drinking Water (amending 1VAC30-40-10, 1VAC30-40-20, 1VAC30-40-30, 1VAC30-40-40, 1VAC30-40-100, 1VAC30-40-110, 1VAC30-40-130, 1VAC30-40-150, 1VAC30-40-240, 1VAC30-40-250, 1VAC30-40-280, 1VAC30-40-320, 1VAC30-40-330, 1VAC30-40-340, 1VAC30-40-360, 1VAC30-40-370; adding 1VAC30-40-85).**

Statutory Authority: §§ 2.2-1102 and 2.2-1105 of the Code of Virginia.

Effective Date: February 3, 2010.

Agency Contact: Rhonda Bishton, Regulatory Coordinator, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email rhonda.bishton@dgs.virginia.gov.

Summary:

Laboratories analyzing drinking water samples under the federal Safe Drinking Water Act (SDWA) must use current federal Environmental Protection Agency (EPA) approved test methods and adhere to other laboratory-specific requirements, as set out in 40 CFR Parts 141 and 143. The lists of test methods are revised regularly to include newly approved methods and delete out-of-date methods. These lists are also revised when new SDWA program requirements are promulgated in the Federal Register.

The changes to the Certification of Laboratories Analyzing Drinking Water Regulations conform them to current federal requirements for test methods, sampling, and laboratory certification. 1VAC30-40-85 is added to incorporate by reference the most current federal requirements. Out-of-date citations and out-of-date tables listing test methods and sample container, preservation, and holding time requirements are deleted. Provisions in the regulations that were taken verbatim from now out-of-date test methods and federal requirements are deleted and replaced by incorporating by reference current requirements. Finally, technical changes are made to replace the Division of Water Supply Engineering with the Office of Drinking Water to reflect the correct name of the Virginia Department of Health division responsible for these regulations.

Part I
General Provisions

1VAC30-40-10. Introduction.

The Safe Drinking Water Act (SDWA) of December 16, 1974, mandated the establishment of drinking water regulations. The United States Environmental Protection Agency (USEPA) was authorized to set the national drinking water regulations and oversee the implementation of the SDWA. State governments through their health departments or environmental agencies were to accept the responsibility for the implementation and enforcement of the SDWA'S provisions.

The Virginia Department of Health, ~~Division of Water Supply Engineering (VDH DWSE)~~ Office of Drinking Water (VDH-ODW) has accepted and maintains the primary enforcement responsibility (primacy) under the SDWA and the requirements of the National Primary Drinking Water Regulations (NPDWR) 40 CFR 141, 142 and 143 (2009). ~~The regulation at 40 CFR 141.28 requires that all testing for compliance purposes except turbidity, free chlorine residual, temperature and pH be performed by laboratories certified by the state.~~

The Department of General Services, Division of Consolidated Laboratory Services (DGS-DCLS) has been designated by ~~VDH- DWSE~~ VDH-ODW as the principal state laboratory. Pursuant to regulation 40 CFR 142.10(b)(3)(i) (2009), DGS-DCLS has established and maintains the state program for the certification of laboratories conducting analytical measurements of drinking water contaminants.

This chapter provides the mechanism to assure that laboratories are capable of providing valid data for compliance under the SDWA.

1VAC30-40-20. Definitions.

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

"Analyst" means a chemist, microbiologist, physicist, or technician who actually performs a test. The analyst may carry out the complete test or participate jointly with other analysts. The qualifications an analyst needs depend greatly on functions being performed.

"Certifying team" means experienced DGS-DCLS professionals to perform laboratory on-site evaluations under the SDWA.

"CFR" means Code of Federal Regulations.

"Compliance sample" means any sample required by the Virginia Department of Health to determine that the water quality does not exceed the maximum contaminant level (MCL) for each specified parameter.

"DGS-DCLS" means the Department of General Services-Division of Consolidated Laboratory Services.

"EMSL-LV" means the Environmental Monitoring Systems Laboratory in Las Vegas, Nevada.

"Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a waterworks.

"Minimum requirements" means criteria which are critical to the generation of valid data. These criteria describe the lowest level of capability at which the analyses can be successfully performed.

"NPDWR" means the National Primary Drinking Water Regulations (40 CFR 141 et seq.) (2009).

"Performance evaluation sample" means annual sample to be analyzed by a laboratory on certain parameters for which certification has been requested or granted. This annual sample is a form of documentation of a laboratory's capabilities in conjunction with on-site inspection evaluations of the laboratory by the certifying team.

"Primary enforcement responsibility (Primacy)" means the primary responsibility for administration and enforcement of primary drinking water regulations and related requirements applicable to public water systems within a state.

"Quality Assurance (QA) Plan" means a written description of a laboratory's quality assurance activities.

"SDWA" means the Safe Drinking Water Act ~~(21 USCS § 349; 42 USCS §§ 201, 300f to 300j 9)~~ (42 USC § 300 f et seq.).

"TTHM" means Total Trihalomethanes.

"USEPA" means the United States Environmental Protection Agency.

~~"VDH-DWSE"~~ "VDH-ODW" means the ~~Virginia Department of Health Division of Water Supply Engineering~~ Virginia Department of Health - Office of Drinking Water.

"Virginia laboratory officer" means the DGS-DCLS coordinator of drinking water laboratory certification activities.

1VAC30-40-30. Public notification for exceeded MCL.

The public notification regulations require that a laboratory analyzing compliance samples immediately notify the ~~VDH-DWSE~~ VDH-ODW of all results which exceed an MCL in accordance with Virginia Waterworks Regulations, 12VAC5-590-530 and 12VAC5-590-540~~, June 23, 1993; the Public Notification Final Rule, Federal Register Vol. 52, No. 208, October 28, 1987; and the Public Notification Technical Amendment, Federal Register Vol. 54, No. 72, April 17, 1989~~.

1VAC30-40-40. Compliance data report.

A. A waterworks with an on-site certified laboratory shall follow the reporting requirements outlined in Virginia Waterworks Regulations, ~~VR 355-18-005.09, 2.20 Reporting, June 23, 1993~~ 12VAC5-590-530.

B. A contract laboratory analyzing compliance samples shall complete the appropriate ~~VDH-DWSE~~ VDH-ODW Sample Input Form in accordance with the instructions for compliance under the SDWA. The contract laboratory shall report the analysis result to the ~~VDH-DWSE~~ VDH-ODW within three days of completion date of sample analysis.

1VAC30-40-85. Incorporation by reference.

A. The sampling, analytical methodology, and laboratory certification requirements of 40 CFR 141 and 143 (2009) are incorporated by reference into this chapter.

B. The specific sampling, analytical methodology, and laboratory certification requirements incorporated by reference are listed below by category:

1. Inorganic chemistry: 40 CFR 141.23, 40 CFR 141.89, and 40 CFR 141.131.

2. Organic chemistry: 40 CFR 141.24 and 40 CFR 141.131.

3. Microbiology: 40 CFR 141.21, 40 CFR 141.74, 40 CFR 141.174, 40 CFR 141.704, and 40 CFR 141.705. 40 CFR 136.3 (a) for *e. coli* requirements under 40 CFR 141.704.

4. Radiochemistry: 40 CFR 141.25.

5. Alternative testing methods: 40 CFR Part 141, Subpart C, Appendix A.

6. Test methods specified for secondary maximum contaminant levels: 40 CFR 143.4.

C. The exceptions to the requirements for laboratory certification in 40 CFR 141.28, 40 CFR 141.74(a), 40 CFR 141.89(a)(1), 40 CFR 141.131(b)(3), and 40 CFR 141.131(c)(3) are incorporated by reference into this chapter. Laboratory testing for alkalinity, calcium, conductivity, disinfectant residual, orthophosphate, pH, silica, temperature, and turbidity for compliance purposes may be performed by laboratories or persons not certified under this chapter but acceptable to VDH-ODW.

1VAC30-40-100. Evaluation procedure.

A. DGS-DCLS shall notify a laboratory three weeks before the on-site evaluation.

B. During the on-site evaluation, the certifying team shall evaluate the laboratory on its equipment and supplies, general laboratory practices, sample collection, handling and preservation, methodology and quality assurance. A laboratory may be required to analyze an unknown sample or perform analysis on a parameter during the evaluation.

Survey forms may be used as guidelines for complete coverage of the laboratory's activities. Each deviation observed during the laboratory evaluation shall be discussed at the time it is observed. The certifying team shall make an oral report to the laboratory staff at the end of the evaluation.

C. The certifying team shall prepare a narrative and action report for the Virginia laboratory officer. This report shall contain information pertinent to the evaluation. The report shall recommend the parameters in a category for which certification can be granted.

D. DGS-DCLS shall obtain from ~~VDH-DWSE~~ VDH-ODW an identification number for a newly certified laboratory. DGS-DCLS shall inform ~~VDH-DSWE~~ VDH-ODW of the certification status of a laboratory.

E. The Virginia laboratory officer shall advise the laboratory within 30 days after the on-site evaluation of its certification status and forward the certifying team's complete report.

F. Each laboratory found to be in noncompliance with this chapter, as indicated in the certifying team report, shall submit documentation of the corrective actions at the time specified by DGS-DCLS.

G. Additional actions toward certification shall be determined based on the specific circumstances.

1VAC30-40-110. Levels of certification.

Certification is granted for individual parameters in a category except for the volatile organic chemicals (VOC's). The VOC's are certified as a group based on the method employed and successful completion of the performance evaluation study.

1. "Certified" means a laboratory that meets the minimum requirements as determined by the certifying team using this chapter. The certification shall be valid for up to three years.

2. "Provisionally certified" means a laboratory which has deficiencies but can still produce valid data. The laboratory can continue to report compliance data to ~~VDH-DWSE~~ VDH-ODW. A laboratory shall be permitted up to six months for correction of deficiencies. The certifying team may perform an announced or unannounced on-site evaluation to determine the adequacy of documented corrective actions. The certifying team shall recommend to the Virginia laboratory officer to upgrade the laboratory's certification status.

3. "Not certified" means a laboratory that does not meet the minimum requirements as determined by the certifying team using this chapter.

1VAC30-40-130. Maintenance of certified status.

To maintain its certified status, a laboratory shall:

1. Continue to meet the requirements listed in this chapter based on the on-site evaluation.

2. Pass performance evaluation samples on an annual basis (for radiochemistry pass additional two cross-check samples).

3. Perform a minimum of five water analyses for each chemical parameter per month. Refer to 1VAC30-40-330 for the minimum number of microbiology analyses. This shall ensure that the laboratory maintains expertise in the certified categories.

4. Notify DGS-DCLS within 30 days of changes in personnel, equipment or laboratory location which may change the laboratory's analytical capability.

5. Use approved methodology ~~listed in this chapter~~ incorporated by reference at 1VAC30-40-85.

6. Notify ~~VDH-DWSE~~ VDH-ODW in accordance with 1VAC30-40-30.

1VAC30-40-150. Revocation of certified status.

A laboratory shall be downgraded from certified or provisionally certified to not certified status for:

1. Failure to employ USEPA approved methods incorporated by reference at 1VAC30-40-85.

2. Failure to submit report for the performance evaluation study at the specified time limit unless a waiver is approved by DGS-DCLS.

3. Failure to successfully analyze a parameter that is provisionally certified.

4. Submission of a performance evaluation sample to another laboratory for analysis and reporting the data as its own.

5. Failure to correct identified deficiencies based on an on-site visit.

6. Permitting persons other than qualified personnel to perform and report results for drinking water analysis.

7. Falsification of data or use of other deceptive practices.

8. Failure to notify the ~~VDH DWSE~~ VDH-ODW in accordance with 1VAC30-40-30.

1VAC30-40-240. Analytical methodology.

~~Analytical methods are specified in NPDWR 40 CFR 141 and 143. All procedural steps in the approved methods are considered requirements.~~

~~1. Inorganic contaminants. Table III-1 of this chapter shows the approved methodology for inorganic contaminants.~~

~~2. Organic contaminants. Table III-2 of this chapter shows the approved methodology for organic contaminants.~~

~~3. Secondary inoraganic contaminants. Table III-3 of this chapter shows the approved methodology for secondary inorganic contaminants.~~

A. Laboratories shall meet the sampling and analytical methodology requirements incorporated by reference at 1VAC30-40-85 B 1 for primary inorganic contaminants, 1VAC30-40-85 B 2 for primary organic contaminants, and 1VAC30-40-85 B 5 for alternative testing methods.

~~4. Prepackaged kits.~~ B. DPD Colorimetric Test Kit and FACTS Colorimetric Test Kit are the only acceptable prepackaged kits for free chlorine residual.

~~5.~~ C. Measurement for residual disinfectant, turbidity, pH and temperature need not be made in certified laboratories but may be performed by any persons acceptable by the ~~VDH DWSE~~ VDH-ODW. The following are the critical elements of these tests:

~~a.~~ 1. Sealed liquid turbidity standards purchased from the instrument manufacturer shall be calibrated against properly prepared and diluted formazin or styrene divinylbenzene polymer standards at least every four months in order to monitor for any eventual deterioration. This calibration shall be documented. The standards shall be replaced when they do not fall within 15% of the assigned value of the standard. Solid turbidity standards composed of plastic, glass, or other materials shall not be used.

~~b.~~ 2. Calibration interval for color wheels, sealed ampules, and other visual standards for free chlorine residual at least every six months. These calibrations shall be documented. By comparing standards and plotting such a comparison on graph paper, a correction factor can be derived and applied to all future results obtained on the now calibrated apparatus.

~~c.~~ 3. Additional criteria. The following criteria shall be used by persons for performing free chlorine residual, turbidity, pH and temperature measurements.

~~(1)~~ a. Free chlorine residual. Samples shall be collected in plastic or glass. Samples are not preserved; analyses are made within 15 minutes. A DPD or FACTS Colorimetric Test Kit, spectrophotometer or photometer is required.

~~(2)~~ b. Turbidity. Samples shall be collected in plastic or glass. Samples are not preserved; analyses are to be made within 15 minutes. Nephelometer is needed with light source for illuminating the sample and one or more photoelectric detectors with a readout device to indicate the intensity of light scattered at right angles to the path of the incident light. Unit may be line/bench or battery/portable operated.

~~(3)~~ c. pH. Samples shall be collected in plastic or glass. Samples are not preserved. Analyses are to be made within 15 minutes. A pH meter is necessary.

~~(4)~~ d. Temperature. Samples shall be analyzed immediately. ~~Good~~ A good grade mercury-filled or dial-type centigrade thermometer, or thermistor ~~are~~ is required.

1VAC30-40-250. Sample collection, handling, and preservation.

A. A written sampling procedure with specified sampling instructions shall be made available to sample collectors. The laboratory shall require strict adherence to correct sampling procedures, complete identification of a sample and prompt transfer of the sample to the laboratory.

B. The collector shall be trained in sampling procedures.

C. The sample needs to be representative of the potable water system. The water tap shall be sampled after maintaining a steady water flow for two or three minutes to clear service line unless otherwise specified by the method, as an example, lead and copper. The tap shall be free of any attachments or water purification devices.

D. The sample report form shall be completed immediately after collection with location, date and time of collection, collector's name, preservative added and any remarks concerning the sample. Indelible ink shall be used.

~~C.~~ E. The sample container, required ~~preservative~~ preservation, and maximum holding time requirements for sampling and analyzing inorganic contaminants are ~~listed in Table III-4 of this chapter~~ incorporated by reference at 1VAC30-40-85 B 1.

~~D.~~ F. The sample container, required ~~preservative~~ preservation, and maximum holding time requirements for sampling and analyzing organic contaminants are ~~listed in Table III-5 of this chapter~~ incorporated by reference at 1VAC30-40-85 B 2.

G. The sample container, required preservation, and maximum holding time requirements for alternative test methods are incorporated by reference at 1VAC30-40-85 B 5.

~~E.~~ H. The laboratory shall reject any sample not meeting the above criteria and notify the system or individual requesting the analyses.

1VAC30-40-280. Action response to laboratory results.

When the action response is a designated laboratory responsibility, the laboratory shall notify the proper authority of noncompliance sample results and request resampling from the same sampling point immediately.

~~TABLE III-1~~
~~Approved Methodology for Inorganic Contaminants~~

~~Contaminant~~	~~Methodology~~	~~EPA~~	~~ASTM[3]~~	~~SM[4]~~	~~USGS[5]~~	~~Other~~
~~Alkalinity~~	~~Titrimetric~~	~~[1] 310.1~~	~~D1067-88B~~	~~2320~~	~~1-030-85~~	———
~~Antimony[6]~~	~~ICP-Mass Spectrometry~~	~~[2] 200.8~~	———	———	———	———
	~~Hydride-Atomic Absorption[10]~~	———	~~D-3697-87~~	———	———	———
	~~Atomic Absorption; Platform~~	~~[2] 200.9~~	———	———	———	———
	~~Atomic Absorption; Furnace~~	———	———	~~3113B~~	———	———
~~Arsenic[6]~~	~~Inductively Coupled Plasma~~	~~[2] 200.7~~	———	~~3120B~~	———	———
	~~ICP-Mass Spectrometry~~	~~[2] 200.8~~	———	———	———	———
	~~Atomic Absorption; Platform~~	~~[2] 200.9~~	———	———	———	———
	~~Atomic Absorption; Furnace~~	~~[2,11] 206.2~~	~~D-2972-88C~~	~~3113B~~	———	———
	~~Hydride-Atomic Absorption[10]~~	———	~~D-2972-88B~~	~~3114B~~	———	———
~~Asbestos~~	~~Transmission Electron Microscopy~~	~~[13] 100.1~~	———	———	———	———
	~~Transmission Electron Microscopy~~	~~[14] 100.2~~	———	———	———	———
~~Barium[6]~~	~~Inductively Coupled Plasma~~	~~[2] 200.7~~	———	~~3120B~~	———	———
	~~ICP-Mass Spectrometry~~	~~[2] 200.8~~	———	———	———	———
	~~Atomic Absorption; Direct~~	———	———	~~3111D~~	———	———
	~~Atomic Absorption; Furnace~~	~~[1] 208.2~~	———	~~3113B~~	———	———
~~Berryllium[6]~~	~~Inductively Coupled Plasma~~	~~[2] 200.7~~	———	~~3120B~~	———	———
	~~ICP-Mass Spectrometry~~	~~[2] 200.8~~	———	———	———	———
	~~Atomic Absorption; Platform~~	~~[2] 200.9~~	———	———	———	———
	~~Atomic Absorption; Furnace~~	———	~~D-3645-84B~~	~~3113B~~	———	———
~~Cadmium[6]~~	~~Inductively Coupled Plasma~~	~~[2] 200.7~~	———	———	———	———
	~~ICP-Mass Spectrometry~~	~~[2] 200.8~~	———	———	———	———

	Atomic Absorption; Platform	[2] 200.9	———	———	———	———
	Atomic Absorption; Furnace	———	———	3113B	———	———
Calcium[6]	EDTA Titrimetric	[1] 215.2	D511-88A	3500-Ca-D	———	———
	Atomic Absorption; Direct Aspiration	[1] 215.1	D511-88B	3111-B	———	———
	Inductively Coupled Plasma	[2] 200.7	———	3120	———	———
Chromium[6]	Inductively Coupled Plasma	[2] 200.7	———	3120B	———	———
	ICP-Mass Spectrometry	[2] 200.8	———	———	———	———
	Atomic Absorption; Platform	[2] 200.9	———	———	———	———
	Atomic Absorption; Furnace	———	———	3113B	———	———
Conductivity	Conductance	[1] 120.1	D1125-82B	2510	———	———
Copper[6]	Atomic Absorption; Furnace	[1] 220.2	D1688-90C	3113B	———	———
	Atomic Absorption; Platform	[2] 200.9	———	———	———	———
	Atomic Absorption; Direct Aspiration	[1] 220.1	D1688-90A	3111-B	———	———
	Inductively Coupled Plasma	[2] 200.7	———	3120	———	———
	ICP-Mass Spectrometry	[2] 200.8	———	———	———	———
Cyanide	Amenable, Spectrophotometric	———	D2036-91B	4500CN-G	———	———
	Manual Distillation followed by Spectro.	———	———	4500-CN-C[16, 18]	———	———
	Manual	———	D2036-91A	4500-CN-E	1-3300-85	———
	Semi-automated	[9] 335.4	———	———	———	———
	Selective Electrode	———	D2036-91A	4500CN-F	———	———
Fluoride	Ion Chromatography	[9] 300.0	D4327-91	4110B	———	———
	Manual Distill; Color. SPADNS	———	———	4500F-B,D	———	———
	Manual Electrode	———	D1179-88B	4500F-C	———	———
	Automated Electrode	———	———	———	3800-75W-E[20]	———
	Automated Alizarin	———	———	4500F-E	———	129-71W[19]
Lead[6]	Atomic Absorption; Furnace Technique	[1] 239.2	D3559-85D	3113B	———	———
	Atomic Absorption; Platform	[2] 200.9	———	———	———	———
		[2] 200.8	———	———	———	———

Mercury	Manual, Cold Vapor[10]	[1] 245.1	D3223-91	3112B	———	———
	Automated, Cold Vapor[10]	[1] 245.2	———	———	———	———
Nickel[6]	Inductively Coupled Plasma	[2] 200.7	———	3120B	———	———
	ICP-Mass Spectrometry	[2] 200.8	———	———	———	———
	Atomic Absorption; Platform	[2] 200.9	———	———	———	———
	Atomic Absorption; Direct	———	———	3111B	———	———
	Atomic Absorption; Furnace	———	———	3113B	———	———
Nitrate	Ion Chromatography	[9] 300.0	D4327-91	4110B	———	B-1011[8]
	Automated Cadmium Reduction	[9] 353.2	D3867-90A	4500-NO_3- F	———	———
	Ion Selective Electrode	———	———	4500-NO_3- D	———	WeWWG-/5880[7]
	Manual Cadmium Reduction	———	D3867-90B	4500-NO_3- E	———	———
Nitrite	Ion Chromatography	[9] 300.0	D4327-91	4110B	———	B-1011[8]
	Automated Cadmium Reduction	[9] 353.2	D3887-90A	4500-NO_3- F	———	———
	Manual Cadmium Reduction	———	D3867-90B	4500-NO_3- E	———	———
	Spectrophotometric	[1] 354.1	———	———	———	———
O-Phosphate Unfiltered, no digestion or hydrolysis	Colorimetric: Ascorbic Acid	———	———	———	———	———
	Manual; 2-Reagent	[1] 365.3	———	———	———	———
	Manual; 1-Reagent	[1] 365.2	D515-88A	4500-P E	———	———
	Auto; Segmented	———	———	———	1-2601-85	———
	Auto; Discrete	———	———	———	1-2598-85	———
	Ion Chromatography	[9] 300.0	D4327-91	4110B	———	———
pH	Electrometric - Individual Measurement	[1] 150.1	D1293-84B	4500-H	———	———
	Electrometric - Online Measurement	[1] 150.2	———	———	———	———
Residual Disinfectant Chlorine	Amperometric Titration	———	———	4500C1-D	———	———
	Amperometric Titration- low level	———	———	4500C1-E	———	———
	DPD Colorimetric Method	———	———	4500C1-G	———	———
	DPD Titrimetric	———	———	4500C1-F	———	———
	Syringaldazine (FACTS)	———	———	4500C1-H	———	———
Ozone	Indigo Method	———	———	4500O_3 B	———	21

Chlorine Dioxide	Amperometric Method			$4500C10_2$		
	DPD Colorimetric			$4500C10_2$ D		
	Amperometric Method			$4500C10_2$ E		
Selenium[6]	Hydride Atomic Absorption[10]		D3859-88A	3114B		
	ICP Mass Spectrometry	[2] 200.8				
	Atomic Absorption; Platform	[2] 200.9				
	Atomic Absorption; Furnace[11]		D3859-88B	3113B		
Silica filtered	Colorimetric Molybdate Blue Manual	[1] 370.1	D89-88		1-700-85	
	Automated				1-2700-85	
	Molybdosilicate Manual			4500Si-D		
	Heteropoly Blue Manual			4500Si-E		
	Molybdate Reactive Silica-Automated			4500Si-F		
	Inductively Coupled Plasma	[2] 200.7		3120		
Sodium[6]	Atomic Absorption: Direct Aspiration	[1] 273.1				
	Inductively Coupled Plasma	[2] 200.7		3120		
	Flame Photometric		D1428-82A	3500Na-D		
Temperature	Thermometric			2550		
Thallium[6]	ICP-Mass Spectrometry	[2] 200.8				
	Atomic Absorption; Platform	[2] 200.9				
	Atomic Absorption; Furnace			3113B		
Turbidity	Nephelometric	[1] 180.1		2130B		
	Great Lake Instruments					Method 2

[1] Methods for Chemical Analysis of Water and Wastes, EPA-600/4-79-020, March 1983. Available at NTIS, publication order number PB84-128677.

[2] Methods for the Determination of Metals in Environmental Samples. EPA-600/4-91-010. Available at NTIS, PB 91-231498, June 1991.

[3] Annual Book of ASTM Standards, Vols. 11.01 and 11.02, 1993, American Society for Testing and Materials, 1918 Race Street, Philadelphia, PA 19103.

[4] 18th edition of Standard methods for the Examination of Water and Wastewater, 1992, American Public Health Association, American Water Works Association, Water Environment Federation.

[5] Techniques of Water Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A-1, Third Edition, 1989. Available at Superintendent of Documents, U.S. Government printing Office, Washington, DC 20402.

[6] Samples may not be filtered. Samples that contain less than 1 NTU(ne phelometric turbidity unit) and are properly preserved

(concentrated nitric acid to pH <2) may be analyzed directly (without digestion) for total metals; otherwise, digestion is required. Turbidity must be measured on the preserved samples just prior to the initiation of metal analysis. When digestion is required, the total recoverable technique as defined in the method must be used.

[7] Orion Guide to Water and Wastewater Analysis, Form WeWWG/5880, p. 5, 1985. Orion Research, Inc., Cambridge, MA.

[8] Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography, Method B-1011, Millipore Corporation, Waters Chromatography Division, 34 Maple Street, Milford, MA 01757.

[9] Methods for the Determination of Inorganic Substances in Environmental Samples, EPA/600/R/93/100, August 1993. Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268.

[10] For the Gaseous hydride determinations of antimony, arsenic, and selenium and for the determination of mercury by the cold vapor techniques, the proper digestion technique as defined in the method must be followed to ensure the element is in the proper state for analysis.

[11] Add 2 ml of 30% hydrogen peroxide and an appropriate concentration of matrix modifier nickel nitrate to samples.

[13] Method 100.1 Analytical method for Determination of Asbestos, Fibers in Water, EPA-600/4-83-043, September 1983, U.S. EPA Environmental Research Laboratory, Athena, GA 30613. Available at NTIS, PB-83-260471.

[14] Method 100.2 Method for the Determination of Asbestos Structure over 10 pm in Length in Drinking Water, (1993), Technical Support division, Cincinnati, OH 45268.

[16] The distillation procedure in EPA Method 335.2 should not be used.

[18] EPA Methods 335.2 and 335.3 require the sodium hydroxide absorber solution final concentration to be adjusted to 0.25 N before colorimetric analysis.

[19] Fluoride in Water and Wastewater. Industrial Method No. 129-71-W. Technicon Industrial Systems. Tarrytown, NY 10591 December 1972.

[20] Fluoride in Water and Wastewater, Method No. 380-75WE. Technicon Industrial Systems. Tarrytown, NY 10591, February 1976.

Table III-2
Approved Methodology for Organic Contaminants

Contaminant	EPA Method
Total Trihalomethanes (TTHM)	502.2, 524.2, 551
Maximum Trihalomethane Potential (MTP)	510.1
Benzene	502.2, 524.2
Carbon tetrachloride	502.2, 524.2, 551.
1,2-Dichlorobenzene	502.2, 524.2
1,4-Dichlorobenzene	502.2, 524.2
1,2-Dichloroethane	502.2, 524.2
cis-Dichloroethylene	502.2, 524.2
trans-Dichloroethylene	502.2, 524.2
Dichloromethane	502.2, 524.2
1,2-Dichloropropane	502.2, 524.2
Ethylbenzene	502.2, 524.2
Styrene	502.2, 524.2

~~Tetrachloroethylene~~	~~502.2, 524.2, 551.~~
~~1,1,1-Trichloroethane~~	~~502.2, 524.2, 551.~~
~~Trichloroethylene~~	~~502.2, 524.2, 551.~~
~~Toluene~~	~~502.2, 524.2.~~
~~1,2,4-Trichlorobenzene~~	~~502.2, 524.2.~~
~~1,1-Dichloroethylene~~	~~502.2, 524.2.~~
~~1,1,2-Trichloroethane~~	~~502.2, 524.2~~
~~Vinyl chloride~~	~~502.2, 524.2.~~
~~Xylene (total)~~	~~502.2, 524.2.~~
~~2,3,7,8-TCDD (dioxin)~~	~~1613.~~
~~2,4-D~~	~~515.2, 555.~~
~~2,4,5-TP (Silvex)~~	~~515.2, 555.~~
~~Alachlor~~	~~505, 507 2, 525.2.~~
~~Atrazine~~	~~505, 507 2, 525.2.~~
~~Benzo(a)pyrene~~	~~525.2, 550, 550.1.~~
~~Carbofuran~~	~~531.1~~
~~Chlordane~~	~~531.1~~
~~Dalapony~~	~~552.1~~
~~Di(2-ethylhexyl)adipate~~	~~506, 525.2.~~
~~Di(2-ethylhexyl)phthalate~~	~~506, 525.2.~~
~~Dibromochloropropane (DBCP)~~	~~504, 551.~~
~~Dinoseb~~	~~515.2, 555.~~
~~Diquat~~	~~549.1~~
~~Endothal~~	~~548.1~~
~~Endrin~~	~~505, 508 2, 525.2.~~
~~Ethylenedibromide (EDB)~~	~~504, 551.~~
~~Glyphosate~~	~~547, 6651 1.~~
~~Heptachlor~~	~~505, 508 2, 525.2.~~
~~Heptachlor Epoxide~~	~~505, 508 2, 525.2.~~
~~Hexachlorobenzene~~	~~505, 508 2, 525.2.~~
~~Hexachlorocyclopentadiene~~	~~505, 525.2~~
~~Lindane~~	~~505, 508 2, 525.2~~
~~Methoxychlor~~	~~505,508 2, 525.2~~
~~Oxamyl~~	~~531.1.~~
~~PCBs 3 (as decachlorobiphenyl)~~	~~508A~~

(as Aroclors)	505, 508 2
Pentachlorophenol	515.2, 525.2, 555
Picloram	515.2, 555.
Simazine	505, 507 2, 525.2
Toxaphene	508 2, 525.2
Aldicarb	531.1
Aldicarb sulfone	531.1.
Aldicarb sulfoxide	531.1.
Aldrin	505, 508 2, 525.2.
Butachlor	507 2, 525.2.
Carbaryl	531.1.
Dicamba	515.2, 555.
Dieldrin	505, 508 2, 525.2.
3 hydroxycarbofuran	531.1.
Methomyl	531.1.
Metholachlor	507 2, 525.2.
Metribuzin	507 2, 525.2.
Propachlor	508 2, 525.2.

[1] Method 6651 is contained in the 18th edition of Standard Methods for the Examination of Water and Wastewate, 1992, American Public Health Association, Water Works Association, Water Environmental Federation.

[2] Solid phase extraction procedures, as specified in USEPA Method 525.2, may be used as an option with USEPA Methods 507 and 508.

[3] PCBs are qualitatively identified as Aroclors and measured for compliance purposes as decachlorobiphenyl.

Table III 3
Approved Methodology for Secondary Inorganic Contaminants

Containment	EPA	ASTM [3]	SM [4]	Other
Aluminum [6]	[2] 200.7 [2] 200.8 [2] 200.9		3120B 3113B 3111D	 [5] 1-305-85
Chloride	[8] 300.0	4327-91	4110 4500-C1- D	
Color	[1] 110.2		2120B	
Copper [6]	[2] 200.7 [2] 200.8 [2] 200.9		3120B	

	[1] 200.1	D1688-90A	3111B	
	[1] 200.2	D1688-90C	3113B	
Flouride	[8] 300.0	D4327-91	4110	
		D1179-88A	4500F-B	
		D1179-88B	and D	
			4500F-C	[7] 129-71W
			4500F-E	[10] 380-75WE
Foaming Agents	[1] 425.1		5540C	
Iron [6]	[2] 200.7		3120B	
	[2] 200.9		3111B	
			3113B	
Manganese [6]	[2] 200.7		3120B	
	[2] 200.8			
	[2] 200.9		3111B	
			3113B	
Odor	[1] 140.1		2150B	
pH	[1] 150.1	D1293-84B	4500-H	
Silver [6]	[2] 200.7		3120B	[5] 1-2822-85
	[2] 200.8		3111B	
	[2] 200.9		3113B	
Sulfate	[8] 300.0	D4327-01	4110	[5] 1-2822-85
	[8] 375.2		4500-SO_4-F	[5] 1-28223-85
			4500-SO_4-E	
Total Dissolved Solids (TDS)	[1] 160.1		3120B	
			3111B	
Zinc	[2] 200.7		3120B	
	[2] 200.8		3111B	

[1] Methods for Chemical Analysis of Water and Wastes, EPA-600/4-79-020, March 1983. Available at NTIS as publication number PB84-128677.

[2] Methods for the Determination of Metals in Environmental Samples. Available at NTIS as publication number PB91-231498, June 1991.

[3] Annual Book of ASTM Standards, Vols. 11.01 and 11.02, 1993, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

[4] 18th edition of Standard Methods for the Examination of Water and Wastewater, 1992, American Public Health Association, American Water Works Association, Water Environmental Federation.

[5] Techniques of Water Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A-1, Third Edition, 1989. Available at Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

[6] Samples may not be filtered. Samples that contain less than 1 NTU (nephelometeric turbidity unit) and are properly preserved (concentrated nitric acid to pH *2) may be analyzed directly (without digestion) for total metals, otherwise, digestion is required. Turbidity must be measured on the preserved samples just prior to the initiation of metal analysis. When digestion is required, the total recoverable technique as defined in the method must be used; samples cannot be filtered.

[7] Fluoride in Water and Wastewater. Industrial Method No. 129-71W. Technicon Industrial Systems. Tarrytown, NY, 10591, December 1972.

[8] Methods for the Determination of Inorganic Substances in Environmental Samples, EPA/600/R/93/100, August 1993. EPA/Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268.

[9] (Reserved).

[10] Fluoride in Water and Wastewater, Method No. 380-75WE. Technicon Industrial Systems. Tarrytown, NY 10591, February 1976.

Table III-4
Sample Collection, Containers, and Preservation for Inorganic Contaminants

Contaminant	Preservative [2]	Container [3]	Maximum Holding Time [4]
Alkalinity	Cool 4°C	P or G	14 days
Antimony	Conc HNO_3 to pH <2	P or G	6 months
Arsenic	Conc HNO_3 to pH <2	P or G	6 months
Asbestos	Cool 4°C [5]	P or G	48 hours
Barium	Conc HNO_3 to pH <2	P or G	6 months
Beryllium	Conc HNO_3 to pH <2	P or G	6 months
Cadmium	Conc HNO_3 to pH <2	P or G	6 months
Calcium	Conc HNO_3 to ph <2	P or G	6 months
Chloride	None	P or G	28 days
Chromium	Conc HNO_3 to pH <2	P or G	6 months
Copper	Conc HNO_3 to pH <2	P or G	6 months
Cyanide	NaOH to pH >12, Cool 4°C 0.6g ascorbid acid [6]	P or G	14 days
Fluoride	None	P or G	1 month
Free Chlorine Residual	None	P or G	Analyze immediately [7]
Lead	Conc HNO_3 to pH <2	P or G	6 months
Mercury	Conc HNO_3 to ph <2	P or G	28 days
Nickel	Conc HNO_3 to pH <2	P or G	6 months
Nitrate N	Cool 4°C	P or G	28 days
Total Nitrate/Nitrite	Conc H_2SO_4 to pH <2	P or G	28 days
Nitrite-N	Cool 4°C	P or G	48 hours
0-Phosphate	Filter immediately, Cool 4°C	P or G	48 hours
pH	None	P or G	Analyze immediately [7]

Selenium	Conc HNO_3 to pH <2	P or G	6 months
Silica	Cool 4°C	P	28 days
Sodium	Conc HNO_3 to pH <2	P or G	6 months
Temperature	None	P or G	Analyze immediately [7]
Thallium	Conc HNO_3 to pH <2	P or G	6 months
Total Filterable Residue (TDS)	Cool 4°C	P or G	7 days
Turbidity	Cool 4°C	P or G	48 hours

[1] The laboratory director must reject any samples, taken for compliance purposes, not meeting these criteria and notify the authority requesting the analysis.

[2] If HNO_3 cannot be used because of shipping restrictions, immediately ship the sample to the laboratory at ambient temperature. Upon receipts, the sample must be acidified with conc. HNO_3 to pH <2 and held for at least 16 hours before analysis.

[3] P = plastic, hard or soft; G = glass, hard or soft.

[4] In all cases, samples should be analyzed as soon after collection as possible.

[5] These samples should never be frozen.

[6] Ascorbic acid should only be used in the presence of residual chlorine.

[7] Analyze immediately generally means within 15 minutes of sample collection.

Table III-5
Sample Collection, Containers, and Preservation for Organic Contaminants

Contaminant	Method	Preservative	Container	Holding Time	
				To Extraction	After Extraction
Non-Volatile SOCs	504	3 mg/40 ml sodium thiosulfate HCl to pH 2 Cool 4°C	Glass Teflon cap liners	28 days	Analyze immediately
	505	3 mg/40 ml sodium thiosulfate	Glass (dark) Teflon cap liners	14 days	Analyze immediately
		Cool 4°C			
	506	60 mg/l sodium thiosulfate Cool 4°C	Glass (dark) Teflon cap liners	14 days [1]	14 days
	507 [2]	80 mg/l sodium thiosulfate Cool 4°C	Glass (dark) Teflon cap liners	14 days	14 days
	508A	Cool 4°C	Glass Teflon cap liners	14 days	30 days
	508 [2]	80 mg/l sodium thiosulfate	Glass (dark) Teflon cap liners	7 days	14 days

		~~Cool 4°C~~			
	~~515.2~~	~~6N HCl to pH <2~~ ~~80 mg/l sodium thiosulfate~~ ~~Cool 4°C~~	~~Glass (dark)~~ ~~Teflon cap liners~~	~~14 days~~	~~14 days~~
	~~525.2~~	~~40-50 mg/l sodium sulfite~~ ~~HCl to pH <2~~ ~~Cool 4°C~~	~~Glass~~ ~~Teflon cap liners~~	~~7 days~~	~~30 days~~
	~~531.1~~ - ~~Monochloracetic acid to pH 3~~ ~~80 mg/l sodium thiosulfate~~ ~~Cool 4°C until storage~~ ~~Store at -10°C~~	~~Glass~~ ~~Teflon cap liners~~	~~28 days~~ ~~-10°C~~	~~No extract~~
	~~547~~	~~100 mg/l sodium thiosulfate~~ ~~Cool 4°C~~	~~Glass (dark)~~ ~~Teflon cap liners~~	~~14 days~~	~~No extract~~
	~~548.1~~	~~Cool 4°C~~	~~Glass~~ ~~Teflon cap liners~~	~~7 days~~	~~1 day~~
	~~549.1~~	~~100 mg/l sodium thiosulfate~~ ~~H_2SO_4 to pH2~~ ~~Cool 4°C~~	~~Amber PVC high density or amber silanized glass~~	~~7 days~~	~~21 days~~
	~~550.0~~	~~100 mg/l sodium thiosulfate~~ ~~6N HCl to pH <2~~ ~~Cool 4°C~~	~~Glass (dark)~~ ~~Teflon cap liners~~	~~7 days~~	~~40 days~~
	~~550.1~~	~~100 mg/l sodium thiosulfate~~ ~~6N HCl to pH <2~~ ~~Cool 4°C~~	~~Glass (dark)~~ ~~Teflon cap liners~~	~~7 days~~	~~40 days~~
	~~552.1~~	~~10 mg/l NH_4Cl~~ ~~Cool 4°C~~	~~Glass~~ ~~Teflon cap liners~~	~~28 days~~	~~48 hours~~
	~~555~~	~~6N HCl to pH <2~~ ~~4-5mg sodium sulfite~~ ~~Cool 4°C~~	~~Glass~~	~~14 days~~	
	~~1613~~	~~80 mg/l sodium thiosulfate~~ ~~Cool 4°C~~	~~Glass (dark)~~		~~40 days~~

~~MTP~~	~~510.1~~	~~Cool 4°C~~	~~Glass (dark) Silicon/Teflon cap liners~~	~~14 days~~	
~~TTHMs/VOCs~~	~~502.2~~	~~25 mg/40 ml ascorbic acid or 3 mg/40 ml sodium thiosulfate 1:1 HCl to pH <2~~ ~~Cool 4°C~~	~~Glass Silicon/Teflon cap liners~~	~~14 days~~	
	~~524.2~~	~~25 mg/60 ml ascorbic acid 1:1 HCl to pH <2~~ ~~Cool 4°C~~	~~Glass Silicon/Teflon cap liners~~	~~14 days~~	
	~~551~~	~~4 mg sodium thiosulfate or sulfite and ammonium chloride or 25mg ascorbic acid 0.2N HCl to pH 4.5-5.0~~ ~~Cool 4°C~~	~~Glass Silicon/Teflon cap liners~~	~~14 days~~	

~~[1] The holding time for Heptachor under this method is 7 days.~~

~~[2] Add 10 mg/l $HgCL_2$ in any drinking water sample that might be expected to exhibit biological degradation of the target pesticides. Samples that have been preserved with $HgCl_2$ may be disposed of in at least two ways: as a hazardous waste, or by passing over an absorbent column (i.e., Alumina, activated with carbon, etc.) for mercury absorption, with the effluent analyzed periodically for breakthrough. The absorbent would then be disposed of as a hazardous waste. Other techniques may be applicable.~~

1VAC30-40-320. General laboratory practices.

A. Sterilization procedures.

Table IV-1
The following times and temperatures shall be used for autoclaving materials:

Material	Temperature/Time
Membrane filters and pads	121°C/10 min.
Carbohydrate-containing media (except P-A Broth)	121°C/12-15 min.
P-A Broth	121°C/12 min.
Contaminated materials and discarded tests	121°C/30 min.
Membrane filter funnel assemblies (wrapped), sample collection bottles (empty), individual glassware items	121°C/15 min.
Dilution water blank (99 mL)	121°C/15 min.
Rinse water volumes of 500 mL to 1000 mL	121°C/30 min.
Rinse water in excess of 1000 mL	121°C/time adjusted for volume

1. Media, membrane filters and pads shall be removed immediately after completion of sterilization cycle.

2. Membrane filter assemblies shall be sterilized between sample filtration series. A filtration series ends when 30 minutes or longer elapse between individual sample filtrations.

B. Laboratory pure water.

1. Use only satisfactorily tested reagent water from stills or deionization units to prepare media, reagents and dilution/rinse water for microbiological analyses.

2. QC - Test the quality of the lab pure water or have it tested by a certified lab to assure it meets these criteria:

Table IV-2

Parameter	Limits	Frequency
Conductivity	Less than 2 Micromho/cm at 25°C	Monthly
or		
Resistivity	Greater than 0.5 megohms at 25°C	Monthly

Heterotrophic Plate Count (Pour Plate)	Less than 500 CFU/ml	Monthly
Total Chlorine Residual	Nondetectable	Monthly
Trace Metals (Pb, Cd, Cr, Cu, Ni, Zn)	Not greater than 0.05 mg/L per contaminant. Collectively, no greater than 0.1 mg/L	Annually
Test for bacteriological quality of reagent water Standard Methods, 18th Ed., 1992, Part 9020 B.3.c.1	Ratio 0.8 - 3.0	Annually

C. Dilution/rinse water.

1. Prepare stock buffer solution according to Standard Methods, 18th Ed., 1992, Part 9050 C.1.a. Autoclave or filter sterilize stock buffer, label and date container and store in refrigerator. Ensure stored stock buffer solution is free of turbidity.

2. Prepare rinse/dilution water by adding 1.25 mL of stock buffer solution and 5 mL of magnesium chloride ($MgCl_2$) solution to one liter of lab pure water. Make magnesium chloride solution by adding 81.1 g $MgCl_2$. $6H_2O$ or 38g of anhydrous $MgCl_2$ to one liter of lab pure water. Autoclave rinse/dilution water according to Table IV-1 of this chapter.

3. QC - Check each batch of dilution/rinse water for sterility by adding 50 mL of dilution/rinse water to 50 mL of double strength TSB. Incubate at 35° ± 0.5°C for 24 hours and check for growth.

D. Glassware washing.

1. Washing processes shall provide clean glassware with no stains or spotting. Glassware shall be washed in a warm detergent solution and thoroughly rinsed initially in tap water. Use distilled or deionized water for final rinse.

2. QC - Perform the Inhibitory Residue Test (Standard Methods, 18th Ed., 1992, Part 9020 B.3.a.2)) on the initial use of a washing compound and whenever a different formulation of washing compound, or washing procedure, is used to ensure glassware is free of toxic residue.

E. Media; general requirements.

1. Use dehydrated or ready to use media manufactured commercially. Store dehydrated media in a cool, dry location away from direct sunlight and discard caked or discolored dehydrated media.

2. Date bottles of dehydrated media when received and when opened. Discard dehydrated media six months after opening; if stored in a desiccator from the time of opening, storage is extended to 12 months. Discard dehydrated media that has passed the manufacturer's expiration date. Unopened dehydrated media should be used within two years of date of receipt.

3. QC - Record the date of preparation, type of medium, manufacturer's lot number, sterilization time and temperature, final pH and technician's initials for media prepared in the laboratory. Store prepared media as described in Table IV-3.

4. QC - Check each batch of laboratory-prepared media and each lot number of commercially prepared (ready to use) media before use with a known positive and a known negative culture control. These control organisms can be stock cultures (periodically checked for purity) or commercially available disks impregnated with the organism.

Table IV-3
Storage times for prepared media.

Media Type	Maximum Storage Time/Temperature
m-Endo Broth in screw-cap flasks or bottles	96 hours/4°C
Poured plates of LES Endo Agar and Nutrient Agar + MUG in sealed plastic bags	2 weeks/4°C
LTB,, BGLB, EC Medium, ECMedium + MUG, and TSB in loose-cap tubes	1 week/4°C
LTB, BGLB, P-A Broth, EC Medium, EC Medium + MUG and TSB in screw-cap tubesor bottles	3 months/4°C
HPC agar in screw-cap flasks or bottles	2 weeks/4°C

5. Incubate refrigerated broth in culture tubes and bottles with fermentation vials overnight at 35°C before use. Discard tubes and bottles showing growth or bubbles.

6. Check tubes and bottles of broth before use and discard if evaporation exceeds 10% of original volume.

7. QC - For commercially prepared (ready to use) liquid media and agars, record the date received, lot number and pH verification. Discard media by manufacturer's expiration date.

Table IV-4
pH of Media

Medium	pH Range
Single-Strength LTB	6.6 - 7.0
Double-Strength LTB	6.5 - 6.9
Triple-Strength LTB	6.4 - 6.8
BGLB Broth	7.0 - 7.4
m-Endo Broth and LES Endo Agar	7.0 - 7.4
P-A Broth	6.6 - 7.0
EC Medium and EC Medium + MUG	6.7 - 7.1
Nutrient Agar + MUG	6.6 - 7.0
HPC Agar	6.8 - 7.2
Trypticase Soy Broth and Agar, Tryptic Soy Broth and and Agar, and Tryptose Broth	7.1 - 7.5

~~F. Membrane Filter (MF) Media.~~

~~Use m-Endo broth or LES Endo agar for the Membrane Filter Test. Ensure that alcohol used in medium rehydration procedure is not denatured.~~

~~Prepare medium in a sterile flask and use a boiling water bath or a constantly attended hot plate with a stir bar to bring medium just to the boiling point. Do not boil medium. Do not autoclave medium.~~

~~G. Fermentation technique media.~~

~~Use lauryl tryptose broth or lauryl sulfate broth in the presumptive test. The appropriate presumptive test medium concentration will vary according to sample volume (10, 20 or 100 mL) in each culture tube/bottle.~~

~~Table IV-5~~
~~Preparation of Lauryl Tryptose Broth for Presumptive Test~~
~~(Total Sample Size is 100mL)~~

~~Number of Tubes or Single Bottle~~	~~Sample per Tube/ Bottle~~ ~~mL~~	~~Medium per Tube/ Bottle~~ ~~mL~~	~~Total Volume of Medium + Sample~~ ~~mL~~	~~Dehy-drated Medium~~ ~~g/L~~	~~Medium Concen-tration~~	~~Minimum Tube or Bottle Size~~ ~~mm~~
~~10~~	~~10~~	~~10~~	~~20~~	~~71.2~~	~~2x~~	~~20 x 150~~
~~10~~	~~10~~	~~20~~	~~30~~	~~53.4~~	~~1.5x~~	~~25 x 150~~
~~5~~	~~20~~	~~10~~	~~30~~	~~106.8~~	~~3x~~	~~25 x 150~~
~~5~~	~~20~~	~~20~~	~~40~~	~~71.2~~	~~2x~~	~~25 x 200~~
~~1~~	~~100~~	~~50~~	~~150~~	~~106.8~~	~~3x~~	~~50 x 50~~
						~~x 160~~

~~Use single strength brilliant green lactose bile (BGLB) broth in the confirmed test. Use LES Endo agar for the completed test. Prepare m-Endo LES agar as described in this subsection.~~

~~H. Presence- Absence (P-A) Medium.~~

~~Use triple strength Presence Absence Broth for the Presence Absence Test. Autoclave media for 12 minutes at 121°C, leave space between bottles. Do not leave media in theautoclave for more than 30 minutes.~~

~~Use single strength brilliant green lactose bile (BGLB) broth in the confirmed test. Use LES Endo agar for the completed test.~~

~~I. ONPG-MUG Test Medium.~~

~~Use ONPG-MUG Test Medium for the ONPG-MUG Test for total coliform and E. coli. Do not prepare this medium from basic ingredients. Protect medium from light. Do not autoclave medium.~~

~~Each lot of ONPG- MUG Test Medium shall be checked before use with stock cultures or commercially available disks impregnated with Escherichia coli, Klebsiella pneumoniae and Pseudomonas aeruginosa. Use sterile distilled water as the test sample and inoculate three tests from each lot of the ONPG-MUG medium with these cultures and incubate at 35° ± 0.5°C for 24-28 hours. The results shall be yellow color with fluorescence with E. coli, yellow color without fluorescence with K. pneumoniae and no color with no fluorescence with P. Aeruginosa.~~

J. EC Medium.

Use EC Medium to check for fecal coliforms in total coliform positive MF, Fermentation and P-A Tests.

K. EC Medium + MUG.

Use EC Medium + MUG to check for E. coli in total coliform positive MF, Fermentation and P-A Tests. The medium is made up of EC Medium supplemented with 50 ug/ml of 4-methylumbelliferyl-beta-D-glucuronide (MUG). MUG may be added to EC Medium before autoclaving or EC Medium + MUG may be purchased commercially. Use 10 mL of medium in each cluture tube.

Do not use a fermentation vial. Gas production is not relevant to the test and the use of a fermentation vial may cause confusion on test interpretation.

QC – Check uninocultated culture tubes and medium before use with a 365 or 366 nm ultraviolet light to insure they do not fluoresce.

L. Nutrient Agar + MUG.

Use Nutrient Agar + MUG to check for E. coli in total coliform positive MF Tests. The medium is nutrient agar supplemented with 100 ug/ml of 4-methylumbelliferyl-beta-D-glucuronide (MUG). Sertilize agar in 100 ml volumes at 121°C for 15 minutes.

M. Heterotrophic Plate Count Agar.

Temper melted agar to 44-46°C before pouring plates. Hold melted agar no longer than three hours. Do not melt sterile agar more than once.

N. Trypticase Soy Broth. Tryptic Soy Broth or Tryptose Broth.

Use these broths for sterility checks of sample containers, membrane filters and rinse/dilution water. Also use these broths to rehydrate lyophilized disks of control organisms.

O. Trypticase Soy Agar or Tryptic Soy Agar.

Use this agar to prepare slants for growth and storage of control organisms.

1VAC30-40-330. Analytical methodology.

A. Table IV-6 of this chapter describes the EPA-approved methods which are mandatory for microbiological analyses of drinking water. Laboratories shall meet the sampling and analytical methodology requirements incorporated by reference at 1VAC30-40-85 B 3 for microbiology and 1VAC30-40-85 B 5 for alternative test methods.

TABLE IV-6
EPA-APPROVED METHODS FOR MICROBIOLOGY

PARAMETER	METHOD	SM[1]	FR[2]
TOTAL COLIFORM	Membrane Filter Technique	9222A,B,C	
TOTAL COLIFORM	Standard Total Coliform Fermentation Technique	9221A,B	
TOTAL COLIFORM	Presence-Absence (P-A) Coliform Test	9221D	
TOTAL COLIFORM	ONPG-MUG	9223	
FECAL COLIFORM	EC Medium		40 CFR 141.21(f)(5)
E.coli	EC Medium + MUG		40 CFR 141.21(f)(6)(i)
E.coli	Nutrient Agar + MUG		40 CFR 141.21(f)(6)(ii)
E.coli	ONPG-MUG Test		40 CFR 141.21(f)(6)(iii)
HETERO TROPHIC PLATE COUNT	Heterotrophic Plate, Plate Count, Pour Plate Technique	9215B	

[1]Standard Methods for the Examination of Water and Waste Water, 18th Edition, American Public Health Association, American Waterworks Association, Water Environment Federation, 1992.

[2]Federal Register, 40 CFR Part 141.

B. Use only the analytical methodology specified in the National Primary Drinking Water Regulations (40 CFR Part 141.21(f)).

B. A laboratory shall be certified for all analytical methods indicated below that it uses. At minimum, the laboratory shall be certified for one total coliform method, one fecal coliform or E. coli method, and the Pour Plate Method for heterotrophic bacteria.

C. Laboratories shall perform a minimum of 20 coliform analyses monthly by each coliform method for which it is certified in order to maintain certification status or qualify for initial certification. The minimum number of coliform analyses (20) may be performed on a variety of water sample types collected from different stages of the water treatment process, raw source water, surface or ground water, as well as drinking water samples collected from a distribution system or private wells.

If any drinking water sample is total coliform-positive, the lab shall analyze that total coliform-positive culture to determine if fecal coliforms are present, except that the lab may test for E. coli in lieu of fecal coliforms. These tests are described in subsections G, H, and I of this section.

Invalidate any sample results that show interference from noncoliform organisms and request another sample from the same sampling point. This interference is generally caused by heterotrophic bacteria and is exhibited by a turbid culture with no gas formation in the presumptive phase of the Fermentation Test, confluent growth without coliforms or TNTC without coliforms in the Membrane Filter Test, a turbid culture bottle without color change in the Presence-Absence Test, or an indeterminate color change in the ONPG-MUG Test.

Public water systems need only determine the presence or absence of total and fecal coliforms; coliform density determination is not required. 100 mL of sample shall be used for each total coliform test.

Incubate cultures within 30 minutes of inoculation.

C. Membrane filter technique.

Shake sample vigorously before analyzing. Sample volume used shall be 100 ± 2.5 mL.

QC – Conduct MF sterility check by filtering 100 mL of sterile rinse water and plating on m-Endo medium at the beginning and the end of each sample filtration series. If sterile controls indicate contamination, reject all data from that series and request immediate resampling of those waters involved in the laboratory error.

QC – Run a 100 mL sterile rinse water blank between every 10 samples if the number of samples in a series exceeds 10.

Invalidate all samples resulting in confluent growth or TNTC (too numerous to count) without evidence of total coliforms. Record as "confluent growth" or "TNTC" and request an additional sample from the same sampling point. Confluent growth is defined as a continuous bacterial growth, without evidence of total coliforms, covering the entire membrane filter. TNTC is defined as greater than 200 colonies on the membrane filter in the absence of detectable coliforms. Do not invalidate the sample when the membrane filter contains at least one total coliform colony.

Typical coliform colonies have a pink to dark red color with a metallic golden green sheen. Subject all sheen colonies to verification when there are 10 or fewer sheen colonies. When the number of coliform colonies exceeds 10, randomly pick 10 colonies for verification. Alternatively, swab the entire membrane surface and transfer to the verification media.

Verify sheen colonies using single strength LTB and then single strength BGLB broth, or an EPA-approved cytochrome oxidase and beta-galactosidase rapid test procedure.

To verify colonies in LTB and BGLB broth, use a sterile needle, loop, applicator stick or cotton swab. To verify colonies using the rapid test (cytochrome oxidase/beta-galactosidase test), pick isolated colonies using a sterile needle or applicator stick.

QC – If no coliform positive tests result from potable water samples, perform the MF procedure on a known positive sample each month. Include the verification test for total and fecal coliform (or E. coli).

D. Fermentation Technique.

100 mL of sample shall be used for each presumptive test. Laboratories may use 10 tubes, 5 tubes or a single culture bottle containing lauryl tryptose broth formulated as described in Table IV-5 of this chapter.

Confirm all gas positive presumptive tubes and bottles in BGLB Broth. The formation of gas in any amount in the fermentation vial of the BGLB broth tube within a 48 ±3 hour incubation time indicates a positive confirmed test.

QC – All presumptive tubes or bottles with turbidity or heavy growth without gas production shall be submitted to the confirmed test to check for the suppression of coliforms. Invalidate all samples which produce a turbid presumptive culture without gas and request an additional sample from the same sampling point, unless total coliforms are detected in the confirmed test.

QC – On a quarterly basis, conduct the completed test on at least 10% of all coliform-positive samples.

QC – If no coliform positive tests result from potable water samples, perform the fermentation procedure monthly on a known positive sample. Perform the confirmed test and the completed test on all coliform-positive tubes or bottles. Include the fecal coliform or E. coli test.

E. Presence-Absence (P-A) Coliform Test.

Inoculate 100 mL of sample into P-A culture bottle.

Observe for turbidity and yellow color or turbidity alone after 24 and 48 hours. Confirm yellow cultures in BGLB broth. The presence of gas in the fermentation vial of the BGLB broth tube within a 48 ±3 hour incubation time indicates a positive confirmation test for total coliforms.

QC - Confirm turbid and yellow cultures or turbid cultures with no color change in BGLB broth. Invalidate all samples which produce a turbid culture with no color change and request an additional sample from the same sampling point, unless coliforms are detected in the confirmed test.

QC - On a quarterly basis, conduct the completed test on at least 10% of all coliform-positive samples.

QC – If no coliform positive tests result from potable water samples, perform the P-A Test on a known positive sample

~~at least once a month. Include the confirmed test, the competed test and the fecal coliform or E. coli test.~~

~~F. ONPG-MUG Test.~~

~~Use 10 tubes, each containing 10 mL of sample, or a single sterile, transparent, nonfluorescent borosilicate glass culture bottle or equivalent bottle containing 100 mL of water sample.~~

~~Avoid prolonged exposure of inoculated tests to direct sunlight. Sunlight may hydrolyze indicator compounds and cause false positive results.~~

~~Incubate for 24 hours at 35 ±0.5°C. A yellow color indicates the presence of total coliforms.~~

~~If yellow color is detected, check for fluorescence in the dark with a 365 or 366 nm UV lamp. Fluorescence indicates the presence of E. coli.~~

~~If the color of the ONPG-MUG culture changes during the initial 24-hour incubation period, but is still not as yellow as the comparator, incubate for another four hours. Do not incubate for more than a total of 28 hours.~~

~~QC—If, at the end of the additional four-hour incubation period, the color is still not as yellow as the comparator, invalidate the test and request an additional sample from the same sample site.~~

~~Laboratories are encouraged to perform parallel testing between the ONPG-MUG Test and another EPA-approved method for total coliforms for at least several months or several seasons to determine the effectiveness of the ONPG-MUG Test on a variety of water submitted for analysis.~~

~~G. Fecal Coliform Test.~~

~~Use EC Medium for determining whether a total coliform-positive culture contains fecal coliforms.~~

~~Laboratories shall conduct fecal coliform analysis in accordance with the following procedures. When the Fermentation Technique or the Presence-Absence (P-A) Test is used to test for total coliforms, gently agitate the positive presumptive fermentation tube or bottle or the positive P-A bottle and transfer the growth with a sterile 3-mm loop or sterile applicator stick into brilliant green lactose bile broth and EC medium to determine the presence of total and fecal coliforms, respectively. Incubate the BGLB broth at 35° ±0.5°C for 24-48 hours and check for gas. Incubate the EC medium at 44.5° ±0.2°C for 24 ±2 hours and check for gas.~~

~~When the Membrane Filter Test is used, verify the sheen colonies by one of the following two methods: Swab the entire membrane filter surface with a sterile cotton swab and inoculate the contents of the swab into LTB. Do not leave the swab in the LTB. Alternatively, pick up to ten individual sheen colonies and inoculate into LTB. Gently agitate the inoculated tubes of LTB to insure adequate mixing. Incubate the LTB at 35° ±0.5°C for 24-48 hours. If the LTB tube shows gas within 24-48 hours, transfer by inoculating loop to a tube of BGLB broth and a tube of EC medium. Incubate the BGLB broth at 35° ±0.5°C for 24-48 hours and check for gas. Incubate the EC medium at 44.5° ±0.2°C for 24 ±2 hours and check for gas. The water level of the water bath shall reach the upper level of the medium in the culture tubes. Gas production of any amount in the inner fermentation tube of the EC medium indicates a positive fecal coliform test. The preparation of EC medium is described in Standard Methods, 18th Ed., 1992, Part 9221 E.1.a.. Public water systems need only determine the presence or absence of fecal coliforms; a determination of fecal coliform density is not required.~~

~~H. EC Medium + MUG Test (for E. coli).~~

~~Use EC Medium supplemented with 50 ug/mL of 4-methylumbelliferyl-beta-D-glucuronide (MUG). The procedure for transferring and incubating a total coliform-positive culture to EC Medium + MUG is the same as that specified in subsection G of this section for transferring and incubating a total coliform-positive culture to EC Medium. After incubation, observe for fluorescence with a 365 or 366 nm ultraviolet light in the dark. A test is positive for E. coli if the medium fluoresces.~~

~~I. Nutrient Agar + MUG Test (for E. coli).~~

~~This test is used to determine if a total coliform-positive sample, as determined by the Membrane Filter Technique, contains E. coli.~~

~~Use Nutrient Agar supplemented with 100 ug/mL of 4-methylumbelli-feryl-beta-D-glucuronide (MUG). Pour agar into 50 mm Petri dishes.~~

~~Pick up to 10 coliform colonies for verification in LTB and BGLB as described in subsection C of this section.~~

~~Using sterile forceps, transfer the membrane filter containing one or more suspected coliform colonies from the m-Endo medium to the surface of the Nutrient Agar + MUG medium. Incubate plate at 35° ± 0.5°C for four hours and observe for fluorescence using a 365 or 366 nm ultraviolet lamp in the dark. Any amount of fluorescence on a sheen colony is positive for E. coli.~~

~~J. ONPG-MUG Test (for E. coli).~~

~~See subsection F of this section.~~

~~K. Heterotrophic Plate Count (HPC).~~

~~Use the pour plate method to determine the HPC for potable water and lab pure water samples. The pour plate method shall be performed as described in Standard Methods, 18th Ed., 1992, Part 9215 B.~~

~~QC Check each flask of HPC agar for sterility by pouring a final control plate. Reject data if controls are contaminated.~~

1VAC30-40-340. Sample collection, handling and preservation

A. If a laboratory does not collect samples and has no control over sample collection, handling, preservation and identification, the laboratory director must reject any samples not meeting sampling criteria and notify the authority requesting the analyses. ~~QC~~ The laboratory shall have a written sample rejection policy covering those samples that do not meet sampling requirements.

B. Sample collector shall be trained in sampling procedures and, if required, approved by the ~~VDH DWSE~~ VDH-ODW.

C. Samples shall be representative of the potable water distribution system. Samples collected from ~~Public Water Supplies~~ public water supplies shall be collected in accordance with a ~~Sample Siting Report~~ sample siting report approved by the ~~VDH DWSE~~ VDH-ODW. Water taps used for sampling are free of aerators, strainers, hose attachments, mixing type faucets and purification devices. Maintain a steady water flow for at least two minutes to clear the service line before sampling. Collect at least a 100 mL sample volume and allow at least ~~½~~ 1/2 inch of space in the sample container to facilitate mixing of sample by shaking.

D. Laboratories that collect as well as analyze samples shall ice samples immediately after collection and deliver the samples directly to the laboratory.

~~E. Holding/travel time between sampling and analysis shall not exceed 30 hours. If the sample is analyzed after 30 hours, the laboratory shall indicate that the data may be invalid because of excessive delay before sample processing. No samples received after 48 hours shall be analyzed.~~

~~All samples received in the laboratory shall be analyzed on the day of receipt. In all cases, samples shall be analyzed as soon after collection as possible.~~

E. The sample container, required preservation, and maximum holding time requirements for sampling and analyzing microbiological contaminants are incorporated by reference at 1VAC30-40-85 B 3.

F. Sample report.

1. Immediately after collection, enter on the sample report form the sample site location, sample type (e.g. regular, repeat, etc.), date and time of collection, free chlorine residual, collector's name and any remarks.

2. Record the date and time of sample arrival at the laboratory and the date and time analysis begins.

1VAC30-40-360. Action response to laboratory results.

A. Immediately notify the appropriate field office of the ~~VDH DWSE~~ VDH-ODW of any coliform-positive samples from ~~Public Water Supplies~~ public water supplies.

B. All analytical results for compliance shall be reported directly to the ~~VDH DWSE~~ VDH-ODW as described in 1VAC30-40-40.

C. Repeat sampling shall be initiated on the basis of coliform presence in either the Fermentation Technique confirmed test, unverified MF Test, P-A confirmed test, or ONPG-MUG Test. Data used to determine monthly compliance may be adjusted by using the Fermentation Technique completed test, verified MF Test results or P- A completed test results.

D. Notify the appropriate field office of the ~~VDH DWSE~~ VDH-ODW when samples from ~~Public Water Supplies~~ public water supplies are invalidated due to interference from noncoliforms.

Part V
Radiochemistry

1VAC30-40-370. Radiochemistry.

A. Laboratories shall meet the sampling and analytical methodology requirements incorporated by reference at 1VAC30-40-85 B 4 for radiochemistry and 1VAC30-40-85 B 5 for alternative testing methods.

B. For radiochemistry certification of laboratories, DGS-DCLS shall require conformance to USEPA "Manual for the Certification of Laboratories Analyzing Drinking Water," EPA-814B-92-002 Chapter VI, Radiochemistry, September 1992. Appropriate revisions of the manual shall become effective upon issuance.

VA.R. Doc. No. R10-2189; Filed December 14, 2009, 2:24 p.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Proposed Regulation

Title of Regulation: **2VAC5-70. Health Requirements Governing the Control of Equine Infectious Anemia in Virginia (amending 2VAC5-70-20; repealing 2VAC5-70-30).**

Statutory Authority: § 3.2-6002 of the Code of Virginia.

Public Hearing Information:

March 25, 2010 - 10 a.m. - Oliver Hill Building, 102 Governor Street, Second Floor Board Room, Richmond, VA

Public Comment Deadline: April 5, 2010.

Agency Contact: Doug Saunders, Deputy Director, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8905, FAX (804) 371-2380, or email doug.saunders@vdacs.virginia.gov.

Basis: Section 3.2-6002 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to adopt regulations as may be necessary to prevent, control, or eradicate infectious or contagious diseases in livestock and poultry in Virginia.

Purpose: The current regulation establishes requirements for the control of equine infectious anemia (EIA) in Virginia. EIA is a contagious and infectious disease of horses, ponies, jackasses, mules and other animals of the genus Equus. This regulation requires the testing of equine animals to be imported into the state and those to be assembled for sale, auction, and other purposes. Additionally, the current regulation authorizes the State Veterinarian to allow, as an alternative or option, the testing of horses at the market or auction where equines are sold rather than requiring the test before the animals are transported to market.

The purpose of this regulatory action is two-fold. First, the language in 2VAC5-70-20 requiring EIA testing is amended to explain that the testing requirements apply to any activity on properties where horses owned by two or more owners may come into contact with each other, such as in state parks. This change is necessary to clarify that horses that come into contact with horses owned by others must have the required testing to further control the spread of EIA, thereby enhancing the health, safety, and welfare of the public. Second, 2VAC5-70-30, which addresses alternate testing requirements, will be eliminated as such alternate testing requirements are ineffective in controlling the spread of EIA.

Substance: Changes being proposed to the current regulation will (i) clarify that the EIA testing requirements identified in 2VAC5-70-20 apply to activities on properties where horses owned by two or more owners may come into contact with each other, such as in state parks, and (ii) remove the authority of the State Veterinarian in 2VAC5-70-30 to allow the EIA (Coggins agar gel immunodiffusin (AGID)) test to be made at market or auction, rather than prior to horses being transported to these activities.

Issues: The predominant issue associated with the proposed regulatory action is the control of EIA in animals of the genus Equus. The current regulation was established in 1985 and has been effective in controlling the spread of EIA. However, instances have arisen where individuals who gather with their horses for the purpose of riding activities, such as in state parks, have argued that the testing requirements do not apply to them. The amendments to 2VAC5-70-20 clarify that the regulation also applies to such activities, providing greater protection to Virginia's horse industry and protecting the horses owned by those individuals who have argued that the testing requirements do not apply to them. Additionally, eliminating 2VAC5-70-30 will remove the allowance for alternate testing that is ineffective in controlling the spread of EIA.

The advantage of these proposed changes is much greater control of the spread of EIA within horse populations in Virginia. This advantage applies to anyone owning a horse, whether an individual horse owner or a large horse operation. The agency does not see any disadvantages of the proposed changes.

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

Summary of the Proposed Amendments to Regulation. The current regulation details requirements for the control of Equine Infectious Anemia (EIA) in Virginia. EIA is a contagious and infectious disease of horses, ponies, jackasses, mules and other animals of the genus Equus. The regulation requires the testing for EIA of equine animals to be imported into the state and for those to be assembled for sale, auction and other purposes. Horses found to have EIA are quarantined. Additionally, the current regulation authorizes the State Veterinarian to allow, as an alternative or option, the testing of horses at the market or auction where equines are sold rather than requiring the test before the animals are transported to market.

The Virginia Department of Agriculture and Consumer Services (VDACS) proposes: 1) to amend language to clarify that testing requirements apply to all horses involved in activities on properties where horses owned by two or more owners may come into contact with each other and 2) to eliminate the language on alternate testing requirements for horses assembled for sale or auction in Virginia when authorized by the State Veterinarian.

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

Estimated Economic Impact. The current regulations specify that "All horses assembled at a show, fair, race meet, or other such function in Virginia, must be accompanied by a report of an official negative test for equine infectious anemia conducted within 12 months prior to such event." According to VDACS, there has been some confusion as to whether horses that are brought to state parks are subject to the negative test requirement. Thus the agency proposes to specify that the requirement applies to all horses involved in

activities on properties where horses owned by two or more owners may come into contact with each other.

VDACS estimates that 2,000 or fewer horses that are currently not already being tested by their owners will need to be tested. Given VDACS' estimate that veterinary practitioners charge $30.00 for an EIA test, the cumulative monetary impact on horse owners in the Commonwealth will be $60,000 or less. Horses infected with EIA can die within two to three weeks.[1] Given the relatively small testing cost of $30 per horse per year, the cost of required testing would seem to be outweighed by the benefit of reduced risk of equine fatalities. VDACS reports that EIA has been present in the Commonwealth in recent years.

According to VDACS, the State Veterinarian has not authorized the testing of horses at the market or auction where equines are sold rather than requiring the test before the animals are transported to market. Thus the proposal to eliminate the language on alternate testing requirements for horses assembled for sale or auction in Virginia when authorized by the State Veterinarian will have no impact beyond the beneficial impact of reducing confusion for the public.

Businesses and Entities Affected. The Virginia Department of Agriculture and Consumer Services estimates that a maximum of 1500 owners owning 2000 horses will be affected by the proposed amendments. The Department estimates that 100 or fewer private businesses, such as horse camps or bed and breakfast establishments that accept horses, will be affected.

Localities Particularly Affected. The proposed amendments potentially affect all localities. Those localities which contain state parks that are frequented by horses are particularly affected.

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

Effects on the Use and Value of Private Property. The proposal to amend language to clarify that testing requirements apply to all horses involved in activities on properties where horses owned by two or more owners may come into contact with each other will likely encourage some additional EIA testing. Veterinarians will likely get some additional business.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to increase costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to adversely affect small businesses.

Real Estate Development Costs. The proposed amendments are 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.

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[1] Source: Virginia Department of Agriculture and Consumer Services

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the analysis of the Department of Planning and Budget.

Summary:

The proposed amendments (i) clarify that testing requirements apply to all horses involved in activities on properties where horses owned by two or more owners may come into contact with each other and (ii) eliminate the alternate testing requirements for horses assembled for sale or auction in Virginia.

2VAC5-70-20. Testing requirements for horses exhibited at shows, fairs, or other exhibitions, or coming into contact with horses owned by others in Virginia.

All horses assembled at a show, fair, race meet, or other such function, or participating in any activity on properties where horses owned by two or more owners may come into contact with each other in Virginia, must be accompanied by a report of an official negative test for equine infectious anemia conducted within 12 months prior to such event or activity. The person in charge will ensure that a copy of the official negative test results accompanies each horse in the event or activity, and shall make such reports available for inspection by a representative of the State Veterinarian upon

request. The person in charge shall exclude any horse which is not accompanied by a negative test report.

2VAC5-70-30. ~~Alternate testing requirements for horses assembled for sale or auction in Virginia.~~ (Repealed.)

~~Horses may be assembled at a sale or auction without a negative test for equine infectious anemia, provided that the State Veterinarian so approves, and that the following requirements are met:~~

~~1. All horses, while assembled at the sale or auction, shall have blood samples drawn for equine infectious anemia testing.~~

~~2. Horses consigned or sold for immediate slaughter to an official slaughtering establishment are exempt from equine infectious anemia testing. Such horses shall be identified in a manner approved by the State Veterinarian, and a written permit shall be issued for their transfer to the slaughtering establishment.~~

~~3. The owner or manager of the sale or auction shall employ a licensed accredited veterinarian, who shall draw blood samples from all horses required to be tested, and shall record all visible markings or other permanent identification for each horse bled.~~

~~4. The owner or manager shall announce, prior to the sale or auction, that all nonslaughter horses will be tested. Each buyer of a nonslaughter horse or horses at the sale or auction shall sign a release form, signifying his agreement to maintain such horse or horses at a specified location until notified of the results of the test. Horses that prove negative to the test may move in normal trade channels. Owners of horses that react to the test must comply with 2VAC5-70-40 of this chapter.~~

~~5. The State Veterinarian may grant such exceptions to these requirements as he feels the circumstances warrant and that are not in variance with other rules and regulations of the Commonwealth of Virginia.~~

VA.R. Doc. No. R09-913; Filed December 15, 2009, 11:34 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Agriculture and Consumer Services is claiming an exemption from the Administrative Process Act in accordance with § 3.2-703 of the Code of Virginia, which exempts quarantine to prevent or retard the spread of a pest into, within, or from the Commonwealth, and § 3.2-704 of the Code of Virginia, which provides that the Board of Agriculture and Consumer Services shall prohibit the importation of any regulated article from any locality of other states, territories, or countries, into the Commonwealth.

Title of Regulation: **2VAC5-316. Rules and Regulations for Enforcement of the Virginia Pest Law - Beach Vitex Quarantine (adding 2VAC5-316-10 through 2VAC5-316-110).**

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

Effective Date: January 8, 2010.

Agency Contact: Roy E. Seward, Jr., Regulatory Coordinator, Department of Agriculture and Consumer Services, Oliver Hill Building, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3535, FAX (804) 371-7679, or email roy.seward@vdacs.virginia.gov.

Summary:

This action establishes the Beach Vitex Quarantine in the cities of Norfolk and Virginia Beach and the counties of Accomack and Northhampton. Beach Vitex is a highly invasive, deciduous, woody vine native to Asia that grows rapidly along dunes and shorelines causing damage to these areas by crowding out native plants and threatening the habitats of various animals. The purpose of this action is to prevent the long distance, artificial spread of Beach Vitex from coastal areas of the Commonwealth that are infested with Beach Vitex to other areas that are not infested.

CHAPTER 316
RULES AND REGULATIONS FOR ENFORCEMENT OF THE VIRGINIA PEST LAW - BEACH VITEX QUARANTINE

2VAC5-316-10. Declaration of quarantine.

A quarantine is hereby established to restrict the movement of the invasive plant, Beach Vitex, and articles capable of transporting life stages of Beach Vitex unless such articles comply with the conditions specified herein.

2VAC5-316-20. Purpose of quarantine.

Beach Vitex, a deciduous woody vine native to the Pacific Rim, grows rapidly along dunes and shorelines causing damage to these areas by crowding out native plants and threatening the habitats of various animals, including the endangered loggerhead sea turtle. Although Beach Vitex has been planted in efforts to stabilize dunes, it is less effective than native grasses in controlling dune erosion. Beach Vitex has been detected in several coastal sites in the Commonwealth and has the potential to spread to other areas through the artificial movement of Beach Vitex by individuals, or through the natural movement of Beach Vitex parts such as seeds and stems that could be carried by water currents to uninfested coastal areas. The purpose of this quarantine is to help prevent the spread of Beach Vitex by prohibiting its artificial movement and the movement of those articles that are capable of transporting it.

2VAC5-316-30. Definitions.

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

"Beach Vitex" means the live plant, in any life stage, known as Beach Vitex, Vitex rotundifolia.

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Certificate" means a document issued by an inspector or person operating in accordance with a compliance agreement to allow the movement of regulated articles to any destination.

"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services.

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

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Infestation" means the presence of Beach Vitex or the existence of circumstances that make it reasonable to believe that life stages of Beach Vitex are present.

"Inspector" means an employee of the Virginia Department of Agriculture and Consumer Services or other person authorized by the Commissioner of the Virginia Department of Agriculture and Consumer Services to enforce the provisions of this quarantine or regulation.

"Limited permit" means a document issued by an inspector to allow the movement of regulated articles to a specific destination.

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

"Person" means the term as defined in § 1-230 of the Code of Virginia.

"Regulated area" means the locality or area listed in 2VAC5-315-50 of this quarantine.

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

2VAC5-316-40. Regulated articles.

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

1. Beach Vitex, in any life stage, including roots, stems, and seeds.

2. Any article known to be infested with Beach Vitex, such as sand, soil, or mulch containing Beach Vitex in any life stage.

3. Any other article or means of conveyance when it is determined by an inspector that it presents a risk of spreading Beach Vitex.

2VAC5-316-50. Regulated areas.

The following areas in Virginia are quarantined for Beach Vitex:

The entire counties of:

Accomack

Northampton

The entire cities of:

Norfolk

Virginia Beach

2VAC5-316-60. Conditions governing the intrastate movement of regulated articles.

A. Movement within regulated area – movement of a regulated article solely within the quarantined area is prohibited unless accompanied by a valid certificate or limited permit.

B. Movement from regulated area into nonregulated area – movement of a regulated article that originates inside of the quarantined area to an area outside of the quarantined area is prohibited unless accompanied by a valid certificate or limited permit.

C. Movement from nonregulated area into regulated area – movement of a regulated article that originates outside of the quarantined area to an area inside of the quarantined area is prohibited unless accompanied by a valid certificate or limited permit.

D. Movement outside of the regulated area – movement of a regulated article solely outside of the quarantined area is not restricted.

2VAC5-316-70. Issuance and cancellation of certificates and limited permits.

A. Certificates and limited permits may be issued by an inspector for the movement of regulated articles into, within, or out of any regulated area to any destination within Virginia when the regulated articles meet the following three conditions:

1. The regulated articles are to be moved intrastate to a specified destination under conditions that specify the limited handling, utilization, processing, or treatment of the

articles when the inspector determines that such movement will not result in the spread of Beach Vitex because the life stage of the plant will be destroyed by such specified handling, utilization, processing, or treatment; or the regulated articles are to be moved by a state or federal agency or person authorized by the department for experimental or scientific purposes;

2. The regulated articles are to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of Beach Vitex; and

3. The regulated articles are eligible for unrestricted movement under all other domestic plant quarantines and regulations applicable to the regulated articles.

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

2VAC5-316-80. Assembly and inspection of regulated articles.

A. Any person who desires to move regulated articles into, within, or out of any regulated area shall apply for a limited permit as far in advance as practical but no less than five business days before the regulated articles are to be moved.

B. The regulated article must be assembled at the place and in the manner the inspector designates as necessary to facilitate inspection and shall be safeguarded from infestation.

2VAC5-316-90. Attachment and disposition of certificates and limited permits.

A. A certificate or limited permit required for the movement of a regulated article into, within, or out of any regulated area must be attached at all times during the intrastate movement to the outside of the container that contains the regulated article or to the regulated article itself. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to facilitate the identification of the regulated article.

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

2VAC5-316-100. Inspection and disposal of regulated articles and pests.

Upon presentation of official credentials, an inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of, regulated articles as provided in the Virginia Pest Law.

2VAC5-316-110. Nonliability of the department.

The department shall not be liable for any costs incurred by third parties whose costs result from or are incidental to inspections required under the provisions of the quarantine.

VA.R. Doc. No. R10-2205; Filed December 9, 2009, 2:08 p.m.

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TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

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

Final Regulation

Title of Regulation: **4VAC20-20. Pertaining to the Licensing of Fixed Fishing Devices (amending 4VAC20-20-50).**

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

Effective Date: December 18, 2009.

Agency Contact: Jane Warren, Agency 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:

The amendment requires that pound net licensees set and fish pound nets at least once during two consecutive calendar years starting in 2009 to maintain their licenses and priority rights associated with those pound nets.

4VAC20-20-50. Priority rights; renewal by current licensee.

A. Applications for renewal of license for existing fixed fishing devices may be accepted by the officer beginning at 9 a.m. on December 1 of the current license year through noon on January 10 of the next license year providing the applicant has met all requirements of law and this chapter. Any location not relicensed during the above period of time shall be

considered vacant and available to any qualified applicant after noon on January 10.

B. Except as provided in subsections C and D of this section, a currently licensed fixed fishing device must have been fished during the current license year in order for the licensee to maintain his priority right to such location. It shall be mandatory for the licensee to notify the officer, on forms provided by the commission, when the fixed fishing device is ready to be fished in the location applied for, by a complete system of nets and poles, except as provided in subsection D of this section, for the purpose of visual inspection by the officer. Either the failure of the licensee to notify the officer when the fixed fishing device is ready to be fished or the failure by the licensee actually to fish the licensed device, by use of a complete system of nets and poles, except as provided in subsection D of this section, shall terminate his right or privilege to renew the license during the period set forth in subsection A of this section of this chapter, and he shall not become a qualified applicant for such location until 9 a.m. on February 1. Any application received from an unqualified applicant under this subsection shall be considered as received at 9 a.m. on February 1; however, in the event of the death of a current license holder, the priority right to renew the currently held locations of the deceased licensee shall not expire by reason of failure to fish said locations during the year for which they were licensed, but one additional year shall be and is hereby granted to the personal representative or lawful beneficiary of the deceased licensee to license the location in the name of the estate of the deceased licensee for purposes of fishing said location or making valid assignment thereof.

C. During the effective period of 4VAC20-530, which establishes a moratorium on the taking and possession of American shad in the Chesapeake Bay and its tributaries, any person licensed during 1993 to set a staked gill net who chooses not to set that net during the period of the moratorium may maintain his priority right to the stake net's 1993 location by completing an application for a fixed fishing device and submitting it to the officer. No license fee shall be charged for the application.

D. ~~Current pound net licensees shall not be required to fish their pound nets or establish a complete system of nets and poles in 2008 in order to renew their licenses or maintain their priority rights to such locations for 2009.~~ In order to maintain priority rights and renew a license to a specific pound net location, a pound net licensee shall be required to set and fish that pound net at least once during two consecutive calendar years starting with calendar year 2009.

VA.R. Doc. No. R10-2257; Filed December 17, 2009, 4:18 p.m.

Final Regulation

Title of Regulation: **4VAC20-490. Pertaining to Sharks (amending 4VAC20-490-44).**

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

Effective Date: December 23, 2009.

Agency Contact: Jane Warren, Agency 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:

The amendment makes it unlawful to transfer any spiny dogfish limited entry permit after November 23, 2009.

4VAC20-490-44. Spiny dogfish limited entry permit and permit transfers.

A. It shall be unlawful for any person to take, catch, possess, or land any spiny dogfish without first having obtained a spiny dogfish limited entry permit from the Marine Resources Commission. Such permit shall be completed in full by the permittee who shall keep a copy of that permit in his possession while fishing for or selling spiny dogfish. Permits shall only be issued to Virginia registered commercial fishermen meeting either of the following criteria:

1. Shall have documented on Virginia mandatory harvest reporting forms harvest from a legally licensed, movable gill net for an average of at least 60 days from 2006 through 2008, and a minimum harvest of one pound of spiny dogfish at any time from 2006 through 2008.

2. Shall have documented on Virginia mandatory reporting forms harvests that total greater than 10,000 pounds of spiny dogfish in any one year from 2006 through 2008.

B. ~~A spiny dogfish limited entry permittee may only transfer that permit to another Virginia registered commercial fisherman. The transferor and the transferee shall have documented any prior fishing activity on Virginia mandatory reporting forms and shall not be under any sanction by the Marine Resources Commission for noncompliance with the regulation. Transfers must be approved by the commissioner, or his designee, and are permanent. The permanent transfer authorizes the transferee to possess a spiny dogfish limited entry permit, and the transferor shall lose his eligibility for that spiny dogfish limited entry permit.~~ It is unlawful to transfer any spiny dogfish limited entry permit after November 23, 2009.

VA.R. Doc. No. R10-2259; Filed December 17, 2009, 4:21 p.m.

Final Regulation

Title of Regulation: **4VAC20-610. Pertaining to Commercial Fishing and Mandatory Harvest Reporting (amending 4VAC20-610-20, 4VAC20-610-60; adding 4VAC20-610-65).**

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

Effective Date: January 1, 2010.

Agency Contact: Jane Warren, Agency 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:

The amendments (i) define "agent" as any person who possesses the commercial fisherman registration license, fishing gear license, or fishing permit of a registered commercial fisherman, in order to fish that commercial fisherman's gear or sell that commercial fisherman's harvest; (ii) require commercial harvesters to report use of an agent to harvest for them; (iii) limit the number of helpers reported by a commercial fisherman registration licensee to five; and (iv) provide guidelines for the commission to use in noncompliance with mandatory reporting cases that are linked to the severity of those noncompliance violations.

4VAC20-610-20. Definitions.

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

"Agent" means any person who possesses the commercial fisherman registration license, fishing gear license, or fishing permit of a registered commercial fisherman in order to fish that commercial fisherman's gear or sell that commercial fisherman's harvest.

"Clam aquaculture product owner" means any person or firm that owns clams on leased, subleased or fee simple ground or on any growing area within or adjacent to Virginia tidal waters that are raised by any form of aquaculture. This does not include any riparian shellfish gardeners whose activities are authorized by 4VAC20-336.

"Commission" means the Marine Resources Commission.

"Commissioner" means the Commissioner of the Marine Resources Commission.

"Continuing business enterprise" means any business that is required to have a Virginia Seafood Buyer's License or is required to have a business license by county, city or local ordinance.

"Oyster aquaculture product owner" means any person or firm that owns oysters on leased, subleased or fee simple ground or on any growing area within or adjacent to Virginia tidal waters that are raised by any form of aquaculture. This does not include any riparian shellfish gardeners whose activities are authorized by 4VAC20-336.

"Sale" means sale, trade, or barter.

"Sell" means sell, trade, or barter.

"Selling" means selling, trading or bartering.

"Sold" means sold, traded, or bartered.

4VAC20-610-60. Mandatory harvest reporting.

A. It shall be unlawful for any valid commercial fisherman registration licensee, seafood landing licensee, oyster aquaculture product owner permittee, or clam aquaculture product owner permittee to fail to fully report harvests and related information as set forth in this chapter.

B. It shall be unlawful for any recreational fisherman, charter boat captain, head boat captain, commercial fishing pier operator, or owner of a private boat licensed pursuant to §§ 28.2-302.7 through 28.2-302.9 of the Code of Virginia, to fail to report recreational harvests, upon request, to those authorized by the commission.

C. All registered commercial fishermen and any valid seafood landing licensee, oyster aquaculture product owner permittee, and clam aquaculture product owner permittee shall complete a daily form accurately quantifying and legibly describing that day's harvest from Virginia tidal and federal waters. The forms used to record daily harvest shall be those provided by the commission or another form approved by the commission. Registered commercial fishermen and seafood landing licensees may use more than one form when selling to more than one buyer.

D. Registered commercial fishermen, seafood landing licensees, valid oyster aquaculture product owner permittees and valid clam aquaculture product owner permittees shall submit a monthly harvest report to the commission no later than the fifth day of the following month. This report shall be accompanied by the daily harvest records described in subsection E of this section. Completed forms shall be mailed or delivered to the commission or other designated locations.

~~E. The monthly harvest report and daily harvest records from registered commercial fishermen shall include the name and signature of the registered commercial fisherman and his license registration number; buyer or private sale information; date of harvest; city or county of landing; water body fished; gear type and amount used; number of hours gear fished; number of hours the registered commercial fisherman fished; number of crew on board, including captain; species harvested; market category; live weight or processed weight of species harvested; and vessel identification (Coast Guard~~

~~documentation number, Virginia license number or hull/VIN number). Any information on the price paid for the harvest may be provided voluntarily. The monthly harvest report and daily harvest records from oyster aquaculture product owner permittees and clam aquaculture product owner permittees shall include the name, signature, permit number, lease number, date of harvest, city or county of landing, gear (growing technique) used, species harvested in weight or amount, number of crew, and buyer or private sale information. The monthly harvest report and daily harvest records from seafood landing licensees shall include the name and signature of the seafood landing licensee and his seafood landing license number; buyer or private sale information; date of harvest; city or county of landing; water body fished; gear type and amount used; number of hours gear fished; number of hours the seafood landing licensee fished; number of crew on board, including captain; nonfederally permitted species harvested; market category; live weight or processed weight of species harvested; and vessel identification (Coast Guard documentation number, Virginia license number, or hull/VIN number).~~

E. The monthly harvest report requirements shall be as follows:

1. Registered commercial fishermen shall be responsible for providing monthly harvest report and daily harvest records that include the name and signature of the registered commercial fisherman and his commercial fisherman's registration license number; the name and license registration number of any agent, if used; the license registration number of no more than five helpers who were not serving as agents; any buyer or private sale information; the date of any harvest; the city or county of landing that harvest; the water body fished, gear type, and amount of gear used for that harvest; the number of hours any gear was fished and the number of hours the registered commercial fisherman fished; the number of crew on board, including captain; species harvested; market category; live weight or processed weight of species harvested; and vessel identification (Coast Guard documentation number, Virginia license number, or hull/VIN number). Any information on the price paid for the harvest may be provided voluntarily.

2. The monthly harvest report and daily harvest records from oyster aquaculture product owner permittees and clam aquaculture product owner permittees shall include the name, signature, permit number, lease number, date of harvest, city or county of landing, gear (growing technique) used, weight or amount of species harvested, number of crew, and buyer or private sale information.

3. The monthly harvest report and daily harvest records from seafood landing licensees shall include the name and signature of the seafood landing licensee and his seafood landing license number; buyer or private sale information; date of harvest; city or county of landing; water body fished; gear type and amount used; number of hours gear fished; number of hours the seafood landing licensee fished; number of crew on board, including captain; nonfederally permitted species harvested; market category; live weight or processed weight of species harvested; and vessel identification (Coast Guard documentation number, Virginia license number, or hull/VIN number).

F. Registered commercial fishermen, oyster aquaculture product owner permittees and clam aquaculture product owner permittees not fishing during a month, or seafood landing licensees not landing in Virginia during a month, shall so notify the commission no later than the fifth of the following month by postage paid postal card provided by the commission or by calling the commission's toll free telephone line.

G. Any person licensed as a commercial seafood buyer pursuant to § 28.2-228 of the Code of Virginia shall maintain for a period of one year a copy of each fisherman's daily harvest record form for each purchase made. Such records shall be made available upon request to those authorized by the commission.

H. Registered commercial fishermen, seafood landing licensees, oyster aquaculture product owner permittees and clam aquaculture product owner permittees shall maintain their daily harvest records for one year and shall make them available upon request to those authorized by the commission.

I. Registered commercial fishermen, seafood landing licensees, and licensed seafood buyers shall allow those authorized by the commission to sample harvest and seafood products to obtain biological information for scientific and management purposes only. Such sampling shall be conducted in a manner that does not hinder normal business operations.

J. The reporting of oyster harvest and transactions by licensed seafood buyers, oyster aquaculture product owner permittees, clam aquaculture product owner permittees, and any registered commercial fisherman who self-markets his oyster harvest shall be made in accordance with 4VAC20-200 and Article 3 (§ 28.2-538 et seq.) of Chapter 5 of Title 28.2 of the Code of Virginia.

K. The reporting of the harvest of federally permitted species from beyond Virginia's tidal waters that are sold to a federally permitted dealer shall be exempt from the procedures described in this section.

L. The owner of any purse seine vessel or bait seine vessel (snapper rig) licensed under the provisions of § 28.2-402 of the Code of Virginia shall submit the Captain's Daily Fishing Reports to the National Marine Fisheries Service, in accordance with provisions of Amendment 1 to the Interstate Fishery Management Plan of the Atlantic States Marine

Fisheries Commission for Atlantic Menhaden, which became effective July 2001.

4VAC20-610-65. Noncompliance.

A. Any initial violation of 4VAC20-610-60 by any registered commercial fisherman, oyster aquaculture product owner permittee, clam aquaculture product owner permittee, or seafood landing licensee shall be subject to penalties as described in subdivisions 1 through 4 of this subsection.

1. Any failure to report harvest or no harvest activity or no landing in Virginia within one to three months after that report was due shall result in a minimum of one year of probation.

2. Any failure to report harvest or no harvest activity or no landing in Virginia within four to six months after that report was due shall result in a minimum of two years of probation.

3. Any failure to report harvest or no harvest activity or no landing in Virginia within seven to 12 months after that report was due shall result in a minimum of six months of suspension of all commercial licenses and permits.

4. Any failure to report harvest or no harvest activity or no landing in Virginia more than 12 months after that report was due shall result in a minimum of one year of suspension of all commercial licenses and permits.

B. Any second or subsequent violation of 4VAC20-610-60 by any registered commercial fisherman, oyster aquaculture product owner permittee, clam aquaculture product owner permittee, or seafood landing licensee may be subject to having his commercial licenses and permits suspended by the commission.

VA.R. Doc. No. R10-2258; Filed December 17, 2009, 4:13 p.m.

Final Regulation

Title of Regulation: **4VAC20-900. Pertaining to Horseshoe Crab (amending 4VAC20-900-25, 4VAC20-900-30, 4VAC20-900-35).**

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

Effective Date: January 1, 2010.

Agency Contact: Jane Warren, Agency 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:

The amendments (i) reduce the 2010 horseshoe crab harvest quota to 137,168, and (ii) enhance management and harvest control measures within the fishery to include (a) reducing the landing limit trigger from 85% to 50%, (b) establishing a horseshoe crab bycatch permit, (c) establishing daily call-in requirements for buyers, (d) increasing the frequency of buyer's reports from monthly to weekly, (e) establishing a separate quota management area for waters east of the COLREGS line, and (f) establishing separate landing limit triggers and provisions for quota overage payback for waters east of the COLREGS line.

4VAC20-900-25. Commercial fisheries management measures.

A. It shall be unlawful for any person to harvest horseshoe crabs from any shore or tidal waters of Virginia within 1,000 feet in any direction of the mean low water line from May 1 through June 7. The harvests of horseshoe crabs for biomedical use shall not be subject to this limitation.

B. From January 1 through June 7 of each year, it shall be unlawful for any person to land, in Virginia, any horseshoe crab harvested from federal waters.

C. Harvests for biomedical purposes shall require a special permit issued by the Commissioner of Marine Resources, and all crabs taken pursuant to such permit shall be returned to the same waters from which they were collected.

D. The commercial quota of horseshoe crab for ~~each calendar year~~ 2010 shall be ~~152,495~~ 137,168 horseshoe crabs. Additional quantities of horseshoe crab may be transferred to Virginia by other jurisdictions in accordance with the provisions of Addendum I to the Atlantic States Marine Fisheries Commission Fishery Management Plan for Horseshoe Crab, April 2000, provided that the combined total of the commercial quota and transfer from other jurisdictions shall not exceed 355,000 horseshoe crabs. It shall be unlawful for any person to harvest from Virginia waters, or to land in Virginia, any horseshoe crab for commercial purposes after any calendar-year commercial quota of horseshoe crab has been attained and announced as such.

E. During each calendar year no more than 40% of ~~Virginia's~~ the commercial horseshoe crab quota and any and all transfers of quota from other jurisdictions shall be harvested from waters east of the COLREGS Line. It shall be unlawful for any person to harvest horseshoe crabs from waters east of the COLREGS Line, or to land horseshoe crabs, in Virginia, that are harvested east of the COLREGS Line, after 40% of Virginia's horseshoe crab quota and any and all transfers of quota have been attained for this designated area and announced as such.

~~E.~~ F. It shall be unlawful for any person whose harvest of horseshoe crabs is from waters east of the COLREGS Line to possess aboard a vessel or to land in Virginia any quantity of horseshoe crabs that, in aggregate, is not comprised of at least a minimum ratio of two male horseshoe crabs to one female horseshoe crab. For the purposes of this regulation, no horseshoe crab shall be considered a male horseshoe crab unless it possesses at least one modified, hook-like appendage as its first pair of walking legs.

~~F.~~ G. Limitations on the daily harvest and possession of horseshoe crabs for any vessel described below are as follows:

1. It shall be unlawful for any person who meets the requirements of 4VAC20-900-30 D and holds a valid horseshoe crab endorsement license to possess aboard any vessel or to land any number of horseshoe crabs in excess of 5,000, except that when it is projected and announced that ~~85%~~ 50% of the commercial quota is taken it shall be unlawful for any person who meets the requirements of 4VAC20-900-30 D and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 2,500.

2. It shall be unlawful for any person who meets the requirements of 4VAC20-900-30 E and holds a valid horseshoe crab endorsement license to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,000, except that when it is projected and announced that ~~85%~~ 50% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-30 ~~D~~ E and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 1,000. The harvest of horseshoe crabs, described in this subdivision, shall be restricted to using only crab dredge.

3. It shall be unlawful for any registered commercial fisherman or seafood landing licensee who does not possess a horseshoe crab endorsement license to possess horseshoe crabs, without first obtaining a horseshoe crab bycatch permit. It shall be unlawful for a horseshoe crab bycatch permittee to possess aboard any vessel more than 500 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 500, per day. When it is projected and announced that 50% of the commercial quota is taken, it shall be unlawful for any person with a horseshoe crab bycatch permit to possess aboard any vessel more than 250 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 250 per day.

~~G.~~ H. It shall be unlawful for any fisherman issued a horseshoe crab endorsement license to offload any horseshoe crabs between the hours of 10 p.m. and 7 a.m.

I. When it is projected and announced that 20% of the commercial quota, as described in 4 VAC20-900-25D, has been taken from waters east of the COLREGS line, the limitations on the possession and landing of horseshoe crabs are as follows:

1. It shall be unlawful for any person who possesses a valid horseshoe crab endorsement license to possess aboard any vessel in waters east of the COLREGS Line or to land more than 2,500 horseshoe crabs per day.

2. It shall be unlawful for any person who possesses a valid restricted horseshoe crab endorsement license to possess aboard any vessel in waters east of the COLREGS Line or to land more than 1,000 horseshoe crabs per day.

3. It shall be unlawful for any person who possesses a valid horseshoe crab bycatch permit to possess aboard any vessel east of the COLREGS Line or to land more than 250 horseshoe crabs per day.

4VAC20-900-30. License requirements and exemption.

A. It shall be unlawful for any person to harvest horseshoe crabs by hand for commercial purposes without first obtaining a commercial fisherman registration license and a horseshoe crab hand harvester license.

B. The taking by hand of as many as five horseshoe crabs in any one day for personal use only shall be exempt from the above licensing requirement.

C. Except as provided for in 4VAC20-900-25 ~~F~~ G 3, it shall be unlawful for any boat or vessel to land horseshoe crabs in Virginia for commercial purposes without first obtaining a horseshoe crab endorsement license as described in this section. The horseshoe crab endorsement license shall be required of each boat or vessel used to land horseshoe crabs for commercial purposes. Possession of any quantity of horseshoe crabs that exceeds the limit described in subsection B of this section shall be presumed for commercial purposes. There shall be no fee for the license.

D. To be eligible for an unrestricted horseshoe crab endorsement license, the boat or vessel shall have landed and sold at least 500 horseshoe crabs in Virginia in at least one year during the period 1998-2000, except as described in subsection E of this section.

1. The owner shall complete an application for each boat or vessel by providing to the Marine Resources Commission a notarized and signed statement of applicant's name, address, telephone number, boat or vessel name and its registration or documentation number.

2. The owner shall complete a notarized authorization to allow the Marine Resources Commission to obtain copies of landings data from the National Marine Fisheries Service.

E. Any Virginia registered commercial fisherman is eligible for a horseshoe crab endorsement license that is restricted to using a crab dredge to harvest horseshoe crabs provided his boat or vessel shall have landed at least 10,000 pounds of whelk in any one year from 2002 through 2005.

1. The Virginia registered commercial fisherman shall complete an application for each boat or vessel by providing to the Marine Resources Commission a notarized and signed statement of the applicant's name, address, telephone number, boat or vessel name and its registration or documentation number.

2. The Virginia registered commercial fisherman shall complete a notarized authorization to allow the Marine Resources Commission to obtain copies of whelk landings data from the National Marine Fisheries Service.

4VAC20-900-35. Monitoring requirements.

A. Any person harvesting or landing horseshoe crabs in Virginia shall report monthly on forms provided by the Marine Resources Commission all harvests of horseshoe crabs including, but not limited to, bait fisheries, bycatch, biomedical industry, and scientific and educational research harvests. Reporting requirements shall consist of numbers and pounds landed by sex, harvest method and harvest location.

B. It shall be unlawful for a horseshoe crab endorsement license holder to fail to contact the Marine Resources Operations Station prior to the vessel issued a horseshoe crab endorsement license offloading horseshoe crabs. The horseshoe crab endorsement license holder shall provide the Marine Resources Commission the name of the vessel and its captain and the anticipated or approximate offloading time and site. Following offloading, the horseshoe crab endorsement license holder shall contact the Virginia Marine Resources Commission Interactive-Voice-Response (IVR) System within 24 hours of landing and provide his horseshoe crab endorsement license number; the time, date and location of offloading; and the number of horseshoe crabs landed.

C. It shall be unlawful for any person, firm or corporation to buy any horseshoe crabs from any lawful harvester on or after July 1, 2007, without first having obtained a Horseshoe Crab Buying Permit from the Marine Resources Commission. The permit application shall be completed in full by the licensed seafood buyer, and a copy of the permit shall be kept in possession of the licensed buyer while buying or possessing horseshoe crabs.

D. Any licensed seafood buyer permitted to purchase horseshoe crabs shall provide written reports to the commission of daily purchases and harvest information on forms provided by the commission. Such information shall include the date of the purchase, the buyer's horseshoe crab permit number and harvester's Commercial Fisherman Registration License number, gear type used, water area fished, city or county of landing, and ~~the~~ number of female horseshoe crabs and male horseshoe crabs ~~for each~~ purchased ~~harvest of horseshoe crabs~~. These reports of any current ~~monthly~~ weekly purchases shall be completed in full and submitted to the commission no later than ~~the 5th day~~ Thursday of the following ~~month~~ week. In addition, once it has been projected and announced that 85% of the ~~annual~~ commercial quota of horseshoe crab ~~quota~~ has been landed~~,~~ or 34% of the commercial quota of horseshoe crab established for the horseshoe crab harvest east of the COLREGS Line has been landed each permitted buyer shall call the commission's interactive voice recording system on a daily basis to report his name and permit number, date, number of female horseshoe crabs and number of male horseshoe crabs purchased, gear used and water area fished by the harvester.

E. Persons harvesting horseshoe crabs for biomedical use and owners of facilities using horseshoe crabs for biomedical purposes shall monitor and report monthly to the commission all harvests or purchases of horseshoe crabs and the percentage of mortality up to the point of release including that mortality which occurs during harvest, shipping, handling, and bleeding.

F. Owners of biomedical facilities using horseshoe crabs shall participate in the tagging program of the commission to evaluate the post-release mortality of horseshoe crabs.

G. Monthly reports shall be due to the commission no later than the fifth day of the following month.

VA.R. Doc. No. R10-2267; Filed December 17, 2009, 4:16 p.m.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Final Regulation

REGISTRAR'S NOTICE: Final amendments to 4VAC50-60, Virginia Stormwater Management Program (VSMP) Permit Regulations, were initially published 26:4 VA.R. 345-354 October 26, 2009; but were simultaneously suspended pursuant to § 2.2-4015 A 4 of the Virginia Administrative Process Act to allow time for a 30-day public review and comment period on changes made since the original proposed regulation was published in 25:21 VA.R. 3791-3808 June 22, 2009. No changes were made to the regulation since the 26:4 publication.

Title of Regulation: **4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (amending 4VAC50-60-700, 4VAC50-60-720, 4VAC50-60-730, 4VAC50-60-740, 4VAC50-60-750, 4VAC50-60-760, 4VAC50-60-770, 4VAC50-60-780, 4VAC50-60-790, 4VAC50-60-800, 4VAC50-60-810, 4VAC50-60-820, 4VAC50-60-830; adding 4VAC50-60-825; repealing 4VAC50-60-710).**

Statutory Authority: §§ 10.1-603.2:1 and 10.1-603.4 of the Code of Virginia.

Effective Date: February 3, 2010.

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

Summary:

This regulatory action establishes a statewide base fee schedule for stormwater management projects and establishes the fee assessment and the collection and

distribution systems for those fees. Permit fees are established for: Municipal Separate Storm Sewer Systems (new coverage); Municipal Separate Storm Sewer Systems (major modifications); Construction activity general permit coverage; Construction activity individual permits, Construction activity modifications or transfers; and MS4 and Construction activity annual permit maintenance fees.

This action is closely tied to the Parts I, II, and III action as the base fees generated are necessary to fund the local stormwater management programs established through that concurrent regulatory action also published in this Register. The fees are established using estimates of the time determined to be necessary for different-sized projects; for a local stormwater management program to conduct plan review, inspections (including stormwater pollution prevention plan (SWPPP) review and reinspections), enforcement, technical assistance, and permit coverage; and for the Department of Conservation and Recreation to provide oversight of the Commonwealth's stormwater management program.

The permit base fee levels were arrived at through discussions of a subcommittee of the Technical Advisory Committee and discussions with the overall Technical Advisory Committee and through corroboration of the costs of conducting the various components of program implementation with Department of Conservation and Recreation stormwater field staff and with a number of local government program personnel.

The qualifying local program with approval of the Virginia Soil and Water Conservation Board (board) was authorized to establish a lower construction fee provided that it can demonstrate its ability to fully and successfully implement a program. Additional authority is added to allow a qualifying local program to establish greater fees if it demonstrates to the board that greater fees are necessary to properly administer a program. Additionally, the permit maintenance fee for MS4s with general permit coverage is reduced from $4,000 to $3,000 and an annual increase in fees based on the CPI-U is removed.

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

Part XIII
Fees

4VAC50-60-700. Purpose.

Sections 10.1-603.4 and 10.1-603.5 of the Code of Virginia authorize the establishment of a statewide fee schedule, including administrative charges for state agencies, for stormwater management ~~and state agency projects~~ for land-disturbing activities and for municipal separate storm sewer systems. ~~These regulations in this~~ This part ~~establish~~ establishes the fee assessment and the collection ~~system~~ and distribution systems for those fees. The fees associated with individual permits or coverage under the General Permit for Discharges of Stormwater From Construction Activities (permits for stormwater management for land-disturbing activities) issued by a qualifying local program or a department-administered local stormwater management program that has been approved by the board shall include costs associated with plan review, permit review and issuance, inspections, enforcement, program administration and oversight, and database management. Fees shall also be established for permit maintenance, modification, and transfer.

Should a qualifying local program demonstrate to the board its ability to fully and successfully implement a qualifying local program without a full implementation of the fees set out in this part, the board may authorize the administrative establishment of a lower fee for that program provided that such reduction shall not reduce the amount of fees due to the department for its program oversight and shall not affect the fee schedules set forth herein.

A qualifying local program may establish greater fees than those base fees specified by this part should it be demonstrated to the board that such greater fees are necessary to properly administer the qualifying local program. Any fee increases established by the qualifying local program beyond those base fees established in this part shall not be subject to the fee distribution formula set out in 4VAC50-60-780. Nothing in this part shall prohibit a locality from establishing other local fees authorized by the Code of Virginia related to stormwater management within their jurisdictions.

As part of its program oversight, the department shall periodically assess the revenue generated by both the localities and the department to ensure that the fees have been appropriately set and the fees may be adjusted through periodic regulatory actions should significant deviations become apparent. ~~The department may make such periodic adjustments in addition to the annual fee increases authorized by 4VAC50-60-840.~~

4VAC50-60-710. ~~Definitions.~~ (Repealed.)

~~The following words and terms used in this chapter have the following meanings:~~

~~"Permit applicant" means for the purposes of this part any person submitting a permit application for issuance, reissuance, or modification, except as exempted by 4VAC50-60-740, of a permit or filing a registration statement or permit application for coverage under a general permit issued pursuant to the Act and this chapter.~~

~~"Permit application" means for the purposes of this part the forms approved by the Virginia Soil and Water Conservation Board for applying for issuance or reissuance of a permit or for filing a registration statement or application for coverage~~

~~under a general permit issued in response to the Act and this chapter. In the case of modifications to an existing permit requested by the permit holder and not exempted by 4VAC50-60-740, the application shall consist of the formal written request and any accompanying documentation submitted by the permit holder to initiate the modification.~~

4VAC50-60-720. Authority.

The authority for this part is ~~pursuant to §§ 10.1-604.4~~ §§ 10.1-603.4 and 10.1-603.4:1 of the Code of Virginia and enactment clause 7 governing the transfer of the relevant provisions of Fees for Permits and Certificates Regulations, 9VAC25-20, in accordance with Chapter 372 of the 2004 Virginia Acts of Assembly.

4VAC50-60-730. Applicability.

A. This part applies to:

1. All ~~permit applicants for issuance of~~ persons seeking coverage of a MS4 under a new permit ~~or reissuance of an existing permit, except as specifically exempt under 4VAC50-60-740 A~~. The fee due shall be as specified under 4VAC50-60-800 ~~or 4VAC50-60-820~~.

2. All ~~permittees~~ operators who request that an existing MS4 individual permit be modified, except as specifically exempt under 4VAC50-60-740 ~~A 1 of this chapter~~. The fee due shall be as specified under 4VAC50-60-810.

3. All persons seeking coverage under the General Permit for Discharges of Stormwater From Construction Activities or a person seeking an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-820.

4. All permittees who request modifications to or transfers of their existing registration statement for coverage under a General Permit for Discharges of Stormwater From Construction Activities or of an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-825 in addition to any additional fees necessary pursuant to 4VAC50-60-820 due to an increase in acreage.

B. ~~An applicant for a permit involving a permit that is to be revoked and reissued~~ Persons who are applicants for an individual VSMP Municipal Separate Stormwater Sewer System permit as a result of existing permit revocation shall be considered an applicant for a new permit. The fee due shall be as specified under 4VAC50-60-800.

Persons whose coverage under the General Permit for Discharges of Stormwater From Construction Activities has been revoked shall reapply for an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-820.

C. Permit and permit coverage maintenance fees may apply to each Virginia Stormwater Management ~~Permit~~ Program (VSMP) permit holder. The fee due shall be as specified under 4VAC50-60-830.

4VAC50-60-740. Exemptions.

A. No permit application fees will be assessed to:

1. Permittees who request minor modifications ~~or minor amendments~~ to permits as defined in 4VAC50-60-10 or other minor amendments at the discretion of the local stormwater management program.

2. Permittees whose permits are modified or amended at the initiative of the permit-issuing authority. This does not include errors in the registration statement identified by the local stormwater management program or errors related to the acreage of the site.

B. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the local stormwater management program shall not be exempt pursuant to this section and shall be subject to fees specified under 4VAC50-60-825.

4VAC50-60-750. Due dates for Virginia Stormwater Management Program (VSMP) Permits.

A. ~~Permit application fees for all new permit applications are due on the day a permit application is submitted and shall be~~ Requests for a permit, permit modification, or general permit coverage shall not be processed until the fees required pursuant to this part are paid in accordance with 4VAC50-60-760. ~~Applications will not be processed without payment of the required fee.~~

~~B. A permit application fee is due on the day a permit application is submitted for a major modification that occurs (and becomes effective) before the stated permit expiration date. There is no application fee for a major modification or amendment that is made at the permit issuing authority's initiative.~~

~~C. Permit~~ B. Individual permit or general permit coverage maintenance fees shall be paid annually to the ~~permit issuing authority by October 1 of each year~~ department or the qualifying local program, as applicable, by the anniversary date of individual permit issuance or general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. Individual permit or general permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

MS4 individual operators who currently pay a permit maintenance fee that is due by October 1 of each year shall continue to pay the maintenance fee by October 1 until their current permit expires. Upon reissuance of the MS4 individual permit, maintenance fees shall be paid on the anniversary date of the reissued permit.

~~Effective April 1, 2005, any permit holder whose permit is effective as of April 1 of a given year (including permits that have been administratively continued) shall pay the permit maintenance fee or fees to the permit issuing authority by October 1 of that same year.~~

4VAC50-60-760. Method of payment.

A. Fees, as applicable, shall be, at the discretion of the department, submitted electronically or be paid by check, draft or postal money order payable to:

~~the~~ 1. The Treasurer of Virginia, for a MS4 individual or general permit or for a coverage issued by the department under the General Permit for Discharges of Stormwater From Construction Activities or Individual Permit for Discharges of Stormwater From Construction Activities, ~~to the permit issuing authority,~~ and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the fee. ~~To pay electronically, go to the Department of Conservation and Recreation's stormwater management section of the Department's public website at http://www.dcr.virginia.gov.~~ The Department of Conservation and Recreation may provide a means to pay fees electronically. Fees not submitted electronically shall be sent to the following address: ~~Virginia Department of Conservation and Recreation, Division of Finance, Accounts Payable, 203 Governor Street, Richmond, VA 23219.~~

Virginia Department of Conservation and Recreation
Division of Finance, Accounts Payable
203 Governor Street
Richmond, VA 23219

2. The qualifying local program, for coverage authorized by the qualifying local program under the General Permit for Discharges of Stormwater From Construction Activities, and must be in U.S. currency.

B. Required information ~~-~~ for permits or permit coverage: All applicants ~~for new permit issuance, permit reissuance, or permit modification~~, unless otherwise specified by the department, shall submit the following information along with the fee payment or utilize the Department of Conservation and Recreation Permit Application Fee Form:

1. Applicant name, address and daytime phone number.

2. Applicant Federal Identification Number (FIN), if applicable.

3. The name of the facility/activity, and the facility/activity location.

4. The type of permit applied for.

5. Whether the application is for a new permit issuance, permit reissuance, permit maintenance, or permit modification.

6. The amount of fee submitted.

7. The existing permit number, if applicable.

8. Other information as required by the local stormwater management program.

4VAC50-60-770. Incomplete payments and late payments.

All incomplete payments will be deemed as nonpayments. The department or the qualifying local program, as applicable, shall provide notification to the applicant of any incomplete payments.

Interest may be charged for late payments at the underpayment rate ~~set out by the U.S. Internal Revenue Service established pursuant to § 6621(a)(2) of the Internal Revenue Code. This rate is prescribed~~ set forth in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate.

A 10% late payment fee ~~may~~ shall be charged to any delinquent (over 90 days past due) account.

The ~~permit issuing authority is~~ department and the qualifying local program are entitled to all remedies available under the Code of Virginia in collecting any past due amount ~~and may recover any attorney's fees and/or other administrative costs incurred in pursuing and collecting any past due amount~~.

4VAC50-60-780. Deposit and use of fees.

A. All fees collected by the ~~board~~ department or ~~department board in response~~ pursuant to this chapter shall be deposited into ~~a special nonreverting fund known as~~ the Virginia Stormwater Management Fund ~~established by,~~ and shall be used and accounted for as specified in § 10.1-603.4:1 of the Code of Virginia. Fees collected by the department or board shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

B. All fees collected by a qualifying local program pursuant to this chapter shall be subject to accounting review and shall be used solely to carry out the qualifying local program's responsibilities pursuant to Part II and Part III A of this chapter.

~~Whenever~~ Pursuant to subdivision 5 a of § 10.1-603.4 of the Code of Virginia, whenever the board has ~~delegated~~ authorized the administration of a stormwater management program ~~to~~ by a ~~locality or is required to do so by the Act~~ qualifying local program, ~~no more than 30%~~ 28% of the total revenue generated by the statewide stormwater management fees collected within the locality in accordance with 4VAC50-60-820 shall be remitted on a monthly basis to the State Treasurer for deposit in the Virginia Stormwater

Management Fund unless otherwise collected electronically. If the qualifying local program waives or reduces any fee due in accordance with 4VAC50-60-820, the qualifying local program shall remit the 28% portion that would be due to the Virginia Stormwater Management Fund if such fee were charged in full. Any fee increases established by the qualifying local program beyond the base fees established in this part shall not be subject to the fee distribution formula.

4VAC50-60-790. General.

~~Each permit application for a new permit each permit application for reissuance of a permit, each permit application for major modification of a permit, and each revocation and reissuance of a permit is a~~ The fees for individual permits, general permit coverage, permit or registration statement modification, or permit transfers are considered separate ~~action~~ actions and shall be assessed a separate fee, as applicable. ~~The fees for each type of permit that the permit-issuing authority has the authority to issue, reissue or modify will be as specified in this part.~~

4VAC50-60-800. Fee schedules for VSMP Municipal Separate Storm Sewer System new permit issuance.

The following fee schedule applies to permit applications for issuance of a new individual VSMP Municipal Separate Storm Sewer System permit or coverage under a MS4 General Permit. All regulated MS4s that apply for joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out below.

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	~~$21,300~~ $16,000
VSMP Municipal Stormwater / MS4 Individual (Small)	~~$2,000~~ $8,000
VSMP Municipal Stormwater / MS4 General Permit (Small)	~~$600~~ $4,000

4VAC50-60-810. Fee schedules for major modification of MS4 individual permits ~~or certificates~~ requested by the ~~permitee~~ operator.

The following fee ~~schedules apply~~ schedule applies to applications for major modification of an individual MS4 permit requested by the permittee:

~~The permit application fees listed in the table below apply to a major modification of a VSMP Municipal Separate Storm Sewer Systems Permit that occurs (and becomes effective) before the stated permit expiration date.~~

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	~~$10,650~~ $5,000
VSMP Municipal Stormwater / MS4 Individual (Small)	~~$1,000~~ $2,500

4VAC50-60-820. Fees for ~~filing permit applications (registration statements) for general permits issued by the permit-issuing authority~~ an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities.

The following fees apply to ~~filing of permit applications (registration statements) for all general permits issued by the permit-issuing authority, except VSMP Stormwater Construction General Permits~~ coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the department prior to a qualifying local program or a department-administered local stormwater management program being approved by the board in the area where the applicable land-disturbing activity is located, or where the department has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency for which it has approved annual standards and specifications.

~~The fee for filing a permit application (registration statement) for coverage under a VSMP stormwater general permit issued by the permit-issuing authority shall be:~~

VSMP General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than ~~5~~ five acres)	$500
VSMP General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development equal to or greater than ~~1~~ one acre and less than ~~5 Acres)~~ five acres)	$300
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	$200

The following fees apply to coverage under the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency that does not file annual standards and specifications, an individual permit issued by the board or coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by a qualifying local program, or a department-administered local stormwater management program that has been approved by the board. For coverage under the General Permit for Discharges of Stormwater from Construction Activities, no more than 50% of the base fee set out in this part shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted

for review in accordance with 4VAC50-60-108. The remaining ~~50%~~ base fee balance shall be due prior to the issuance of coverage under the General Permit for Discharges of Stormwater from Construction Activities.

When a site or sites are purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites according to the following table.

VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 0.5 acre)	$290
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre)	$290
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 0.5 acre and less than one acre)	$1,500
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)	$2,700
VSMP General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	$3,400
VSMP General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	$4,500
VSMP General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	$6,100
VSMP General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	$9,600
VSMP Individual Permit for Discharges of Stormwater From Construction Activities	$15,000

4VAC50-60-825. Fees for the modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities.

The following fees apply to modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities issued by a qualifying local program or a department-administered local stormwater management program that has been approved by the board. If the permit modifications result in changes to stormwater management plans that require additional review by the local stormwater management program, such reviews shall be subject to the fees set out in this section. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in 4VAC50-60-820. No modification or transfer fee shall be required until such board-approved programs exist. No modification fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency that is administering a project in accordance with approved annual standards and specifications but shall apply to all other state or federal agency projects.

VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 0.5 acre)	$20
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale	$20

with land disturbance acreage less than one acre)	
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 0.5 acre and less than one acre)	$100
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one and less than five acres)	$200
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	$250
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	$300
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	$450
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	$700
VSMP Individual Permit for Discharges of Stormwater From Construction Activities	$5,000

4VAC50-60-830. Permit maintenance fees.

~~A.~~ The following annual permit maintenance fees apply to each VSMP permit identified below, including expired permits that have been administratively continued~~:~~. With respect to the General Permit for Discharges of Stormwater from Construction Activities, these fees shall apply until the permit coverage is terminated, and shall only be effective when assessed by a qualifying local program or a department-administered local stormwater management program that has been approved by the board. No maintenance fee shall be required for a General Permit for Discharges of Stormwater from Construction Activities until such board approved programs exist. No maintenance fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency that is administering a project in accordance with approved annual standards and specifications but shall apply to all other state or federal agency projects. All regulated MS4s who are issued joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out below:

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	~~$3,800~~ $8,800
VSMP Municipal Stormwater / MS4 Individual (Small)	~~$400~~ $6,000
VSMP Municipal Stormwater / MS4 General Permit (Small)	~~$4,000~~ $3,000
~~VSMP General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than 5 acres)~~	~~$0~~
~~VSMP General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development equal to or greater than 1 acre and less than 5 Acres)~~	~~$0~~
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 0.5 acre)	$50
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre)	$50
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance	$200

acreage equal to or greater than 0.5 acre and less than one acre)	
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance equal to or greater than one acre and less than five acres)	$400
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	$500
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	$650
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	$900
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater 100 acres)	$1,400
VSMP Individual Permit for Discharges ~~From~~ from Construction Activities	$3,000

~~B. An additional permit maintenance fee of $1,000 shall be paid annually by permittees in a toxics management program. Any facility that performs acute or chronic biological testing for compliance with a limit or special condition requiring monitoring in a VPDES permit is included in the toxics management program.~~

4VAC50-60-840. [Reserved.] ~~Annual increase in fees.~~

~~The fees set out in 4VAC50-60-800 through 4VAC50-60-830 shall be increased each July 1 by multiplying the fee by the percentage by which the consumer price index for all urban consumers published by the United States Department of Labor (CPI-U) for the 12-month period ending May 31 of the preceding year exceeds the CPI-U for the 12-month period ending May 31, 2007, and the result shall be rounded to the nearest $1 increment. The fee schedule shall be posted to the department's website and distributed to each qualified local program in advance of each fiscal year. Notwithstanding the foregoing, in no event shall the permit fee be decreased and in no event shall any increase exceed 4.0% per annum without formal action by the board.~~

NOTICE: The forms used in administering the above regulation are listed below. Any amended or added forms are reflected in the listing and published following the listing.

FORMS (4VAC50-60)

Application Form 1-General Information, Consolidated Permits Program, EPA Form 3510-1, DCR 199-149 (August 1990).

Department of Conservation and Recreation Permit Fee Form, DCR 199-145 ~~(03/09)~~ ~~(9/08)~~ (10/09).

VSMP General Permit for Discharges of Stormwater from Construction Activities (VAR10) - Registration Statement, DCR 199-146 (03/09).

VSMP General Permit Notice of Termination - Construction Activity Stormwater Discharges (VAR10), DCR 199-147 (03/09).

VSMP General Permit for Discharges of Stormwater from Construction Activities (VAR10) - Transfer Agreement, DCR199-191 (03/09).

VSMP General Permit Registration Statement for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (VAR04), DCR 199-148 (07/08).

DCR
Department of Conservation & Recreation
CONSERVING VIRGINIA'S NATURAL & RECREATIONAL RESOURCES

DEPARTMENT OF CONSERVATION AND RECREATION PERMIT FEE FORM

Instructions:
Applicants for an individual Virginia Stormwater Management Program (VSMP) Permit are required to pay permit application fees. Fees are also required for registration coverage under General Permits. Fees must be paid when applications for permit issuance or modification are submitted. Applications will be considered incomplete if the proper fee is not paid and will not be processed until the fee is received.

The permit fee schedule is included with this form. Fees for permit issuance, reissuance, modification and maintenance are included. Once you have determined the fee for the type of application you are submitting, complete this form. The original copy of the form and your check or money order payable to "Treasurer of Virginia" should be mailed to:

Department of Conservation and Recreation
Division of Finance, Accounts Payable
203 Governor Street, 4th Floor
Richmond, Virginia 23219

A copy of the form and a copy of your check or money order should accompany the permit registration statement (application). You should retain a copy for your records. Please direct any questions regarding this form or fee payment to SWMESquestions@dcr.virginia.gov.

Construction Activity Operator:

Name:_____ FIN: _____

Mailing Address:_____

City:_____ State:_____ Zip:_____ Phone:_____

Daytime Phone Number: (_____) _____ - _____

Name and Location of Construction Activity:

Name:_____

Town, City, or County:_____

Type of VSMP Permit (from Fee Schedule):

_____ MS4 Individual Permit _____ MS4 General Permit
_____ Construction Individual Permit _____ Construction General Permit

Type of Action: _____ New Issuance _____ Reissuance
_____ Modification _____ Maintenance

Amount of Fee Submitted (from Fee Schedule): _____

Existing Permit Number (if applicable): _____

FOR DCR USE ONLY
Date: _____ DC #: _____

(DCR 199-145) (10/09)

DCR
Department of Conservation & Recreation
CONSERVING VIRGINIA'S NATURAL & RECREATIONAL RESOURCES

Virginia Stormwater Management Program (VSMP) Permit Fee Schedule

A. VSMP Individual Permits. Applications for issuance of new individual VSMP permits, and for permittee initiated major modifications that occur (and become effective) before the stated permit expiration date. [NOTE: Individual VSMP permittees pay an Annual Permit Maintenance Fee instead of a reapplication fee. The permittee is billed separately by DCR for the Annual Permit Maintenance Fee.]

TYPE OF VSMP PERMIT	ISSUANCE	MODIFICATION
Municipal Stormwater / MS4 Individual (Large and Medium)	$16,000	$5,000
Municipal Stormwater / MS4 Individual (Small)	$8,000	$2,500
Construction Stormwater Individual	$15,000	$0

B. Registration Statements for VSMP MS4 General Permit Coverage. The fee for filing a permit application (registration statement) for coverage under a VSMP MS4 stormwater general permit issued by the permit issuing authority is as follows:

TYPE OF VSMP PERMIT	ISSUANCE
Municipal Stormwater / MS4 General Permit (Small)	$4,000

C. Registration Statements for VSMP Construction General Permit Coverage. The fee for filing a permit application (registration statement) for coverage under a VSMP Construction stormwater general permit issued by the permit issuing authority is as follows:

TYPE OF VSMP PERMIT	ISSUANCE
Construction General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development or sale equal to or greater than five acres)	$500
Construction General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development or sale equal to or greater than one acre and less than five acres)	$300
Construction General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	$200

D. Permit Maintenance Fees. The annual permit maintenance fees apply to each VSMP permit identified below, including expired permits that have been administratively continued.

TYPE OF PERMIT	MAINTENANCE
VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	$8,800
VSMP Municipal Stormwater / MS4 Individual (Small)	$6,000
VSMP Municipal Stormwater / MS4 General Permit (Small)	$3,000
VSMP General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than 5 acres)	$0
VSMP General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development equal to or greater than 1 acre and less than 5 Acres)	$0
Construction General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	$0

(DCR 199-145) (10/09)

VA.R. Doc. No. R06-129; Filed December 15, 2009, 9:54 a.m.

Final Regulation

REGISTRAR'S NOTICE: Final amendments to 4VAC50-60, Virginia Stormwater Management Program (VSMP) Permit Regulations, were initially published in 26:4 VA.R. 355-393 October 26, 2009, but were simultaneously suspended pursuant to § 2.2-4015 A 4 of the Virginia Administrative Process Act to allow time for a 30-day public review and comment period on changes made since the original proposed regulation was published in 25:21 VA.R. 3803-3849 June 22, 2009. The changes made since the 26:4 publication are shown in brackets.

Title of Regulation: **4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (amending 4VAC50-60-10, 4VAC50-60-20, 4VAC50-60-30, 4VAC50-60-40; adding 4VAC50-60-45, 4VAC50-60-48, 4VAC50-60-53, 4VAC50-60-56, 4VAC50-60-63, 4VAC50-60-65, 4VAC50-60-66, 4VAC50-60-69, 4VAC50-60-72, 4VAC50-60-74, 4VAC50-60-76, 4VAC50-60-85, 4VAC50-60-92, 4VAC50-60-93, 4VAC50-60-94, 4VAC50-60-95, 4VAC50-60-96, 4VAC50-60-97, 4VAC50-60-98, 4VAC50-60-99, 4VAC50-60-102, 4VAC50-60-104, 4VAC50-60-106, 4VAC50-60-108, 4VAC50-60-112, 4VAC50-60-114, 4VAC50-60-116, 4VAC50-60-118, 4VAC50-60-122, 4VAC50-60-124, 4VAC50-60-126, 4VAC50-60-128, 4VAC50-60-132, 4VAC50-60-134, 4VAC50-60-136, 4VAC50-60-138, 4VAC50-60-142, 4VAC50-60-154, 4VAC50-60-156, 4VAC50-60-157, 4VAC50-60-158, 4VAC50-60-159; repealing 4VAC50-60-50 through 4VAC50-60-150).**

Statutory Authority: §§ 10.1-603.2:1 and 10.1-603.4 of the Code of Virginia.

Effective Date: July 1, 2010.

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

Summary:

This final regulatory action amends the technical criteria applicable to stormwater discharges from construction activities; establishes minimum criteria for locality-administered stormwater management programs (qualifying local programs) and Department of Conservation and Recreation (department) administered local stormwater management programs, as well as authorization procedures and review procedures for qualifying local programs; and amends the definitions section applicable to all of the Virginia Stormwater Management Program (VSMP) regulations.

The proposed version of the regulations established consistent statewide water quality requirements that included a 0.28 lbs/acre/year phosphorus standard for new development and a requirement that total phosphorus loads be reduced to an amount at least 20% below the predevelopment phosphorus load on prior developed lands. Concerning water quantity, the proposed version specified that stormwater discharged from a site to an unstable channel must be released at or below a "forested" peak flow rate condition. No exceptions to the standard were provided. As described below, the final regulations change these technical standards and provide additional flexibility that was not present in the proposed regulations.

In the final action, with regard to technical criteria applicable to stormwater discharges from construction activities, revised water quality and water quantity requirements are included in Part II A of the regulations (existing technical criteria will now be maintained in a new Part II B that applies to grandfathered projects). These revised technical requirements in Part II A include:

1. A 0.45 lbs/acre/year phosphorus standard for new development activities statewide;

2. A requirement that total phosphorus loads be reduced to an amount at least 20% below the predevelopment phosphorus load on prior developed lands for land disturbing activities greater than or equal to an acre and 10% for redevelopment sites disturbing less than 1 acre;

3. A requirement that control measures be installed on a site to meet any applicable wasteload allocation; and

4. Water quantity requirements that include both channel protection and flood protection criteria. In the final version, stormwater that is discharged from a site to an unstable channel must be released at or below a "good pasture" peak flow rate condition unless the predeveloped condition for the site is forest, in which case, the runoff shall be held to the forested condition. Exceptions to the "good pasture" standard are provided to a land disturbing activity that is less than five acres on prior developed lands; or less than one acre for new development. Under the exceptions, the sites are expected to improve upon the predeveloped runoff condition.

The final regulations also provide five offsite options organized in a new section that may be utilized as specified in the regulation for a developer to achieve the required onsite water quality and, where allowed, water quantity requirements (the proposed regulations only contained three options). One of the new provisions includes a state buy-down option that would be available in the future should a standard more stringent than 0.45 lbs/acre/year phosphorus be established for projects occurring within the Chesapeake Bay Watershed.

The proposed regulations did not contain grandfathering provisions. The final regulations contain a new section on grandfathering that specifies that if the operator of a

project has met the three listed local vesting criteria related to significant affirmative governmental acts and has received general permit coverage by July 1, 2010, then the project is grandfathered under today's water quality and quantity technical standards (Part II B) until June 30, 2014. If permit coverage is maintained by the operator, then the project will remain grandfathered until June 30, 2019. It also notes that past June 30, 2019, or if a project's general permit coverage is not maintained, portions of the project not yet completed shall become subject to the new technical criteria set out in Part II A. The grandfathering provisions also contain criteria for the grandfathering of state agency projects for which state or federal funding has been approved as of July 1, 2010, and finally, criteria for grandfathering projects that governmental bonding or public debt financing has been issued prior to July 1, 2010.

This final action establishes the minimum criteria and ordinance requirements (where applicable) for a Virginia Soil and Water Conservation Board (board) authorized qualifying local program (Part III A) or for a board-authorized department-administered local stormwater management program (Part III B) which include, but are not limited to, administration, plan review, issuance of coverage under the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities, inspection, enforcement, reporting, and recordkeeping. Part III D establishes the procedures the board will utilize in authorizing a locality to administer a qualifying local program. Part III C establishes the criteria the department will utilize in reviewing a locality's administration of a qualifying local program.

The primary issue in Part III that changed between the proposed and final regulations is that in the final regulations language was added that specified that stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot, at the qualifying program's discretion, are not subject to the locality inspection requirements (once every five years), homeowner inspection requirements, maintenance agreement requirements, or construction record drawing requirements. Instead, a qualifying local program is authorized to develop a strategy for addressing maintenance of stormwater management facilities located on and primarily designed to treat stormwater runoff from an individual residential lot. Such a strategy may include periodic inspections, public outreach and education, or other method targeted at promoting the long-term maintenance of such facilities.

Finally, this action changes definitions in Part I, which is applicable to the full body of the VSMP regulations. Unnecessary definitions are deleted, needed definitions are added, and many existing definitions are updated. In the final action, several additional definitions are added and other minor refinements address comments received.

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

Part I
Definitions, Purpose, and Applicability

4VAC50-60-10. Definitions.

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

"Act" means the Virginia Stormwater Management Act, Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Adequate channel" means a ~~channel~~ watercourse ~~or wetland~~ that will convey the designated frequency storm event without overtopping ~~the channel bank nor~~ its banks or causing erosive damage to the ~~channel~~ bed ~~or~~, banks, or overbank sections of the same. A wetland may be considered an adequate channel provided the discharge from the designated frequency storm event does not cause erosion in the wetland.

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

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

"Approval authority" means the Virginia Soil and Water Conservation Board or ~~their~~ its designee.

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

~~"Aquatic bench" means a 10- to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.~~

~~"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16%. Note that a locality may opt to calculate~~

~~actual watershed specific values for the average land cover condition based upon 4VAC50-60-110.~~

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

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

"Best management practice ~~(BMP)~~" or "BMP" means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

~~"Bioretention basin" means a water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed, and into the in situ material.~~

~~"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.~~

"Board" means the Virginia Soil and Water Conservation Board.

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

"Channel" means a natural stream or manmade ~~waterway~~ watercourse with defined bed and banks that conducts continuously or periodically flowing water.

"Chesapeake Bay watershed" means all land areas draining to the following Virginia river basins: Potomac River Basin, James River Basin, Rappahannock River Basin, Chesapeake Bay and small coastal basins, and York River Basin.

"Common plan of development or sale" means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

~~"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.~~

"Comprehensive stormwater management plan" means a plan, which may be integrated with other land use plans or regulations, that specifies how the water quality ~~and~~ components, quantity components, or both of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

"Construction activity" means any clearing, grading or excavation associated with large construction activity or associated with small construction activity.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

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

"Control measure" means any BMP, stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

"Co-operator" means an operator ~~to~~ of a VSMP permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

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

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

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

"Department" means the Department of Conservation and Recreation.

"Development" means ~~a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units~~ land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or

structures or the clearing of land for nonagricultural or nonsilvicultural purposes.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

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

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to state waters from any point source; or

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

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

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

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

"Drainage area" means a land ~~and~~ area, water area ~~on a land-disturbing site~~, or both from which runoff flows to a common ~~outlet~~ point.

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

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

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

"Existing permit" means for the purposes of this chapter a permit issued by the permit-issuing authority and currently held by a permit applicant.

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

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

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

"Flood fringe" is the portion of the floodplain outside the floodway~~, usually associated with standing rather than flowing water, which is covered by floodwater during the 100-year discharge~~ [that is covered with water from the 100-year storm event].

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Floodplain" means any land area adjoining a channel, river, stream, or other water body that is susceptible to being inundated by water. It includes the floodway and flood fringe areas [associated with the 100-year storm event].

"Floodway" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the [~~base flood~~ 100-year storm event] without cumulatively increasing the water surface elevation more than one foot or as otherwise designated by the Federal Emergency Management Agency.

"General permit" means a VSMP permit authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

~~"Grassed swale" means an earthen conveyance system which is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.~~

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

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a VPDES or VSMP permit (other than the VSMP permit for discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and discharges identified by and in compliance with 4VAC50-60-1220 C 2.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious surfaces include, but are not limited to, conventional roofs, buildings, streets, parking areas, and any conventional concrete, asphalt, or ~~compacted~~ gravel surface that is or may become compacted.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works (POTW)."

~~"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.~~

"Inspection" means an on-site review of the project's compliance with the permit, the local stormwater management program, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the enforcement of the Act and this chapter.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Karst area" means any land area predominantly underlain at the surface or shallow subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface karst features.

"Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the ~~federal Clean Water Act~~ CWA, the Act, and this chapter.

"Large construction activity" means construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F (2000));

2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

a. Physical interconnections between the municipal separate storm sewers;

b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

c. The quantity and nature of pollutants discharged to surface waters;

d. The nature of the receiving surface waters; and

e. Other relevant factors.

4. The board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; (iii) highway construction projects ~~and~~; (iv) construction of stormwater channels and stream restoration activities; and (v) water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

"Local stormwater management program" or "local program" means ~~a statement of~~ the various methods employed by a locality or the department to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, plan review, inspection, enforcement, and evaluation consistent with the Act and this chapter. ~~The ordinance shall include provisions to require the control of after-development stormwater runoff rate of flow, the proper maintenance of stormwater management facilities, and minimum administrative procedures.~~

"Locality" means a county, city, or town.

"Major facility" means any VSMP facility or activity classified as such by the regional administrator in conjunction with the board.

"Major modification" means, for the purposes of this chapter, the modification or amendment of an existing permit before its expiration that is not a minor modification as defined in this regulation.

"Major municipal separate storm sewer outfall ~~(or major outfall)~~" or "major outfall" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Manmade" means constructed by man.

"Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other conveyance constructed by man.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G (2000));

2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

a. Physical interconnections between the municipal separate storm sewers;

b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

c. The quantity and nature of pollutants discharged to surface waters;

d. The nature of the receiving surface waters; or

e. Other relevant factors.

4. The board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2 and 3 of this definition.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing permit before its expiration for the reasons listed at 40 CFR 122.63 and as specified in 4VAC50-60-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

4. That is not part of a publicly owned treatment works.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the ~~Virginia Stormwater Management~~ Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

"National Pollutant Discharge Elimination System ~~(NPDES)~~" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the CWA. The term includes an approved program.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its floodplain.

"Natural stormwater conveyance system" means the main channel of a natural stream, in combination with the floodway and flood fringe, which compose the floodplain.

"Natural stream" means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams ; however, channels designed utilizing natural channel design concepts may be considered natural streams.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. Which is not a new source; and

4. Which has never received a finally effective VPDES or VSMP permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil

and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New permit" means, for the purposes of this chapter, a permit issued by the permit-issuing authority to a permit applicant that does not currently hold and has never held a permit of that type, for that activity, at that location.

"New source," means 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 CWA that are applicable to such source; or

2. After proposal of standards of performance in accordance with § 306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"Nonpoint source pollution" means pollution such as sediment, nitrogen and phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

~~"Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff.~~

"Operator" means the owner or operator of any facility or activity subject to the VSMP permit regulation. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes or pollutants to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia, the Act and this chapter.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permit" means an approval issued by the permit-issuing authority for the initiation of a land-disturbing activity or for stormwater discharges from an MS4. Permit does not include any permit that has not yet been the subject of final permit-issuing authority action, such as a draft permit or a proposed permit.

"Permit-issuing authority" means the board, the department, or a locality ~~that is delegated authority by the board to issue, deny, revoke, terminate, or amend stormwater permits under the provisions of the Act and this chapter~~ with a qualifying local program.

"Permittee" means the person or locality to which the permit is issued, including any owner or operator whose construction site is covered under a construction general permit.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body (including but not limited to a federal, state, or local entity), any interstate body or any other legal entity.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Point of discharge" means a location at which concentrated stormwater runoff is released.

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or

2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"Pollutant discharge" means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered ~~in a diffuse manner~~ by stormwater runoff.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

~~"Post-development"~~ "Postdevelopment" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

~~"Pre-development"~~ "Predevelopment" refers to the conditions that exist at the time that plans for the land development of a tract of land are ~~approved by~~ submitted to the plan approval authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the first item being ~~approved or permitted~~ submitted shall establish ~~pre-development~~ predevelopment conditions.

"Prior developed lands" means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbing activity.

"Privately owned treatment works ~~(PVOTW)~~" or "PVOTW" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Proposed permit" means a VSMP permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) that is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly owned treatment works ~~(POTW)~~" or "POTW" means a treatment works as defined by § 212 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Qualified personnel" means a licensed professional engineer, responsible land disturber, or other person who holds a certificate of competency from the board in the area of project inspection or combined administrator.

"Qualifying local stormwater management program" or "qualifying local program" means a local program that is administered by a locality that has been authorized by the board to issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities (4VAC50-60-1170).

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

~~"Regional (watershed wide) stormwater management facility" or "regional facility" means a facility or series of facilities designed to control stormwater runoff from a specific watershed, although only portions of the watershed may experience land development.~~

~~"Regional (watershed wide) stormwater management plan" or "regional plan" means a document containing material describing how runoff from open space, existing development and future planned development areas within a watershed will be controlled by coordinated design and implementation of regional stormwater management facilities.~~

"Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts, including the main channel, floodway, and flood fringe.

"Revoked permit" means, for the purposes of this chapter, an existing permit that is terminated by the board before its expiration.

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

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

~~"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.~~

"Runoff characteristics" include ~~, but are not limited to,~~ velocity, peak flow rate, volume, time of concentration, and flow duration, and their influence on channel morphology including sinuosity, channel cross-sectional area, and channel slope.

"Runoff volume" means the volume of water that runs off the site of a land-disturbing activity from a prescribed design storm.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act, the CWA and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

~~"Shallow marsh" means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area, to maintain the desired water surface elevations to support emergent vegetation.~~

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns which are part of the county.

"Site" means the land or water area where any facility or activity is physically located or conducted, a parcel of land being developed, or a designated ~~planning~~ area of a parcel in which the land development project is located. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

"Site hydrology" means the movement of water on, across, through and off the site as determined by parameters including, but not limited to, soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a "total maximum daily load" (TMDL) approved or established by

EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the either the board or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"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, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"Stable" means, in the context of channels, a channel that has developed an established dimension, pattern, and profile such that over time, these features are maintained.

"State" means the Commonwealth of Virginia.

"State/EPA agreement" means an agreement between the regional administrator and the state that coordinates EPA and state activities, responsibilities and programs including those under the CWA and the Act.

"State project" means any land development project that is undertaken by any state agency, board, commission, authority or any branch of state government, including state-supported institutions of higher learning.

"State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater conveyance system" means any of the following, either within or downstream of the land-disturbing activity: (i) a manmade stormwater conveyance system, (ii) a natural stormwater conveyance system, or (iii) a restored stormwater conveyance system.

~~"Stormwater detention basin" or "detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.~~

"Stormwater discharge associated with construction activity" means a discharge of pollutants in stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

~~"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and,~~

~~therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.~~

~~"Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.~~

"Stormwater management facility" means a device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a document(s) containing material for describing how existing runoff characteristics will be maintained by a land-disturbing activity and methods for complying with the requirements of the local program or this chapter.

"Stormwater Management Program" means a program established by a locality that is consistent with the requirements of the ~~Virginia Stormwater Management~~ Act, this chapter and associated guidance documents.

"Stormwater management standards" means the minimum criteria for stormwater management programs and land-disturbing activities as set out in Part II (4VAC50-60-40 et seq.) of this chapter.

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site or its associated land-disturbing activities. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an erosion and sediment control plan, a post-construction stormwater management plan, a spill prevention control and countermeasure (SPCC) plan, and other practices that will be used to minimize pollutants in stormwater discharges from land-disturbing activities in compliance with the terms and conditions of this chapter. All plans incorporated by reference into the SWPPP shall be enforceable under the permit issued or general permit coverage authorized.

~~"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet, even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding, or stream channel erosion.~~

~~"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.~~

~~"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.~~

~~"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.~~

"Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate wetlands;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. That are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. That are used or could be used for industrial purposes by industries in interstate commerce.

4. All impoundments of waters otherwise defined as surface waters under this definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2000).

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

"Unstable" means, in the context of channels, a channel that is not stable.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Urban development area" or "UDA" means, as defined by § 15.2-2223.1 of the Code of Virginia, an area designated by a locality that is appropriate for higher density development due to proximity to transportation facilities, the availability of a public or community water and sewer system, or proximity to a city, town, or other developed area.

"Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40 CFR Part 125 (2000), or in the applicable federal effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on § 301(c), § 301(g), § 301(h), § 301(i), or § 316(a) of the CWA.

~~"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration and absorption, and is dedicated for that purpose.~~

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

"Virginia Stormwater Management Act" means Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Virginia Stormwater BMP Clearinghouse website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations and that is jointly created by the department and the Virginia Water Resources Research Center subject to advice to the director from a permanent stakeholder advisory committee.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the Act and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

"Virginia Stormwater Management Program ~~(VSMP)~~" or "VSMP" means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the ~~federal Clean Water Act~~ CWA, the ~~Virginia Stormwater Management~~ Act, this chapter, and associated guidance documents.

"Virginia Stormwater Management Program ~~(VSMP)~~ permit" or "VSMP permit" means a document issued by the permit-issuing authority pursuant to the Virginia Stormwater Management Act and this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters. Under the approved state program, a VSMP permit is equivalent to a NPDES permit.

"VSMP application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VSMP permit.

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the ~~Virginia Stormwater Management~~ Act (§ 10.1-603.1 et seq. of the Code of Virginia), and the ~~federal Clean Water Act~~ CWA (33 USC § 1251 et seq.).

~~"Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the impervious surface of the land development project.~~

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which the water drains may be considered the single outlet for the watershed.

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

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

4VAC50-60-20. Purposes.

The purposes of this chapter are to provide a framework for the administration, implementation and enforcement of the Virginia Stormwater Management Act (Act) and to delineate the procedures and requirements to be followed in connection with VSMP permits issued by the board or its designee pursuant to the Clean Water Act (CWA) and the Virginia Stormwater Management Act, while at the same time providing flexibility for innovative solutions to stormwater management issues. The chapter also establishes the board's procedures for the authorization of a qualifying local program, board and department oversight authorities for an authorized qualifying local program, the board's procedures for utilization by the department in administering a local program in localities where no qualifying local program is authorized, and the components of a stormwater management program including but not limited to stormwater management standards.

4VAC50-60-30. Applicability.

This chapter is applicable to:

1. Every private, local, state, or federal entity that establishes a stormwater management program or a MS4 program;

2. The department in its oversight of locally administered programs or in its administration of a local program;

~~2.~~ 3. Every state agency project regulated under the Act and this chapter; and

~~3.~~ 4. Every land-disturbing activity regulated under § 10.1-603.8 of the Code of Virginia unless otherwise exempted in § 10.1-603.8 B.

Part II A
Stormwater Management Program Technical Criteria

4VAC50-60-40. ~~Applicability~~ Authority ~~and applicability~~.

~~This part specifies technical criteria for every stormwater management program and land-disturbing activity.~~

Pursuant to the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia), the board is required to take actions ensuring the general health, safety, and welfare of the citizens of the Commonwealth as well as protecting the quality and quantity of state waters from the potential harm of unmanaged stormwater. In addition to other authority granted to the board under the Stormwater Management Act, the board is authorized pursuant to §§ 10.1-603.2:1 and 10.1-603.4 to adopt regulations that specify minimum technical criteria for stormwater management programs in Virginia, to establish statewide standards for stormwater management from land-disturbing activities, and to protect properties, the quality and quantity of state waters, the physical integrity of stream channels, and other natural resources.

~~In accordance with the board's authority, this part establishes the minimum technical criteria and stormwater management standards that shall be employed by a state agency in accordance with an implementation schedule set by the board, or by a qualifying local program or department administered local stormwater management program that has been approved by the board, to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities.~~

~~For those localities required to adopt a local stormwater management program pursuant to § 10.1-603.3 of the Code of Virginia, until a local program is approved by the board, the technical criteria required shall be that found at 4VAC50-60-1180 through 4VAC50-60-1190.~~

4VAC50-60-45. Applicability.

In accordance with the board's authority, this part establishes the minimum technical criteria and stormwater management standards that shall be employed by a state agency in accordance with an implementation schedule set by the board, or by a qualifying local program or department-administered local stormwater management program that has been approved by the board, to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, except as provided in 4VAC50-60-48.

4VAC50-60-48. Grandfathering.

A. Land-disturbing activities that receive coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities prior to the adoption of a local stormwater management program within their jurisdiction shall not be subject to the technical criteria of Part II A, but

shall be subject to the technical criteria of Part II B, until the expiration of that permit on June 30, 2014.

B. If the operator of a project, as of July 1, 2010, (i) obtained or is the beneficiary of a significant affirmative governmental act that remains in effect allowing development of a specific project, (ii) relied in good faith on the significant affirmative governmental act, (iii) incurred extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act, and (iv) obtained VSMP general permit coverage prior to July 1, 2010, then the land-disturbing activity associated with the project is grandfathered and shall remain subject to the Part II B Technical Criteria until June 30, 2014. If permit coverage continuously remains in effect for the land-disturbing activity within the entire project area, then the project shall remain subject to the Part II B Technical Criteria until June 30, 2019. Should permit coverage not be maintained or if the land-disturbing activity continues beyond June 30, 2019, portions of the project not completed shall be subject to the Part II A Technical Criteria. In the event that the qualifying significant affirmative governmental act or the VSMP permit is subsequently modified or amended in a manner such that there is no increase in the amount of phosphorus leaving the site through stormwater runoff, and such that there is no increase in the volume or rate of runoff, the grandfathering shall continue as before.

For purposes of this subsection and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the governing body has accepted proffers or proffered conditions that specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan, or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; or (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property. [For the purposes of this subsection and without limitation, for state and federal projects, the approval of state or federal funding for a project or the approval of a stormwater management plan are deemed to be significant affirmative governmental acts.]

C. Where a land-disturbing activity is part of a common plan of development or sale that has obtained VSMP general permit coverage from the department prior to July 1, 2010, the land-disturbing activity will be subject to the technical criteria of Part II B. The registration statement shall include the permit coverage number for the common plan of development or sale for which association is being claimed.

[D. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2010, such project shall be subject to the technical criteria of Part II B.]

4VAC50-60-50. ~~General.~~ (Repealed.)

~~A. Determination of flooding and channel erosion impacts to receiving streams due to land disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed which also contributes to that point of discharge.~~

~~B. The specified design storms shall be defined as either a 24 hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.~~

~~C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.~~

~~D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws and regulations. Evidence of approval of all necessary permits shall be presented.~~

~~E. Impounding structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.~~

~~F. Pre-development and post-development runoff rates shall be verified by calculations that are consistent with good engineering practices.~~

~~G. Outflows from a stormwater management facility or stormwater conveyance system, shall be discharged to an adequate channel.~~

~~H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.~~

~~I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and~~

~~the responsible party for carrying out the inspection and maintenance plan.~~

~~J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided to the extent possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59.~~

~~K. Natural channel characteristics shall be preserved to the maximum extent practicable.~~

~~L. Land disturbing activities shall comply with the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and attendant regulations.~~

~~M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas defined in the Chesapeake Bay Preservation Act, provided that (i) the local government has conclusively established that the location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; and, (iii) the facility must be consistent with a stormwater management program that has been approved by the board.~~

4VAC50-60-53. General requirements.

The physical, chemical, biological, and hydrologic characteristics and the water quality and quantity of the receiving state waters shall be maintained, protected, or improved in accordance with the requirements of this part. Objectives include, but are not limited to, supporting state designated uses and water quality standards. All control measures used shall be employed in a manner that minimizes impacts on receiving state waters.

4VAC50-60-56. Applicability of other laws and regulations.

Nothing in this chapter shall be construed as limiting the applicability of other laws and regulations, including, but not limited to, the CWA, Virginia Stormwater Management Act, Virginia Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act, except as provided in § 10.1-603.3 I of the Code of Virginia and all applicable regulations adopted in accordance with those laws, or the rights of other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law.

4VAC50-60-60. ~~Water quality.~~ (Repealed.)

~~A. Compliance with the water quality criteria may be achieved by applying the performance-based criteria or the technology based criteria to either the site or a planning area.~~

~~B. Performance based criteria. For land disturbing activities, the calculated post-development nonpoint source pollutant runoff load shall be compared to the calculated pre-development load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 1 to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:~~

~~1. Situation 1 consists of land disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover which is less than the average land cover condition.~~

~~Requirement: No reduction in the after disturbance pollutant discharge is required.~~

~~2. Situation 2 consists of land disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover which is greater than the average land cover condition.~~

~~Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the average land cover condition.~~

~~3. Situation 3 consists of land disturbing activities where the existing percent impervious cover is greater than the average land cover condition.~~

~~Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant discharge based on existing conditions less 10% or (ii) the pollutant discharge based on the average land cover condition, whichever is greater.~~

~~4. Situation 4 consists of land disturbing activities where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.~~

~~Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.~~

~~C. Technology based criteria. For land disturbing activities, the post-developed stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the post-developed condition percent impervious cover as specified in Table 1. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 1. Design standards and~~

~~specifications for the BMPs in Table 1 that meet the required target pollutant removal efficiency will be available at the department.~~

~~Table 1*~~

~~Water Quality BMP*~~	~~Target Phosphorus Removal Efficiency~~	~~Percent Impervious Cover~~
~~Vegetated filter strip~~ ~~Grassed Swale~~	~~10%~~ ~~15%~~	~~16-21%~~
~~Constructed wetlands~~ ~~Extended detention (2 x WQ Vol)~~ ~~Retention basin I (3 x WQ Vol)~~	~~20%~~ ~~35%~~ ~~40%~~	~~22-37%~~
~~Bioretention basin~~ ~~Bioretention filter~~ ~~Extended detention-enhanced~~ ~~Retention basin II (4 x WQ Vol)~~ ~~Infiltration (1 x WQ Vol)~~	~~50%~~ ~~50%~~ ~~50%~~ ~~50%~~ ~~50%~~	~~38-66%~~
~~Sand filter~~ ~~Infiltration (2 x WQ Vol)~~ ~~Retention basin III (4 x WQ Vol with aquatic bench)~~	~~65%~~ ~~65%~~ ~~65%~~	~~67-100%~~

~~*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table which target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department.~~

4VAC50-60-63. Water quality design criteria requirements.

In order to protect the quality of state waters and to control ~~nonpoint source pollution~~ stormwater pollutants, the following minimum technical criteria and statewide standards for stormwater management shall be applied to the site of a land-disturbing activity. ~~The local program shall have discretion to allow for application of the criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 4VAC50-60-96.~~

1. New development. The total phosphorus load of new development projects shall not exceed ~~0.28~~ 0.45 pounds per acre per year, as calculated pursuant to 4VAC50-60-65, except:

[~~a. The total phosphorus load of a new development project disturbing greater than or equal to one acre in the Chesapeake Bay watershed shall not exceed 0.28 pounds per acre per year, as calculated pursuant to 4VAC50-60-65.~~

~~b. Within~~ a. Should the board establish by regulatory action a standard more stringent than 0.45 pounds per acre per year in the Chesapeake Bay watershed, then a qualifying local program may establish a standard of no greater than 0.45 pounds per acre per year to be applied within] urban development areas designated pursuant to § 15.2-2223.1 of the Code of Virginia [~~in the Chesapeake Bay watershed a qualifying local program may establish a phosphorus standard between 0.28 and 0.45 pounds per acre per year~~] for projects greater than or equal to one acre in order to encourage compact development that achieves superior water quality benefits. The qualifying local program shall provide to the board for approval a justification for any standards established [~~if greater than 0.28~~] and shall define the types of projects within a UDA that would qualify for the [~~relaxed~~] standards. The standard shall be based upon factors including, but not limited to, number of housing units per acre for residential development, floor area ratio for nonresidential development, level of imperviousness, brownfield remediation potential, mixed-use and transit oriented development potential, proximity to the Chesapeake Bay or local waters of concern, and the presence of impaired waters. This provision shall not apply to department-administered local programs.

[~~c. Localities~~ b. Should the board establish by regulatory action a standard more stringent than 0.45 pounds per acre per year in the Chesapeake Bay watershed, localities] that have lands that drain to both the Chesapeake Bay watershed and other non-Chesapeake Bay watersheds may choose to apply the [~~0.28 pounds per acre per year~~ more stringent] phosphorus standard [for the Chesapeake Bay watershed] to land-disturbing activities that discharge to watersheds other than the Chesapeake Bay watershed.

[c. Upon the completion of the Virginia TMDL Implementation Plan for the Chesapeake Bay Nutrient and Sediment TMDL approved by EPA, the board shall by regulatory action establish a water quality design criteria for new development activities that is consistent

with the pollutant loadings called for in the approved Implementation Plan.]

2. Development on prior developed lands.

a. The total phosphorus load of ~~projects~~ a project occurring on prior developed lands and [~~distributing~~ disturbing] greater than or equal to one acre shall be reduced to an amount at least 20% below the predevelopment total phosphorus load.

~~However, the~~ b. The total phosphorus load of a project occurring on prior developed lands and disturbing less than one acre shall be reduced to an amount at least 10% below the predevelopment total phosphorus load.

c. The total phosphorus load shall not be required to be reduced to below ~~0.28 pounds per acre per year~~ the applicable standard for new development unless a more stringent standard has been established by a qualifying local program.

3. Compliance with subdivisions 1 and 2 of this section shall be determined in accordance with 4VAC50-60-65 ~~shall constitute compliance with subdivisions 1 and 2 of this section~~.

4. TMDL. In addition to the above requirements, if a specific WLA for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, necessary control measures must be implemented by the operator to meet the WLA in accordance with the requirements established in the General Permit for Discharges of Stormwater from Construction Activities or an individual permit, which address both construction and postconstruction discharges.

5. Nothing in this section shall prohibit a qualifying local program from establishing a more stringent standard.

4VAC50-60-65. Water quality compliance.

A. Compliance with the water quality design criteria set out in subdivisions 1 and 2 of 4VAC50-60-63 shall be determined by utilizing the Virginia Runoff Reduction Method or another methodology that is demonstrated by the qualifying local program to achieve equivalent or more stringent results and is approved by the board.

B. The BMPs listed in Table 1 ~~or the BMPs available on the Virginia Stormwater BMP Clearinghouse website~~ shall be utilized as necessary to effectively reduce the phosphorus load in accordance with the Virginia Runoff Reduction Method. Design specifications for the BMPs listed in Table 1 can be found on the Virginia Stormwater BMP Clearinghouse Website at http://www.vwrrc.vt.edu/swc. Other approved BMPs available on this website may also be utilized.

TABLE 1
BMP Pollutant Removal Efficiencies

Practice	Removal of Total Phosphorus by Runoff Volume Reduction (RR, as %) (based upon 1 inch of rainfall - -90% storm)	Removal of Total Phosphorus by Treatment -- Pollutant Concentration Reduction (PR, as %)	Total Mass Load Removal of Total Phosphorus (TR, as %) [[5]]
~~Green~~ Vegetated Roof 1	45	0	45
~~Green~~ Vegetated Roof 2	60	0	60
Rooftop Disconnection ~~1~~ [2]	25 or 50[1]	0	25 or 50[1]
~~Rooftop Disconnection 2~~	~~50~~	~~0~~	~~50~~
~~Rain Tanks/Cisterns 1~~ Rainwater Harvesting	~~actual volume x .75~~ up to 90[3] [~~,5~~]	0	~~actual volume x .75~~ up to 90[3] [~~,5~~]
~~Soil Amendments 1~~	~~50~~	~~0~~	~~50~~
~~Soil Amendments 2~~	~~75~~	~~0~~	~~75~~
Soil Amendments	Can be used to decrease runoff coefficient for turf cover at site. See designs for Rooftop Disconnection, Sheet Flow, and Grass Channel practices.		
Permeable Pavement 1	45	25	59
Permeable Pavement 2	75	25	81
Grass Channel ~~1~~	10 or 20[1]	15	23
~~Grass Channel 2~~	~~20~~	~~15~~	~~32~~
Bioretention 1 (also applies to Urban Bioretention)	40	25	55

Bioretention 2	80	50	90
Infiltration 1	50	25	63
Infiltration 2	90	25	93
Dry Swale 1	40	20	52
Dry Swale 2	60	40	76
Wet Swale 1	0	20	20
Wet Swale 2	0	40	40
Sheet Flow to ~~Conserved~~ Filter/ Open Space 1	~~0~~ 25 or 50[1]	~~50~~ 0	25 or 50[1]
Sheet Flow to ~~Conserved~~ Filter/ Open Space 2[~~52~~]	~~0~~ 50 or 75[1]	~~75~~ 0	50 or 75[1]
Extended Detention Pond 1	0	15	15
Extended Detention Pond 2	15	15	~~28~~ 31
Filtering Practice 1	0	60	60
Filtering Practice 2	0	65	65
Constructed Wetland 1	0	50	50
Constructed Wetland 2	0	75	75
Wet Pond 1	0	50 (45[4])	50 (45[4])
Wet Pond 2	0	75 (65[4])	75 (65[4])

[1] Lower rate is for Hydrologic Soil Group (HSG) class C and D soils; higher rate is for HSG class A and B soils.

[2] The removal can be increased to 50% for C and D soils by adding soil compost amendments, and may be higher yet if combined with secondary runoff reduction practices.

[3] Credit up to 90% is possible if all water from storms 1" or less is used through demand, and tank is sized such that no overflow occurs. Total credit is not to exceed 90%.

[4] Lower nutrient removals in parentheses apply to wet ponds in coastal plain terrain.

[5] See BMP design specification for an explanation of how additional pollutant removal can be achieved.

C. BMPs differing from those listed in Table 1 shall be reviewed and approved by the director in accordance with procedures established by the BMP Clearinghouse Committee and approved by the board.

D. A qualifying local program may establish ~~use~~ limitations on the use of specific BMPs following the submission of the proposed ~~use~~ limitation and written justification to the department.

E. Where the land-disturbing activity only occurs on a portion of the site, the local program may review the stormwater management plan based upon the portion of the site that is proposed to be developed, provided that the local program has established guidance for such a review. Such portion shall be deemed to include any area left undeveloped pursuant to any local requirement or proffer accepted by a locality. Any such guidance shall be provided to the department.

F. ~~If a comprehensive watershed stormwater management plan has been adopted pursuant to 4VAC50-60-96 for the watershed within which a project is located, then the qualifying local program may allow offsite controls in accordance with the plan to achieve the postdevelopment pollutant load water quality technical criteria set out in subdivisions 1 and 2 of 4VAC50-60-63. Such offsite controls shall achieve the required pollutant reductions either completely offsite in accordance with the plan or in a combination of onsite and offsite controls.~~ The local program shall have the discretion to allow for application of the criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 4VAC50-60-92.

~~G. Where no plan exists pursuant to subsection F of this section, offsite controls may be used to meet the postdevelopment pollutant load water quality technical criteria set out in subdivisions 1 and 2 of 4VAC50-60-63 provided:~~

~~1. The local program allows for offsite controls;~~

~~2. The applicant demonstrates to the satisfaction of the local program that offsite reductions equal to or greater than those that would otherwise be required for the site are achieved;~~

~~3. The applicant demonstrates to the satisfaction of the local program that the development's runoff and the runoff from any offsite treatment area shall be controlled in accordance with 4VAC50-60-66;~~

~~4. Offsite controls must be located within the same HUC or the adjacent downstream HUC to the land disturbing site; and~~

~~5. The applicant demonstrates to the satisfaction of the local program that the right to utilize the offsite control~~

~~area and any necessary easements has been obtained and maintenance agreements for the stormwater management facilities have been established pursuant to 4VAC50-60-124.~~

~~H. Alternatively, the local program may waive the requirements of subdivisions 1 and 2 of 4VAC50-60-63 through the granting of an exception pursuant to 4VAC50-60-122.~~ G. Offsite alternatives where allowed in accordance with 4VAC50-60-69 may be utilized to meet the design criteria of subdivisions 1 and 2 of 4VAC50-60-63.

4VAC50-60-66. Water quantity.

A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of subdivision 7 of § 10.1-603.4 of the Code of Virginia. Nothing in this section shall prohibit a qualifying local program from establishing a more stringent standard.

B. Channel protection. Concentrated stormwater flow from the site and offsite contributing areas shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of accepted hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to manmade stormwater conveyance systems. The point of discharge releases stormwater into a manmade stormwater conveyance system that, following the land-disturbing activity, conveys the postdevelopment peak flow rate from the two-year 24-hour storm without causing erosion of the system.

2. Concentrated stormwater flow to restored stormwater conveyance systems. The point of discharge releases stormwater into a stormwater conveyance system that (i) has been restored and is functioning as designed or (ii) will be restored. The applicant must demonstrate that the runoff following the land-disturbing activity, in combination with other existing stormwater runoff, will not exceed the design of the restored stormwater conveyance system nor result in instability of the system.

3. Concentrated stormwater flow to stable natural stormwater conveyance systems. The point of discharge releases stormwater into a natural stormwater conveyance system that is stable and, following the land-disturbing activity, (i) will not become unstable as a result of the discharge from the one-year 24-hour storm, and (ii) provides a peak flow rate from the one-year 24-hour storm calculated as follows or in accordance with another methodology that is demonstrated by the local program to achieve equivalent results and is approved by the board:

$Q_{Developed} * RV_{Developed} \leq Q_{Pre\text{-}Developed} * RV_{Pre\text{-}Developed}$, where

$Q_{Developed}$ = The allowable peak flow rate of runoff from the developed site. [Such peak flow rate must be less than or equal to $Q_{Pre\text{-}developed}$.]

$Q_{Pre\text{-}Developed}$ = The peak flow rate of runoff from the site in the predeveloped condition.

$RV_{Pre\text{-}Developed}$ = The volume of runoff from the site in the predeveloped condition.

$RV_{Developed}$ = The volume of runoff from the developed site.

4. ~~Concentrated~~ Except as set out in subdivision 5 of this subsection, concentrated stormwater flow to unstable natural stormwater conveyance systems. Where the point of discharge releases stormwater into a natural stormwater conveyance system that is unstable, stormwater runoff following a land-disturbing activity shall be released into a channel at or below a peak flow rate ($Q_{Developed}$) based on the one-year 24-hour storm, calculated as follows or in accordance with another methodology that is demonstrated by the local program to achieve equivalent or more stringent results and is approved by the board:

$Q_{Developed} * RV_{Developed} \leq Q_{\text{~~Forested~~ Good Pasture}} * RV_{\text{~~Forested~~ Good Pasture}}$, where

$Q_{Developed}$ = The allowable peak flow rate from the developed site. [Such peak flow rate must be less than or equal to $Q_{Good\ Pasture}$.]

$Q_{\text{~~Forested~~ Good Pasture}}$ = The peak flow rate from the site in a ~~forested~~ good pasture condition.

$RV_{\text{~~Forested~~ Good Pasture}}$ = The volume of runoff from the site in a ~~forested~~ good pasture condition.

$RV_{Developed}$ = The volume of runoff from the developed site.

However, in the case that the predeveloped condition is forested, [~~both the peak flow rate and the volume of runoff from the developed site shall be held to the forested condition~~ the forested condition shall be utilized instead of the good pasture condition in all instances in the calculation above].

5. This subdivision shall apply to concentrated stormwater flow to unstable natural stormwater conveyance systems from (i) a land-disturbing activity less than five acres on prior developed lands, or (ii) a regulated land-disturbing activity less than one acre for new development. Where the point of discharge releases stormwater into a natural stormwater conveyance system that is unstable, stormwater runoff following a land-disturbing activity shall provide a peak flow rate from the one-year 24-hour storm, calculated as follows or in accordance with another methodology that is demonstrated by the local program to achieve equivalent or more stringent results and is approved by the board:

$Q_{Developed} * RV_{Developed} < Q_{Pre\text{-}Developed} * RV_{Pre\text{-}Developed}$, where

$Q_{Developed}$ = The allowable peak flow rate from the developed site. Such peak flow rate must be less than $Q_{Pre\text{-}Developed}$.

$Q_{Pre\text{-}Developed}$ = The peak flow rate from the site in pre-development condition.

$RV_{Pre\text{-}Developed}$ = The volume of runoff from the site in pre-development condition.

$RV_{Developed}$ = The volume of runoff from the developed site. [~~Such volume must be less than $RV_{Pre\text{-}Developed}$.~~]

C. Flood protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of accepted hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to manmade stormwater conveyance systems. The point of discharge releases stormwater into a manmade stormwater conveyance system that, following the land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm within the manmade stormwater conveyance system.

2. Concentrated stormwater flow to restored stormwater conveyance systems. The point of discharge releases stormwater into a stormwater conveyance system that (i) has been restored and is functioning as designed or (ii) will be restored. The applicant must demonstrate that the peak flow rate from the 10-year 24-hour storm following the land-disturbing activity will be confined within the system.

3. Concentrated stormwater flow to natural stormwater conveyance systems. The point of discharge releases stormwater into a natural stormwater conveyance system that currently does not flood during the 10-year 24-hour storm and, following the land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm within the system.

4. Concentrated stormwater flow to natural stormwater conveyance systems where localized flooding exists during the 10-year 24-hour storm. The point of discharge releases a postdevelopment peak flow rate for the 10-year 24-hour storm that shall not exceed the predevelopment peak flow rate from the 10-year 24-hour storm based on ~~forested~~ good pasture conditions, unless the predeveloped condition is forested, in which case the peak flow rate from the developed site shall be held to the forested condition.

5. ~~A local program may adopt alternate flood protection design criteria that (i) achieve equivalent or more stringent results, (ii) are based upon geographic, land use, topographic, geologic, or other downstream conveyance factors, and (iii) are approved by the board.~~ Subdivision C 4 of this subsection notwithstanding, this subdivision shall apply to concentrated stormwater flow to natural stormwater conveyance systems where localized flooding exists during the 10-year 24-hour storm from (i) a land-disturbing activity less than five acres on prior developed lands, or (ii) a regulated land-disturbing activity less than one acre for new development. The point of discharge releases a postdevelopment peak flow rate for the 10-year 24-hour storm that is less than the predevelopment peak flow rate from the 10-year 24-hour storm.

D. One percent rule. If either of the following criteria are met, subsections ~~A~~ B and ~~B~~ C of this section do not apply, nor is the analysis of subsection H required:

1. Based on area. Prior to any land disturbance, the site's contributing drainage area to a point of discharge from the site is less than or equal to 1.0% of the total watershed area draining to that point of discharge; or

2. Based on peak flow rate. Based on the postdevelopment land cover conditions prior to the implementation of any stormwater quantity control measures, the development of the site results in an increase in the peak flow rate from the one-year 24-hour storm that is less than 1.0% of the existing peak flow rate from the one-year 24-hour storm generated by the total watershed area draining to that point of discharge.

E. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a ~~detention~~ stormwater management facility or a stormwater conveyance system that conveys the runoff without causing down gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

F. For purposes of computing predevelopment runoff from prior developed sites, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the local program that actual site conditions warrant such considerations.

G. Predevelopment runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices ~~in accordance with guidance~~. Guidance provided in the Virginia Stormwater Management Handbook ~~and by the qualifying local program~~ shall be considered appropriate standards.

H. Except where the compliance options under subdivisions B 4 and 5 and C 4 and 5 of this section are utilized, flooding and channel erosion impacts to stormwater conveyance systems shall be analyzed for each point of discharge in accordance with channel analysis guidance provided in Technical Bulletin # 1, Stream Channel Erosion Control, or in accordance with more stringent channel analysis guidance established by the qualifying local program and provided to the department. Such analysis shall include estimates of runoff from the developed site and the entire upstream watershed that contributes to that point of discharge. Good engineering practices and calculations in accordance with department guidance shall be used to evaluate postdevelopment runoff characteristics and site hydrology, and flooding and channel erosion impacts.

If the downstream owner or owners refuse to give permission to access the property for the collection of data, evidence of this refusal shall be given and arrangements made satisfactory to the local program to provide an alternative method for the collection of data to complete the analysis, such as through the use of photos, aerial surveys, "as built" plans, topographic maps, soils maps, and any other relevant information.

4VAC50-60-69. Offsite compliance options.

A. A qualifying local program shall have the authority to consider the use of the following offsite compliance options:

1. If a comprehensive watershed stormwater management plan has been adopted pursuant to 4VAC50-60-92 for the local watershed within which a project is located, then the qualifying local program may allow offsite controls in accordance with the plan to achieve the water quality reductions, quantity reductions, or both required for a site by this chapter. Such offsite controls shall achieve the required reductions either completely offsite in accordance with the plan or by a combination of on site and offsite controls.

2. A pro rata fee in accordance with § 15.2-2243 of the Code of Virginia or similar [local] funding mechanism through which the water quality and quantity reductions required for a site by this chapter may be achieved by the payment of a fee sufficient to fund improvements necessary to adequately achieve offsite reductions equal to or greater than those that would otherwise be required for the site.

3. The nonpoint nutrient offset program established by § 10.1-603.8:1 of the Code of Virginia.

4. Where no comprehensive watershed stormwater management plan or pro rata fee exists, or where a qualifying local program otherwise elects to allow the use of this subdivision, offsite stormwater management facilities may be used by the operator of a land-disturbing activity to meet the water quality reductions required for a site by this chapter provided:

a. The operator demonstrates to the satisfaction of the local program that offsite reductions equal to or greater than those that would otherwise be required for the site are achieved;

b. The operator demonstrates to the satisfaction of the local program that the development's runoff and the runoff from any offsite treatment area shall be controlled in accordance with 4VAC50-60-66;

c. Offsite stormwater management facilities must be located within the HUC or within the upstream HUCs in the local watershed that the land-disturbing activity directly discharges to or within the same watershed, as determined by the local program; and

d. The operator demonstrates to the satisfaction of the local program that the right to utilize the offsite area and any necessary easements have been obtained and maintenance agreements for the stormwater management facilities have been established pursuant to 4VAC50-60-124.

B. [Should the board establish by regulatory action a standard more stringent than 0.45 pounds per acre per year in the Chesapeake Bay watershed, the offsite compliance option provided by this subsection shall be available as follows.] Where the offsite options of subsection A of this section are not available for use, where the fee established by a qualifying local program to offset a pound of phosphorus removal onsite pursuant to subdivision A 2 exceeds $23,900, or where a qualifying local program otherwise elects to allow the use of this subsection, offsite compliance may be achieved through a payment in accordance with the following:

1. When the land-disturbing activity is in an urban development area the payment shall be $15,000 per pound of phosphorus and shall be calculated based on the poundage not treated on site. In all other cases the payment shall be $23,900 per pound of phosphorus. Payment amounts shall be determined based upon the nearest 0.01 of a pound of phosphorus.

2. All payments shall be deposited and utilized in accordance with the following:

a. Payments shall be made prior to commencement of the land-disturbing activity and shall be deposited to the Virginia Stormwater Management Fund and held in a subaccount.

b. The board shall establish priorities for the use of these funds by December 1 of each year. Payments held in the fund shall be promptly applied to ensure that nutrient reduction practices are being implemented. Priorities for

the funds shall be established in accordance with the following:

(1) At least 50% of the funds shall be utilized for projects to address local stormwater quality issues related to the impacts of development activities including but not limited to urban retrofits, urban stream restorations, and reduction of impervious areas.

(2) Priority use for the remaining funds shall be for the acquisition of certified nonpoint nutrient offsets at a rate not to exceed $23,900 per pound of phosphorus. Any remaining funds shall be utilized to fund long-term contracts for agricultural best management practices no less than 20 years in duration or long-term best management practices including but not limited to stream fencing, alternative water supplies, and riparian buffers in accordance with practice standards established within the Virginia Agricultural BMP Cost Share Program administered by the department.

(3) In establishing priorities, the board shall consider targeting equivalent reductions in the same local watershed as where the payment came from; implementing urban practices/retrofits that address TMDLs; securing permanent practices; and achieving measurable reductions. When purchasing agricultural best management practices, the board shall consider purchasing practices beyond the baseline established under the Chesapeake Bay Watershed Nutrient Credit Exchange Program (§ 62.1-44.19:12 et seq. of the Code of Virginia).

c. The department shall track the payment amount, the associated poundage of phosphorus purchased, the jurisdiction where the payment originated, the regulated MS4 name, if any, and the HUC for the land-disturbing activity. The department shall additionally track the annual expenditure of the funds including the locality and regulated MS4 name, if any, where the moneys are expended, the associated poundage of phosphorus reduced, and the cost per pound for phosphorus reductions associated with the nutrient reduction practices.

d. The department may annually utilize up to 6.0% of the payments to administer the stormwater management program.

e. The board shall periodically review the payment amount, at least every five years or in conjunction with the development of a new construction general permit, and shall evaluate the performance of the fund and the sufficiency of the payment rate in achieving the needed offsite pollution reductions. The board shall adjust the payment amount based upon this analysis.

3. Utilization of a payment to achieve compliance with the water quality technical criteria shall be subject to the following limitations:

a. A new development project disturbing greater than or equal to one acre in the Chesapeake Bay watershed must reduce its phosphorus discharge to a level of 0.45 pounds per acre per year of phosphorus on site, or less, and then may achieve all or a portion of the remaining required phosphorus reductions through a payment.

b. A new development project disturbing less than one acre in the Chesapeake Bay watershed may achieve all necessary phosphorus reductions through a payment.

c. A new development project outside of the Chesapeake Bay watershed must achieve all necessary phosphorus reductions on site.

d. Development on prior developed lands disturbing greater than or equal to one acre must achieve at least a 10% reduction from the predevelopment total phosphorus load on site and then may achieve the remaining required phosphorus reductions through a payment.

e. Development on prior developed lands disturbing less than one acre may achieve all necessary phosphorus reductions through a payment.

4. Nitrogen or other pollutant reductions achieved through payments into the fund must be retired and shall not be made available to other parties.

C. Where the department is administering a local program, only offsite options set out in subdivisions A 3 and A 4 [,] and [, when available,] subsection B of this section shall be available.

4VAC50-60-70. ~~Stream channel erosion.~~ (Repealed.)

~~A. Properties and receiving waterways downstream of any land disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.~~

~~B. The permit issuing authority shall require compliance with subdivision 19 of 4VAC50-30-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.~~

~~C. The permit issuing authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land disturbing activities. Therefore, in lieu of the reduction of the two year post-developed peak rate of runoff as required in subsection B of this section, the land development project being considered~~

~~shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm.~~

~~D. In addition to subsections B and C of this section permit-issuing authorities, by local ordinance may, or the board by state regulation may, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include, but are not limited to, the following:~~

~~1. Criteria and procedures for channel analysis and classification.~~

~~2. Procedures for channel data collection.~~

~~3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.~~

~~4. Criteria for the selection of proposed natural or man-made channel linings.~~

4VAC50-60-72. Design storms and hydrologic methods.

A. Unless otherwise specified, the prescribed design storms are the one-year, two-year, and 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time series shall be used for the precipitation data.

B. ~~All~~ Unless otherwise specified, all hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the subject project.

C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in this part.

D. The local program may allow for the use of the Rational Method for evaluating peak discharges or the Modified Rational Method for evaluating volumetric flows to stormwater conveyances with drainage areas of 200 acres or less.

4VAC50-60-74. Stormwater harvesting.

In accordance with § 10.1-603.4 of the Code of Virginia, stormwater harvesting is encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing water closets and urinals, and other water handling systems to the extent such systems are consistent with federal, state, and local regulatory authorities.

4VAC50-60-76. Linear development projects.

Unless exempt pursuant to § 10.1-603.8 B of the Code of Virginia, linear development projects shall control postdevelopment stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan developed in accordance with these regulations.

4VAC50-60-80. ~~Flooding.~~ (Repealed.)

~~A. Downstream properties and waterways shall be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.~~

~~B. The 10-year post developed peak rate of runoff from the development site shall not exceed the 10-year pre-developed peak rate of runoff.~~

~~C. In lieu of subsection B of this section, localities may, by ordinance, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors or other downstream conveyance factors as appropriate.~~

~~D. Linear development projects shall not be required to control post-developed stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.~~

4VAC50-60-85. Stormwater management impoundment structures or facilities.

A. Construction of stormwater management impoundment structures or facilities within tidal or nontidal wetlands and perennial streams is not recommended.

B. Construction of stormwater management impoundment structures or facilities within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain is not recommended.

C. Stormwater management wet ponds and extended detention ponds that are not covered by the Impounding Structure Regulations (4VAC50-20) shall, at a minimum, be engineered for structural integrity ~~and spillway design~~ for the 100-year storm event.

D. Construction of stormwater management impoundment structures or facilities may occur in karst areas only after a ~~geological~~ study of the geology and hydrology of the area has been conducted to determine the presence or absence of karst features that may be impacted by stormwater runoff and BMP placement.

E. Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set out in 4VAC50-60-63 and the water quantity criteria set out in 4VAC50-60-66.

Permanent stormwater management impoundment structures or facilities shall only be constructed in karst features after completion of a geotechnical investigation that identifies any necessary modifications to the BMP to ensure its structural integrity and maintain its water quality and quantity efficiencies. The person responsible for the land-disturbing activity is encouraged to screen for known existence of heritage resources in the karst features. Any Class V Underground Injection Control Well registration statements for stormwater discharges to improved sinkholes shall be included in the SWPPP.

4VAC50-60-90. ~~Regional (watershed-wide) stormwater management plans.~~ (Repealed.)

~~This section enables localities to develop regional stormwater management plans. State agencies intending to develop large tracts of land such as campuses or prison compounds are encouraged to develop regional plans where practical.~~

~~The objective of a regional stormwater management plan is to address the stormwater management concerns in a given watershed with greater economy and efficiency by installing regional stormwater management facilities versus individual, site specific facilities. The result will be fewer stormwater management facilities to design, build and maintain in the affected watershed. It is also anticipated that regional stormwater management facilities will not only help mitigate the impacts of new development, but may also provide for the remediation of erosion, flooding or water quality problems caused by existing development within the given watershed.~~

~~If developed, a regional plan shall, at a minimum, address the following:~~

~~1. The specific stormwater management issues within the targeted watersheds.~~

~~2. The technical criteria in 4VAC50-60-40 through 4VAC50-60-80 as needed based on subdivision 1 of this section.~~

~~3. The implications of any local comprehensive plans, zoning requirements, local ordinances pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and other planning documents.~~

~~4. Opportunities for financing a watershed plan through cost sharing with neighboring agencies or localities, implementation of regional stormwater utility fees, etc.~~

~~5. Maintenance of the selected stormwater management facilities.~~

~~6. Future expansion of the selected stormwater management facilities in the event that development exceeds the anticipated level.~~

4VAC50-60-92. Comprehensive watershed stormwater management plans.

[~~A.~~] Qualifying local programs may develop comprehensive watershed stormwater management plans to be approved by the department that meet the water quality objectives, quantity objectives, or both of this chapter:

1. Such plans shall ensure that offsite reductions equal to or greater than those that would be required on each contributing land-disturbing site are achieved within the same HUC or within another locally designated watershed. Pertaining to water quantity objectives, the plan may provide for implementation of a combination of channel improvement, stormwater detention, or other measures that are satisfactory to the qualifying local program to prevent downstream erosion and flooding.

2. If the land use assumptions upon which the plan was based change or if any other amendments are deemed necessary by the qualifying local program, the qualifying local program shall provide plan amendments to the board for review and approval.

3. During the plan's implementation, the qualifying local program shall account for nutrient reductions accredited to the BMPs specified in the plan.

4. State and federal agencies may develop comprehensive stormwater management plans, and may participate in locality-developed comprehensive watershed stormwater management plans where practicable and permitted by the qualifying local program.

4VAC50-60-93. ~~Stormwater management plan development.~~ (Reserved.)

~~A. A stormwater management plan for a land-disturbing activity shall apply these stormwater management technical criteria to the entire land-disturbing activity.~~

~~B. Individual lots or planned phases of developments shall not be considered separate land-disturbing activities, but rather the entire development shall be considered a single land-disturbing activity.~~

~~C. The stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.~~

Part II B
Stormwater Management Program Technical Criteria:
Grandfathered Projects

4VAC50-60-94. Applicability.

This part specifies the technical criteria for regulated land-disturbing activities that are not subject to the technical criteria of Part II A in accordance with 4VAC 50-60-48.

4VAC50-60-95. General.

A. Determination of flooding and channel erosion impacts to receiving streams due to land-disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed that also contributes to that point of discharge.

B. The specified design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.

C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.

D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws and regulations. Evidence of approval of all necessary permits shall be presented.

E. Impounding structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.

F. Predevelopment and postdevelopment runoff rates shall be verified by calculations that are consistent with good engineering practices.

G. Outflows from a stormwater management facility or stormwater conveyance system shall be discharged to an adequate channel.

H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land-disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.

I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan.

J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided to the extent possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59.

K. Natural channel characteristics shall be preserved to the maximum extent practicable.

L. Land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and attendant regulations.

M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in resource protection areas defined in the Chesapeake Bay Preservation Act, provided that (i) the local government has conclusively established that the location of the facility within the resource protection area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; and (iii) the facility must be consistent with a stormwater management program that has been approved by the board, the Chesapeake Bay Local Assistance Board, or the Board of Conservation and Recreation.

4VAC50-60-96. ~~Comprehensive watershed stormwater management plans~~ Water quality.

~~A. Local programs may develop comprehensive watershed stormwater management plans to be approved by the department that meet the water quality objectives, quantity objectives, or both of this chapter:~~

~~1. Such plans shall ensure that offsite reductions equal to or greater than those that would be required on each contributing land-disturbing site are achieved within the same HUC or within another locally designated watershed. Pertaining to water quantity objectives, the plan may provide for implementation of a combination of channel improvement, stormwater detention, or other measures that are satisfactory to the local program to prevent downstream erosion and flooding.~~

~~2. If the land use assumptions upon which the plan was based change or if any other amendments are deemed necessary by the local program, the local program shall provide plan amendments to the board for review and approval.~~

~~3. During the plan's implementation, the local program shall account for nutrient reductions accredited to the BMPs specified in the plan.~~

~~4. State and federal agencies may participate in comprehensive watershed stormwater management plans where practicable and permitted by the local program.~~

A. Compliance with the water quality criteria may be achieved by applying the performance-based criteria or the technology-based criteria to either the site or a planning area.

B. ~~If the qualifying local program allows for a pro rata fee in accordance with § 15.2-2243 of the Code of Virginia, then the reductions required for a site by this chapter may be achieved by the payment of a pro rata fee sufficient to fund improvements necessary to adequately achieve those requirements in accordance with that section of the Code of Virginia and this chapter.~~ Performance-based criteria. For land-disturbing activities, the calculated postdevelopment nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 2 of this section to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:

1. Situation 1 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is less than the average land cover condition.

Requirement: No reduction in the after disturbance pollutant discharge is required.

2. Situation 2 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the average land cover condition.

3. Situation 3 consists of land-disturbing activities where the existing percent impervious cover is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant discharge based on existing conditions less 10% or (ii) the pollutant discharge based on the average land cover condition, whichever is greater.

4. Situation 4 consists of land-disturbing activities where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.

C. Technology-based criteria. For land-disturbing activities, the postdeveloped stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the postdeveloped condition percent impervious cover as specified in Table 2 of this section. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 2 or those found in 4VAC50-60-65. Design standards and specifications for the BMPs in Table 2 that meet the required target pollutant removal efficiency are available in the 1990 Virginia Stormwater Management Handbook. Other approved BMPs available on the Virginia Stormwater BMP Clearinghouse website at http://www.vwrrc.vt.edu/swc may also be utilized.

Table 2*

Water Quality BMP*	Target Phosphorus Removal Efficiency	Percent Impervious Cover
Vegetated filter strip	10%	16-21%
Grassed Swale	15%	
Constructed wetlands	20%	22-37%
Extended detention (2 x WQ Vol)	35%	
Retention basin I (3 x WQ Vol)	40%	
Bioretention basin	50%	38-66%
Bioretention filter	50%	
Extended detention-enhanced	50%	
Retention basin II (4 x WQ Vol)	50%	
Infiltration (1 x WQ Vol)	50%	
Sand filter	65%	67-100%
Infiltration (2 x WQ Vol)	65%	
Retention basin III (4 x WQ Vol with aquatic bench)	65%	

*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department.

4VAC50-60-97. Stream channel erosion.

A. Properties and receiving waterways downstream of any land-disturbing activity shall be protected from erosion and

damage due to changes in runoff rate of flow and hydrologic characteristics, including, but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The permit-issuing authority shall require compliance with subdivision 19 of 4VAC50-30-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

C. The permit-issuing authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land-disturbing activities. Therefore, in lieu of the reduction of the two-year postdeveloped peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm.

D. In addition to subsections B and C of this section, permit-issuing authorities, by local ordinance may, or the board by state regulation may, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include, but are not limited to, the following:

1. Criteria and procedures for channel analysis and classification.

2. Procedures for channel data collection.

3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.

4. Criteria for the selection of proposed natural or manmade channel linings.

4VAC50-60-98. Flooding.

A. Downstream properties and waterways shall be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including, but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The 10-year postdeveloped peak rate of runoff from the development site shall not exceed the 10-year predeveloped peak rate of runoff.

C. In lieu of subsection B of this section, localities may, by ordinance, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors, or other downstream conveyance factors as appropriate.

D. Linear development projects shall not be required to control postdeveloped stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.

4VAC50-60-99. Regional [~~(watershedwide)~~ (watershed-wide)] stormwater management plans.

Water quality and where allowed, water quantity, may be achieved in accordance with sections 4VAC50-60-69 and 4VAC50-60-92.

~~Part III~~
~~Local Programs~~

4VAC50-60-100. ~~Applicability.~~ (Repealed.)

~~This part specifies technical criteria, minimum ordinance requirements, and administrative procedures for all localities operating local stormwater management programs.~~

Part III A
Local Programs

4VAC50-60-102. Authority and applicability.

If a locality has adopted a local stormwater management program in accordance with the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia) and the board has deemed such program adoption consistent with the Virginia Stormwater Management Act and these regulations in accordance with § 10.1-603.3 F of the Code of Virginia, the board may authorize a locality to administer a qualifying local program. Pursuant to § 10.1-603.4, the board is required to establish standards and procedures for such an authorization.

This part specifies the minimum technical criteria and the local government ordinance requirements for a local program to be considered a qualifying local program. Such criteria include but are not limited to administration, plan review, issuance of coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities, inspection, and enforcement.

4VAC50-60-104. Technical criteria for qualifying local programs.

A. All qualifying local programs shall require compliance with the provisions of ~~Part II~~ Part II A and Part II B as applicable (4VAC50-60-40 et seq.) of this chapter unless an exception is granted pursuant to 4VAC50-60-122 and shall comply with the requirements of 4VAC50-60-460 L.

B. When a locality operating a qualifying local program has adopted requirements more stringent than those imposed by this chapter in accordance with § 10.1-603.7 of the Code of Virginia or implemented a comprehensive stormwater management plan, the department shall consider such requirements in its review of state projects within that locality

in accordance with Part IV (4VAC50-60-160 et seq.) of this chapter.

C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.

4VAC50-60-106. Qualifying local program administrative requirements.

A. A qualifying local program shall provide for the following:

1. Identification of the authority authorizing coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities, the plan reviewing authority, the plan approving authority, the inspection authority, and the enforcement authority;

2. Technical criteria to be used in the qualifying local program;

3. Procedures for the submission and approval of plans;

4. Inspection and monitoring of land-disturbing activities covered by a permit for compliance;

5. ~~Procedures or policies for long-term inspection and maintenance of stormwater management facilities~~ Enforcement; and

6. ~~Enforcement~~ Procedures or policies for long-term inspection and maintenance of stormwater management facilities.

B. A ~~locality~~ qualifying local program shall adopt an ordinance(s) that incorporates the components set out in subdivisions 1 through 5 of subsection A of this section and consent to follow procedures provided by the department for the issuance, denial, revocation, termination, reissuance, transfer, or modifications of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

C. A qualifying local program shall report to the department information related to the administration and implementation of the qualifying local program in accordance with 4VAC50-60-126.

D. A qualifying local program may require the submission of a reasonable performance bond or other financial surety and provide for the release of such sureties in accordance with the criteria set forth in § 10.1-603.8 of the Code of Virginia.

4VAC50-60-108. Qualifying local program stormwater management plan review.

A. A qualifying local program shall require stormwater management plans to be submitted for review and be approved prior to commencement of land-disturbing activities. In addition to the other requirements of this chapter, a stormwater management plan must be developed in accordance with the following:

1. A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria to the entire land-disturbing activity.

2. At the discretion of the qualifying local program, individual lots or planned phases of developments shall not be considered separate land-disturbing activities, but rather the entire development shall be considered a single land-disturbing activity.

3. The stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

B. A qualifying local program shall approve or disapprove a stormwater management plan and required accompanying information according to the following:

1. Stormwater management plan review shall begin upon submission of a complete plan. A complete plan shall include the following elements:

a. The location of all points of stormwater discharge, receiving surface waters or karst features into which the stormwater discharges, and predevelopment and postdevelopment conditions for drainage areas, including final drainage patterns and changes to existing contours;

b. Contact information including the name, address, and telephone number of the property owner and the tax reference number and parcel number of the property or properties affected;

c. A narrative that includes a description of current site conditions and proposed development and final site conditions, including proposed stormwater management facilities and the mechanism, including an identification of financially responsible parties, through which the facilities will be operated and maintained during and after construction activity;

d. The location and the design of the proposed stormwater management facilities;

e. Information identifying the hydrologic characteristics and structural properties of soils utilized with the installation of stormwater management facilities;

f. Hydrologic and hydraulic computations of the predevelopment and postdevelopment runoff conditions for the required design storms;

g. Good engineering practices and calculations verifying compliance with the water quality and quantity requirements of this chapter;

h. A map or maps of the site that depicts the topography of the site and includes:

(1) All contributing drainage areas;

(2) Receiving surface waters or karst features into which stormwater will be discharged;

(3) Existing streams, ponds, culverts, ditches, wetlands, and other water bodies;

(4) Soil types, geologic formations, forest cover, and other vegetative areas;

(5) Current land use including existing structures, roads, and locations of known utilities and easements;

(6) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site;

(7) The limits of clearing and grading, and the proposed drainage patterns on the site;

(8) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

(9) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

i. No more than 50% of the required base fee in accordance with 4VAC50-60-820, and the required fee form must have been submitted.

2. Elements of the stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia and attendant regulations.

3. Completeness of a plan and required accompanying information shall be determined by the qualifying local program, and the applicant shall be notified of any determination, within 15 calendar days of receipt.

a. If within those 15 days the plan is deemed to be incomplete based on the criteria set out in this subsection, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.

b. If a determination of completeness is made and communicated to the applicant within the 15 calendar days, an additional 60 calendar days from the date of the communication will be allowed for the review of the plan.

c. If a determination of completeness is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a total of 60 calendar days from the date of submission will be allowed for the review of the plan.

d. The qualifying local program shall act within 45 days on any plan that has been previously disapproved and resubmitted.

4. During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this chapter and of the qualifying local program. Where available to the applicant, electronic communication may be considered communication in writing.

5. If a plan meeting all requirements of this chapter and of the qualifying local program is submitted and no action is taken within the time specified above, the plan shall be deemed approved.

C. Notwithstanding the requirements of subsection A of this section, if allowed by the qualifying local program, an initial stormwater management plan may be submitted for review and approval when it is accompanied by an erosion and sediment control plan, preliminary stormwater design for the current and future site work, fee form, and no more than 50% of the base fee required by 4VAC50-60-820. Such plans shall be limited to the initial clearing and grading of the site unless otherwise allowed by the qualifying local program. Approval by the qualifying local program of an initial plan does not supersede the need for the submittal and approval of a complete stormwater management plan and the updating of the SWPPP prior to the commencement of activities beyond initial clearing and grading and other activities approved by the local program. The initial plan shall include information detailed in subsection B of this section to the extent required by the qualifying local program and such other information as may be required by the qualifying local program.

D. Each approved plan may be modified in accordance with the following:

1. Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the qualifying local program. The qualifying local program shall have 60 calendar days to respond in writing either approving or disapproving such requests.

2. Based on an inspection, the qualifying local program may require amendments to the approved stormwater management plan to address the noted deficiencies and notify the permittee of the required modifications.

4VAC50-60-110. ~~Technical criteria for local programs.~~ (Repealed.)

~~A. All local stormwater management programs shall comply with the general technical criteria as outlined in 4VAC50-60-50.~~

~~B. All local stormwater management programs which contain provisions for stormwater runoff quality shall comply with 4VAC50-60-60. A locality may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria. A locality may opt to calculate actual watershed specific or locality wide values for the average land cover condition based upon:~~

~~1. Existing land use data at time of local Chesapeake Bay Preservation Act Program or department stormwater management program adoption, whichever was adopted first;~~

~~2. Watershed or locality size; and~~

~~3. Determination of equivalent values of impervious cover for nonurban land uses which contribute nonpoint source pollution, such as agriculture, forest, etc.~~

~~C. All local stormwater management programs which contain provisions for stream channel erosion shall comply with 4VAC50-60-70.~~

~~D. All local stormwater management programs must contain provisions for flooding and shall comply with 4VAC50-60-80.~~

~~E. All local stormwater management programs which contain provisions for watershed or regional stormwater management plans shall comply with 4VAC50-60-110.~~

~~F. A locality that has adopted more stringent requirements or implemented a regional (watershed wide) stormwater management plan may request, in writing, that the department consider these requirements in its review of state projects within that locality.~~

~~G. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.~~

4VAC50-60-112. Qualifying local program authorization of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

A. Coverage shall be authorized by the qualifying local program under the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with the following:

1. The applicant must have an approved initial stormwater management plan or an approved stormwater management plan for the land-disturbing activity.

2. The applicant must have submitted proposed right-of-entry agreements or easements from the owner for purposes of inspection and maintenance and proposed maintenance agreements, including inspection schedules, where required in accordance with 4VAC50-60-124.

3. The applicant must have an approved registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities.

4. The applicant must have submitted the required fee form and total fee required by 4VAC50-60-820.

5. Applicants submitting registration statements deemed to be incomplete must be notified within 15 working days of receipt by the qualifying local program that the registration statement is not complete and be notified (i) of what material needs to be submitted to complete the registration statement, and (ii) that the land-disturbing activity does not have coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

B. Coverage or termination of coverage shall be authorized through a standardized database or other method provided by the department. Such database shall include, at a minimum, permit number, operator name, activity name, acres disturbed, date of permit coverage, and site address and location as well as date of termination.

C. Coverage information pertaining to the VSMP General Permit for Discharges of Stormwater from Construction Activities shall be reported to the department in accordance with 4VAC50-60-126 by the qualifying local program.

D. The applicant shall be notified of authorization of permit coverage by the qualifying local program.

4VAC50-60-114. Inspections.

A. The qualifying local program or its designee shall inspect the land-disturbing activity during construction for compliance with the VSMP General Permit for Discharges of Stormwater from Construction Activities.

B. The person responsible for the development project or their designated agent shall submit to a qualifying local program a construction record drawing for permanent stormwater management facilities, appropriately sealed, and signed by a professional in accordance with all minimum standards and requirements pertaining to the practice of that profession pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia and attendant regulations, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. The qualifying local program shall have the construction record drawing and certification on file prior to the release of the portion of ~~the~~ any performance bond or surety associated with the stormwater management facility. The qualifying local program may elect not to require construction record drawings for stormwater management facilities for which maintenance agreements are not required pursuant to 4VAC50-60-124.

C. The ~~owners~~ owner of a stormwater management ~~facilities~~ facility for which a maintenance agreement is required pursuant to 4VAC50-60-124 shall be required to conduct

inspections in accordance with an inspection schedule in ~~a~~ the recorded maintenance agreement, and shall submit written inspection and maintenance reports to the qualifying local program ~~upon request~~. Such reports, if consistent with a board-approved inspection program established in subsection ~~D~~ E of this section, may be utilized by the qualifying local program if the inspection is conducted by a person who is licensed as a professional engineer, architect, ~~certified~~ landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 or who holds a certificate of competence from the board. The reports, if so utilized, must be kept on file with the qualifying local program.

D. A qualifying local program shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff [~~solely~~ primarily] from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the qualifying local program every five years contained within subsection E of this section.

E. A qualifying local program shall establish an inspection program that ensures that the stormwater management facilities are being maintained as designed. Any inspection program shall be:

1. Approved by the board prior to implementation;

2. Established in writing;

3. Based on a system of priorities that takes into consideration the purpose and type of the facility, ownership and the existence of a recorded maintenance agreement and inspection schedule where required, the contributing drainage area, and downstream conditions;

4. Demonstrated to be an enforceable inspection program that meets the intent of the regulations and ensures that each stormwater management facility is inspected by the qualifying local program or its designee, not to include the owner, except as provided in ~~subsection~~ subsections C and D of this section, at least every five years; and

5. Documented by inspection records.

~~E.~~ F. Inspection reports shall be generated and kept on file in accordance with 4VAC50-60-126 for all stormwater management facilities inspected by the qualifying local program.

4VAC50-60-116. Qualifying local program enforcement.

A. A qualifying local program may incorporate the following components:

1. Informal and formal administrative enforcement procedures including:

a. Verbal warnings and inspection reports;

b. Notices of corrective action;

c. Consent special orders and civil charges in accordance with subdivision 7 of § 10.1-603.2:1 and § 10.1-603.14 D 2 of the Code of Virginia;

d. Notices to comply in accordance with § 10.1-603.11 of the Code of Virginia;

e. Special orders in accordance with subdivision 7 of § 10.1-603.2:1 of the Code of Virginia;

f. Emergency special orders in accordance with subdivision 7 of § 10.1-603.2:1 of the Code of Virginia; and

g. Public notice and comment periods pursuant to 4VAC50-60-660.

2. Civil and criminal judicial enforcement procedures including:

a. Schedule of civil penalties set out in subsection D of this section;

b. Criminal penalties in accordance with § 10.1-603.14 B and C of the Code of Virginia; and

c. Injunctions in accordance with §§ 10.1-603.12:4, 10.1-603.2:1 and 10.1-603.14 D 1 of the Code of Virginia.

B. A qualifying local program shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the Stormwater Management Act and attendant regulations and the local ordinance.

C. A qualifying local program may utilize the department's Stormwater Management Enforcement Manual as guidance in establishing policies and procedures.

D. A court may utilize as guidance the following Schedule of Civil Penalties set by the board in accordance with § 10.1-603.14 A of the Code of Virginia. The range contained within the schedule reflects the degree of harm caused by the violation, which is site-specific and may vary greatly from case to case, as may the economic benefit of noncompliance to the violator. Each day of violation of each requirement shall constitute a separate offense. Assignment of the degree of harm is a qualitative decision subject to the court's discretion. The court has the discretion to impose a maximum penalty of $32,500 per violation per day in accordance with § 10.1-603.14 A of the Code of Virginia.

1. Gravity-based Component	Marginal	Moderate	Serious	
Violations* and Frequency of Occurrence **	$$ x occurrences	$$ x occurrences	$$ x occurrences	SUBTOTAL
No Permit Registration (each month w/o coverage = 1 occurrence)	500 x ____	1,000 x ____	2,000 x ____	
No SWPPP (No SWPPP components including E&S Plan) (each month of land-disturbing without SWPPP = 1 occurrence)	1,000 x ____	1,500 x ____	2,000 x ____	
Incomplete SWPPP	300 x ____	500 x ____	1,000 x ____	
SWPPP not on site	100 x ____	300 x ____	500 x ____	
No approved Erosion and Sediment Control Plan	500 x ____	1,000 x ____	2,000 x ____	
Failure to install stormwater BMPs or erosion and sediment ("E&S") controls	300 x ____	500 x ____	1,000 x ____	
Stormwater BMPs or E&S controls improperly installed or maintained	250 x ____	500 x ____	750 x ____	
Operational deficiencies (e.g., failure to initiate stabilization measures as soon as practicable; unauthorized discharges of stormwater; failure to implement control measures for construction debris)	1,000 x ____	2,000 x ____	5,000 x ____	
Failure to conduct required inspections	500 x ____	2,000 x ____	3,000 x ____	

Incomplete, improper or missed inspections (e.g., inspections not conducted by qualified personnel; site inspection reports do not include date, weather information, location of discharge, or are not certified, etc.)	300 x____	500 x ___	1,000 x ____	
			Subtotal #1	
2. Estimated Economic Benefit of Noncompliance (if applicable)			Subtotal #2	
3. Recommended civil penalty			Total (#1 and #2)	
* Each stormwater BMP or E&S control that is either not installed or improperly installed or maintained is a separate violation. ** The frequency of occurrence is per event unless otherwise noted.				

E. Pursuant to subdivision 2 of § 10.1-603.2:1 of the Code of Virginia, authorization to administer a qualifying local program shall not remove from the board the authority to enforce the provisions of the Virginia Stormwater Management Act and attendant regulations.

F. Pursuant to § 10.1-603.14 A of the Code of Virginia, amounts recovered by a qualifying local program shall be paid into the treasury of the locality in which the violation occurred and are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

4VAC50-60-118. Hearings.

A qualifying local program shall ensure that any permit applicant or permittee shall have a right to a hearing pursuant to § 10.1-603.12:6 of the Code of Virginia and shall ensure that all hearings held under this chapter shall be conducted in accordance with § 10.1-603.12:7 of the Code of Virginia or as otherwise provided by law.

4VAC50-60-120. ~~Requirements for local program and ordinance.~~ (Repealed.)

~~A. At a minimum, the local stormwater management program and implementing ordinance shall meet the following:~~

~~1. The ordinance shall identify the plan approving authority and other positions of authority within the program, and shall include the regulations and technical criteria to be used in the program.~~

~~2. The ordinance shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land development projects. The party responsible for conducting inspections shall be identified. The local program authority shall maintain, either on site or in local program files, a copy of the approved plan and a record of all inspections for each land development project.~~

~~B. The department shall periodically review each locality's stormwater management program, implementing ordinance, and amendments. Subsequent to this review, the department shall determine if the program and ordinance are consistent with the state stormwater management regulations and notify the locality of its findings. To the maximum extent practicable the department will coordinate the reviews with other local government program reviews to avoid redundancy. The review of a local program shall consist of the following:~~

~~1. A personal interview between department staff and the local program administrator or his designee;~~

~~2. A review of the local ordinance and other applicable documents;~~

~~3. A review of plans approved by the locality and consistency of application;~~

~~4. An inspection of regulated activities; and~~

~~5. A review of enforcement actions.~~

~~C. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.~~

4VAC50-60-122. Qualifying local program exceptions.

A. A qualifying local program may grant exceptions to the provisions of ~~Part II (4VAC50-60-40 et seq.)~~ Parts II A and II B of this chapter through an administrative process. A request

for an exception, including the reasons for making the request, shall be submitted in writing to the qualifying local program. An exception may be granted provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer on the permittee any special privileges that are denied to other permittees who present similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.

C. Under no circumstance shall the qualifying local program grant an exception to the requirement that the land-disturbing activity obtain a permit.

D. Any exception to the water quality technical criteria of subdivisions 1 and 2 of 4VAC50-60-63 shall require that all available offsite options be utilized before an exception is granted and that any necessary phosphorus reductions unable to be achieved on site or through the available offsite options of subsection A of 4VAC50-60-69 be achieved through a payment made in accordance with subsection B of 4VAC50-60-69 [, when such payment option is available]. In the case of the granting of an exception, the minimum on site thresholds of subsection B of 4VAC50-60-69 shall not apply.

E. A record of all exceptions applied for and granted shall be maintained by the qualifying local program and reported to the department in accordance with 4VAC50-60-126.

4VAC50-60-124. Qualifying local program stormwater management facility maintenance.

A. Responsibility for the operation and maintenance of stormwater management facilities in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner or other legally established entity and shall pass to any successor.

1. The ~~government entity implementing the~~ qualifying local program shall ~~be a party to each~~ require a maintenance agreement for each stormwater management facility except as provided in subdivision 2. Such maintenance agreement shall ~~include a schedule for~~ require the owner to (i) perform inspections ~~by the owner, and, in addition to ensuring that each~~ on a specified schedule, (ii) maintain the facility ~~is maintained~~ as designed, ~~shall ensure that~~ and (iii) maintain the designed flow and drainage patterns from the site to a permanent facility ~~are maintained~~. Such agreements may also contain provisions specifying that, where maintenance or repair of a stormwater management facility located on the owner's property is neglected, or the stormwater management facility becomes a public health or safety concern and the owner has failed to perform the necessary maintenance and repairs after receiving notice from the locality, the qualifying local program may perform the necessary maintenance and repairs and recover the costs from the owner. In the specific case of a public health or safety danger, the agreement may provide that the written notice may be waived by the locality.

2. Maintenance agreements, at the discretion of the qualifying local program, shall not be required for stormwater management facilities designed to treat stormwater runoff [~~solely~~ primarily] from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the qualifying local program that future maintenance of such facilities will be addressed through a deed restriction or other mechanism enforceable [~~by~~ at the discretion of] the qualifying local program.

B. ~~The~~ Where a maintenance agreement is required for a stormwater management facility, the qualifying local program shall be notified of any transfer or conveyance of ownership or responsibility for maintenance of a stormwater management facility.

C. ~~The~~ Where a maintenance agreement is required for a stormwater management facility, the qualifying local program shall require right-of-entry agreements or easements from the property owner for purposes of inspection and maintenance.

4VAC50-60-126. Qualifying local program report and recordkeeping.

A. On a fiscal year basis (July 1 to June 30), a qualifying local program shall report to the department by October 1 of each year in a format provided by the department. The information to be provided shall include the following:

1. Information on each permanent stormwater management facility completed during the fiscal year to include type of stormwater management facility, coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;

2. Number of VSMP General Permit for Discharges of Stormwater from Construction Activities projects inspected and the total number of inspections by acreage categories determined by the department during the fiscal year;

3. Number and type of enforcement actions during the fiscal year; and

4. Number of exceptions applied for and the number granted or denied during the fiscal year.

B. A qualifying local program shall make information set out in subsection A of this section available to the department upon request.

C. A qualifying local program shall keep records in accordance with the following:

1. Permit files shall be kept for three years after permit termination. After three years, the permit file shall be delivered to the department by October 1 of each year.

2. Stormwater maintenance facility inspection reports shall be kept for five years from the date of inspection.

3. Stormwater maintenance agreements, design standards and specifications, ~~postconstruction surveys~~ construction record drawings, and maintenance records shall be maintained in perpetuity or until a stormwater management facility is removed due to redevelopment of the site.

Part III B
Department of Conservation and Recreation Administered Local Programs

4VAC50-60-128. Authority and applicability.

In the absence of a qualifying local program, the department, in accordance with an adoption and implementation schedule set by the board and upon board approval, shall administer the local stormwater management program in a locality in accordance with § 10.1-603.3 C of the Code of Virginia. This part specifies the minimum technical criteria for a department-administered local stormwater management program in accordance with the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia), and the standards and criteria established in these regulations by the board pursuant to its authority under that article. Such criteria include but are not limited to administration, plan review, issuance of coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities, issuance of individual permits, inspection, enforcement, and education and outreach components.

4VAC50-60-130. ~~Administrative procedures: stormwater management plans.~~ (Repealed.)

~~A. Localities shall approve or disapprove stormwater management plans according to the following:~~

~~1. A maximum of 60 calendar days from the day a complete stormwater management plan is accepted for review will be allowed for the review of the plan. During the 60-day review period, the locality shall either approve or disapprove the plan and communicate its decision to the applicant in writing. Approval or denial shall be based on the plan's compliance with the locality's stormwater management program.~~

~~2. A disapproval of a plan shall contain the reasons for disapproval.~~

~~B. Each plan approved by a locality shall be subject to the following conditions:~~

~~1. The applicant shall comply with all applicable requirements of the approved plan, the local program, this chapter and the Act, and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.~~

~~2. The land development project shall be conducted only within the area specified in the approved plan.~~

~~3. The locality shall be allowed, after giving notice to the owner, occupier or operator of the land development project, to conduct periodic inspections of the project.~~

~~4. The person responsible for implementing the approved plan shall conduct monitoring and submit reports as the locality may require to ensure compliance with the approved plan and to determine whether the plan provides effective stormwater management.~~

~~5. No changes may be made to an approved plan without review and written approval by the locality.~~

4VAC50-60-132. Technical criteria.

A. The department-administered local stormwater management programs shall require compliance with the provisions of ~~Part II~~ Part II A and Part II B as applicable (4VAC50-60-40 et seq.) of this chapter unless an exception is granted pursuant to 4VAC50-60-142 D and shall comply with the requirements of 4VAC50-60-460 L.

B. When reviewing a federal project, the department shall apply the provisions of this chapter.

C. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies to impose stricter technical criteria or other requirements as allowed by law.

4VAC50-60-134. Administrative authorities.

A. The department is the permit-issuing authority, plan approving authority, and the enforcement authority.

B. The department or its designee is the plan reviewing authority and the inspection authority.

C. The department shall assess and collect fees.

D. The department may require the submission of a reasonable performance bond or other financial surety in accordance with the criteria set forth in § 10.1-603.8 of the Code of Virginia prior to the issuance of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities and in accordance with the following:

1. The amount of the installation performance security shall be the total estimated construction cost of the stormwater management BMPs approved under the stormwater management plan, plus 25%;

2. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions that may be required in accordance with the approved stormwater management plan;

3. Upon failure by the applicant to take such action as required, the department may act and may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held; and

4. Within 60 days of the completion of the requirements and conditions of the VSMP General Permit for Discharges of Stormwater from Construction Activities and the department's acceptance of the Notice of Termination, such bond, cash escrow, letter of credit, or other legal arrangement shall be refunded to the applicant.

4VAC50-60-136. Stormwater management plan review.

A. Stormwater management plans shall be reviewed and approved by the department prior to commencement of land-disturbing activities.

B. The department shall approve or disapprove a stormwater management plan and required accompanying information according to the criteria set out for a qualifying local program in 4VAC50-60-108 B.

C. The department shall not ~~accept~~ review or approve initial stormwater management plans.

D. Each approved stormwater management plan may be modified in accordance with the criteria set out for a qualifying local program in 4VAC50-60-108 D.

4VAC50-60-138. Issuance of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

The department shall issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with the following:

1. The applicant must have a department-approved stormwater management plan for the land-disturbing activity.

2. The applicant must have submitted a complete registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with Part VII (4VAC50-60-360 et seq.) of this chapter and the requirements of the VSMP General Permit for Discharges of Stormwater from Construction Activities, which acknowledges that a SWPPP has been developed and will be implemented, and the registration statement must have been reviewed and approved prior to the commencement of land disturbance.

3. The applicant must have submitted the required fee form and fee for the registration statement seeking coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

4. Applicants submitting registration statements deemed to be incomplete must be notified within 15 working days of receipt by the department that the registration statement is not complete and be notified (i) of what material needs to be submitted to complete the registration statement, and (ii) that the land-disturbing activity does not have coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

5. The applicant shall be notified of authorization of permit coverage by the department.

6. Individual permits for qualifying land-disturbing activities may be issued at the discretion of the board or its designee pursuant to 4VAC50-60-410 B 3.

4VAC50-60-140. ~~Administrative procedures: exceptions.~~ (Repealed.)

~~A. A request for an exception shall be submitted, in writing, to the locality. An exception from the stormwater management regulations may be granted, provided that: (i) exceptions to the criteria are the minimum necessary to afford relief and (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved.~~

~~B. Economic hardship is not sufficient reason to grant an exception from the requirements of this chapter.~~

4VAC50-60-142. Inspections, enforcement, hearings, exceptions, and stormwater management facility maintenance.

A. Inspections shall be conducted by the department in accordance with 4VAC50-60-114.

B. Enforcement actions shall be conducted by the department in accordance with 4VAC50-60-116. The department's Stormwater Management Enforcement Manual shall serve as guidance to be utilized in enforcement actions under the Stormwater Management Act and attendant regulations. Any amounts assessed by a court as a result of a summons issued by the board or the department shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § 10.1-603.4:1 of the Code of Virginia.

C. Hearings shall be conducted by the department in accordance with 4VAC50-60-118.

D. Exceptions may be granted by the department in accordance with 4VAC50-60-122.

E. Stormwater management facility maintenance shall be conducted in accordance with 4VAC50-60-124.

4VAC50-60-150. ~~Administrative procedures: maintenance and inspections.~~ (Repealed.)

~~A. Responsibility for the operation and maintenance of stormwater management facilities, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the~~

~~land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.~~

~~B. In the case of developments where lots are to be sold, permanent arrangements satisfactory to the locality shall be made to ensure continued performance of this chapter.~~

~~C. A schedule of maintenance inspections shall be incorporated into the local ordinance. Ordinances shall provide that in cases where maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the locality has the authority to perform the work and to recover the costs from the owner.~~

~~D. Localities may require right-of-entry agreements or easements from the applicant for purposes of inspection and maintenance.~~

~~E. Periodic inspections are required for all stormwater management facilities. Localities shall either:~~

~~1. Provide for inspection of stormwater management facilities on an annual basis; or~~

~~2. Establish an alternative inspection program which ensures that stormwater management facilities are functioning as intended. Any alternative inspection program shall be:~~

~~a. Established in writing;~~

~~b. Based on a system of priorities that, at a minimum, considers the purpose of the facility, the contributing drainage area, and downstream conditions; and~~

~~c. Documented by inspection records.~~

~~F. During construction of the stormwater management facilities, localities shall make inspections on a regular basis.~~

~~G. Inspection reports shall be maintained as part of a land development project file.~~

4VAC50-60-154. Reporting and recordkeeping.

A. The department shall maintain a current database of permit coverage information for all projects that includes permit number, operator name, activity name, acres disturbed, date of permit coverage, and site address and location.

B. On a fiscal year basis (July 1 to June 30), ~~a local program shall report to~~ the department shall compile a report on the local programs it administers by October 1 in accordance with 4VAC50-60-126 A.

~~C. On a fiscal year basis (July 1 to June 30), the department shall compile information provided by local programs.~~

~~D.~~ C. Records shall be maintained by the department in accordance with 4VAC50-60-126 C.

Part III C
Department of Conservation and Recreation Procedures for Review of Qualifying Local Programs

4VAC50-60-156. Authority and applicability.

This part specifies the criteria that the department will utilize in reviewing a locality's administration of a qualifying local program pursuant to § 10.1-603.12 of the Code of Virginia following the board's approval of such program in accordance with the Virginia Stormwater Management Act and these regulations.

4VAC50-60-157. Stormwater management program review.

A. The department shall review each board-approved qualifying local program at least once every five years on a review schedule approved by the board. The department may review a qualifying local program on a more frequent basis if deemed necessary by the board and shall notify the local government if such review is scheduled.

B. The review of a board-approved qualifying local program shall consist of the following:

1. An interview between department staff and the qualifying local program administrator or his designee;

2. A review of the local ordinance(s) and other applicable documents;

3. A review of a subset of the plans approved by the qualifying local program and consistency of application including exceptions granted;

4. An accounting of the receipt and of the expenditure of fees received;

5. An inspection of regulated activities; and

6. A review of enforcement actions and an accounting of amounts recovered through enforcement actions.

C. To the extent practicable, the department will coordinate the reviews with other local government program reviews to avoid redundancy.

D. The department shall provide its recommendations to the board within 90 days of the completion of a review. Such recommendations shall be provided to the locality in advance of the meeting.

E. The board shall determine if the qualifying local program and ordinance are consistent with the Act and state stormwater management regulations and notify the qualifying local program of its findings.

F. If the board determines that the deficiencies noted in the review will cause the qualifying local program to be out of

compliance with the Stormwater Management Act and its attendant regulations, the board shall notify the qualifying local program concerning the deficiencies and provide a reasonable period of time for corrective action to be taken. If the qualifying local program agrees to the corrective action recommended by the board, the qualifying local program will be considered to be conditionally compliant with the Stormwater Management Act and its attendant regulations until a subsequent finding is issued by the board. If the qualifying local program fails to take the corrective action within the specified time, the board may take action pursuant to § 10.1-603.12 of the Code of Virginia.

Part III D
Virginia Soil and Water Conservation Board Authorization for Qualifying Local Programs

4VAC50-60-158. Authority and applicability.

Subdivision 1 of § 10.1-603.4 of the Code of Virginia requires that the board establish standards and procedures for authorizing a locality to administer a stormwater management program. In accordance with that requirement, and with the further authority conferred upon the board by the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia), this part specifies the procedures the board will utilize in authorizing a locality to administer a qualifying local program.

4VAC50-60-159. Authorization procedures for qualifying local programs.

A. A locality required to adopt a program in accordance with § 10.1-603.3 A of the Code of Virginia or those electing to seek authorization to administer a qualifying local program must submit to the board an application package which, at a minimum, contains the following:

1. The local program ordinance(s);

2. A funding and staffing plan based on the projected permitting fees; and

3. The policies and procedures, including but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other entities, for the administration, plan review, permit issuance, inspection, and enforcement components of the program.

B. Upon receipt of an application package, the board or its designee shall have ~~20~~ 30 calendar days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria set out in subsection A of this section, the board or its designee must identify in writing the reasons the application package is deemed deficient.

C. Upon receipt of a complete application package, the board or its designee shall have 90 calendar days for the review of the application package. During the 90-day review period, the board or its designee shall either approve or disapprove the application, or notify the locality of a time extension for the review, and communicate its decision to the locality in writing. If the application is not approved, the reasons for not approving the application shall be provided to the locality in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Act and these regulations.

D. A locality required to adopt a qualifying local program in accordance with § 10.1-603.3 A of the Code of Virginia shall submit a complete application package for the board's review pursuant to a schedule set by the board in accordance with § 10.1-603.3 and shall adopt a qualifying local program consistent with the Act and this chapter within the timeframe established pursuant to § 10.1-603.3.

E. A locality not required to adopt a qualifying local program in accordance with § 10.1-603.3 A but electing to adopt a qualifying local program shall notify the board in accordance with the following:

1. A locality electing to adopt a qualifying local program may notify the board of its intention within six months of the effective date of these regulations. Such locality shall submit a complete application package for the board's review pursuant to a schedule set by the board and shall adopt a qualifying local program within the timeframe established by the board.

2. A locality electing to adopt a qualifying local program that does not notify the board within the initial six-month period of its intention may thereafter notify the board at any regular meeting of the board. Such notification shall include a proposed schedule for adoption of a qualifying local program within a timeframe agreed upon by the board.

F. The department shall administer the responsibilities of the Act and this chapter in any locality in which a qualifying local program has not been adopted. The department shall develop a schedule, to be approved by the board, for adoption and implementation of the requirements of this chapter in such localities. Such schedule may include phases of implementation and shall be based upon considerations including the typical number of permitted projects located within a locality, total number of acres disturbed by such permitted projects, and such other considerations as may be deemed necessary by the board.

DOCUMENTS INCORPORATED BY REFERENCE (4VAC50-60)

Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, EPA Cooperative Agreement X-82907801-0, October 2004, by Center for Watershed Protection and Robert Pitt, University of Alabama, available on the Internet at http://www.cwp.org/idde_verify.htm.

Getting in Step – A Guide for Conducting Watershed Outreach Campaigns, EPA-841-B-03-002, December 2003, U.S. Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds, available on the Internet at http://www.epa.gov/owow/watershed/outreach/documents/getnstep.pdf, or may be ordered from National Service Center for Environmental Publications, telephone 1-800-490-9198.

Municipal Stormwater Program Evaluation Guidance, EPA-833-R-07-003, January 2007 (field test version), U.S. Environmental Protection Agency, Office of Wastewater Management, available on the Internet at http://cfpub.epa.gov/npdes/docs.cfm?program_id=6&view=allprog&sort=name#ms4_guidance, or may be ordered from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone 1-800-553-6847 or (703) 605-6000.

[Erosion & Sediment Control] Technical Bulletin #1 [~~Stream Channel Erosion Control~~ Improving Soil Quality in Urbanizing Areas], Virginia Department of Conservation and Recreation, 2000.

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Virginia Runoff Reduction Method Worksheet, [~~September~~ December] ~~2008~~ 2009.

Virginia Runoff Reduction Method Worksheet – Redevelopment, [~~September~~ December] 2009.

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TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **9VAC5-10. General Definitions (amending 9VAC5-10-20).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 3, 2010.

Effective Date: February 18, 2010.

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Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law (Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare.

Federal Requirements

Section 109 (a) of the Clean Air Act requires the Environmental Protection Agency (EPA) to prescribe national ambient air quality standards (NAAQS) to protect public health. Section 110 mandates that each state adopt and submit to EPA a plan (the state implementation plan or SIP) that provides for the implementation, maintenance, and enforcement of the NAAQS. Ozone, one of the pollutants for which there is a NAAQS, is in part created by emissions of volatile organic compounds (VOCs). Therefore, in order to control ozone, VOCs must be addressed in Virginia's SIP.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs. Subpart F of Part 51, Procedural Requirements, includes § 51.100, which consists of a list of definitions. 40 CFR 51.100 contains a definition of VOC. This definition is revised by EPA in order to add or remove VOCs as necessary. If, for example, it can be demonstrated that a particular VOC is "negligibly reactive" (that is, if it can be shown that a VOC is not as reactive or makes a significant contribution to ozone formation), then EPA may remove that substance from the definition of VOC.

On January 21, 2009 (74 FR 3437), EPA revised the definition of VOC in 40 CFR 51.100 to exclude two substances from the definition of VOC: propylene carbonate and dimethyl carbonate. This exclusion is accomplished by adding the substances to a list of substances not considered to be a VOC. This change to the exemption list became effective on February 20, 2009.

State Requirements

These specific amendments are not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308 A of the Code of Virginia). The law defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property" (§ 10.1-1300 of the Code of Virginia).

Purpose: The purpose of the regulation is not to impose any regulatory requirements in and of itself, but to provide a basis for and support to other provisions of the Regulations for the Control and Abatement of Air Pollution, which are in place in order to protect public health and welfare. The proposed amendments are being made to ensure that the definition of VOC, which is crucial to most of the regulations, is up to date

and scientifically accurate, as well as consistent with the overall EPA requirements under which the regulations operate.

Rationale for Using Fast-Track Process: The definition is being revised to add two less-reactive substances to the list of compounds not considered to be VOCs. As discussed elsewhere, this revision is not expected to affect a significant number of sources or have any significant impact, other than a positive one, on air quality overall. Additionally, removal of the substances at the federal level was accompanied by detailed scientific review and public comment and no negative comments were received during the federal public comment period. Therefore, no additional information on the reactivity of these substances or the appropriateness of their removal is anticipated.

Substance: The general definitions impose no regulatory requirements in and of themselves but provide support to other provisions of the Regulations for the Control and Abatement of Air Pollution (9VAC5-10 through 9VAC5-80). The list of substances not considered to be VOCs in Virginia has been revised to include propylene carbonate and dimethyl carbonate.

Issues: The general public health and welfare will benefit because the revision may encourage the use of products containing the less-reactive substances in place of products containing more reactive and thereby more polluting substances, ultimately resulting in fewer emissions of VOCs and reduced production of ozone, which results from VOC emissions. Companies that use these substances in place of more reactive substances may also benefit by reducing their VOC emissions and concomitant reductions in permitting and other regulatory requirements.

The revision will allow the department to focus VOC reduction strategies on substances that are more responsible for ozone formation.

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

Summary of the Proposed Amendments to Regulation. The State Air Pollution Control Board (Board) proposes to add propylene carbonate and dimethyl carbonate to the list of substances not considered volatile organic compounds (VOCs).

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

Estimated Economic Impact. Section 109 (a) of the federal Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to prescribe national ambient air quality standards (NAAQS) to protect public health. Section 110 mandates that each state adopt and submit to EPA a plan (the state implementation plan or SIP) which provides for the implementation, maintenance, and enforcement of the NAAQS. Ozone, one of the pollutants for which there is a NAAQS, is in part created by emissions of VOCs. Therefore, in order to control ozone, VOCs are addressed in Virginia's SIP.

Federal regulation 40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs and includes a definition of VOC. This definition is periodically revised by EPA in order to add or remove VOCs as necessary. If, for example, it can be demonstrated that a particular VOC is negligibly reactive, then EPA may remove that substance from the definition of VOC.

On January 21, 2009, EPA revised the definition of VOC to exclude two substances from the definition of VOC: propylene carbonate and dimethyl carbonate. This exclusion is accomplished by adding the substances to a list of substances not considered to be a VOC. Consequently, the Board proposes to add propylene carbonate and dimethyl carbonate to the list of substances not considered VOCs in Virginia's Regulations for the Control and Abatement of Air Pollution.

Propylene carbonate can be used in cosmetics, as an adhesive component in food packaging, as a solvent for plasticizers and synthetic fibers and polymers, and as a solvent for aerial pesticide application.[1] Dimethyl carbonate may be used as a solvent in paints and coatings, or in waterborne paints and adhesives. It may also be used as a methylation and carbonylation agent in organic synthesis, and can be used as a fuel additive.[2] According to the Department of Environmental Quality (DEQ), neither propylene carbonate nor dimethyl carbonate are currently known to be used in Virginia. By being added to the list of substances not considered VOCs, firms could start using these substances instead of substances that continue to be considered VOCs, and would have their official VOC emissions be considered lower. This would potentially allow firms greater flexibility in meeting Board permit requirements. DEQ is not aware of any firms that plan to do this, but the potential for future firms to reduce costs this way would exist. If firms were to start using propylene carbonate and dimethyl carbonate instead of other substances there would be no increase in air pollution and possibly a reduction. Since there would be no harm to air quality, and there is the potential for cost savings for firms, the Board's proposal creates a net benefit.

Businesses and Entities Affected. According to DEQ, neither propylene carbonate nor dimethyl carbonate are currently known to be used in Virginia. Propylene carbonate can be used in cosmetics, as an adhesive component in food packaging, as a solvent for plasticizers and synthetic fibers and polymers, and as a solvent for aerial pesticide application. Dimethyl carbonate may be used as a solvent in paints and coatings, or in waterborne paints and adhesives. It may also be used as a methylation and carbonylation agent in organic synthesis, and can be used as a fuel additive. Thus, there is

the potential that firms involved in these activities may at some time in the future choose to use propylene carbonate or dimethyl carbonate.

Localities Particularly Affected. There is no locality which will bear any identified disproportionate impact due to the proposed amendments.

Projected Impact on Employment. The proposal to add propylene carbonate and dimethyl carbonate to the list of substances not considered VOCs would potentially allow firms greater flexibility in meeting Board permit requirements. This greater flexibility may allow some firms to operate at lower cost which could potentially make more business activity profitable. If more business activity becomes profitable, there is the potential for increased business activity and employment. As of now though, DEQ is not aware of any Virginia firms with immediate plans to use propylene carbonate or dimethyl carbonate.

Effects on the Use and Value of Private Property. The proposal to add propylene carbonate and dimethyl carbonate to the list of substances not considered VOCs would potentially allow firms greater flexibility in meeting Board permit requirements. This greater flexibility may allow some futures to operate at lower cost which could potentially make more business activity profitable.

Small Businesses: Costs and Other Effects. The proposal is not expected to increase costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposal is not expected to increase costs for small businesses.

Real Estate Development Costs. The proposed amendments are not expected 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.

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[1] Source: Department of Environmental Quality

[2] Ibid

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

Summary:

The general definitions of 9VAC5-10 impose no regulatory requirements in and of themselves but provide support to other provisions of the Regulations for the Control and Abatement of Air Pollution (9VAC5-10 through 9VAC5-80). The definition of volatile organic compound (VOC) is revised to add two substances that have been demonstrated to be less reactive to the list of substances that are not considered to be VOCs: propylene carbonate and dimethyl carbonate.

9VAC5-10-20. Terms defined.

"Actual emissions rate" means the actual rate of emissions of a pollutant from an emissions unit. In general actual emissions shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the most recent two-year period or some other two-year period which is representative of normal source operation. If the board determines that no two-year period is representative of normal source operation, the board shall allow the use of an alternative period of time upon a determination by the board that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or his authorized representative.

"Affected facility" means, with reference to a stationary source, any part, equipment, facility, installation, apparatus, process or operation to which an emission standard is applicable or any other facility so designated. The term "affected facility" includes any affected source as defined in 40 CFR 63.2.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to

animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

"Air quality" means the specific measurement in the ambient air of a particular air pollutant at any given time.

"Air quality control region" means any area designated as such in 9VAC5-20-200.

"Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method, but which has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Ambient air quality standard" means any primary or secondary standard designated as such in 9VAC5-30 (Ambient Air Quality Standards).

"Board" means the State Air Pollution Control Board or its designated representative.

"Class I area" means any prevention of significant deterioration area (i) in which virtually any deterioration of existing air quality is considered significant and (ii) designated as such in 9VAC5-20-205.

"Class II area" means any prevention of significant deterioration area (i) in which any deterioration of existing air quality beyond that normally accompanying well-controlled growth is considered significant and (ii) designated as such in 9VAC5-20-205.

"Class III area" means any prevention of significant deterioration area (i) in which deterioration of existing air quality to the levels of the ambient air quality standards is permitted and (ii) designated as such in 9VAC5-20-205.

"Continuous monitoring system" means the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent continuous record of emissions or process parameters.

"Control program" means a plan formulated by the owner of a stationary source to establish pollution abatement goals, including a compliance schedule to achieve such goals. The plan may be submitted voluntarily, or upon request or by order of the board, to ensure compliance by the owner with standards, policies and regulations adopted by the board. The plan shall include system and equipment information and operating performance projections as required by the board for evaluating the probability of achievement. A control program shall contain the following increments of progress:

1. The date by which contracts for emission control system or process modifications are to be awarded, or the date by which orders are to be issued for the purchase of component parts to accomplish emission control or process modification.

2. The date by which the on-site construction or installation of emission control equipment or process change is to be initiated.

3. The date by which the on-site construction or installation of emission control equipment or process modification is to be completed.

4. The date by which final compliance is to be achieved.

"Criteria pollutant" means any pollutant for which an ambient air quality standard is established under 9VAC5-30 (Ambient Air Quality Standards).

"Day" means a 24-hour period beginning at midnight.

"Delayed compliance order" means any order of the board issued after an appropriate hearing to an owner which postpones the date by which a stationary source is required to comply with any requirement contained in the applicable implementation plan.

"Department" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"Director" or "executive director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Dispersion technique"

1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

a. Using that portion of a stack which exceeds good engineering practice stack height;

b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

2. The preceding sentence does not include:

a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

b. The merging of exhaust gas streams where:

(1) The owner demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emissions limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emissions limitation or, in the event that no emissions limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the owner that merging was not significantly motivated by such intent, the board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

c. Smoke management in agricultural or silvicultural prescribed burning programs;

d. Episodic restrictions on residential woodburning and open burning; or

e. Techniques under subdivision 1 c of this definition which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

"Emissions limitation" means any requirement established by the board which limits the quantity, rate, or concentration of continuous emissions of air pollutants, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures to assure continuous emission reduction.

"Emission standard" means any provision of 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources) that prescribes an emissions limitation, or other requirements that control air pollution emissions.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any air pollutant.

"Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the satisfaction of the board to have a consistent and quantitative relationship to the reference method under specified conditions.

"EPA" means the U.S. Environmental Protection Agency or an authorized representative.

"Excess emissions" means emissions of air pollutant in excess of an emission standard.

"Excessive concentration" is defined for the purpose of determining good engineering practice (GEP) stack height under subdivision 3 of the GEP definition and means:

1. For sources seeking credit for stack height exceeding that established under subdivision 2 of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the provisions of Article 8 (9VAC5-80-1605 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subdivision 2 of the GEP definition, either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subdivision 1 of this definition, except that the emission rate specified by any applicable implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the board; and

3. For sources seeking credit after January 12, 1979, for a stack height determined under subdivision 2 of the GEP definition where the board requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subdivision 2 of the GEP definition, a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

"Existing source" means any stationary source other than a new source or modified source.

"Facility" means something that is built, installed or established to serve a particular purpose; includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means Chapter 85 (§ 7401 et seq.) of Title 42 of the United States Code.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

1. Emission standards, alternative emission standards, alternative emissions limitations, and equivalent emissions limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an implementation plan.

5. Limitations and conditions that are part of a section 111(d) or section 111(d)/129 plan.

6. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.

7. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

8. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

9. Individual consent agreements issued pursuant to the legal authority of EPA.

"Good engineering practice" or "GEP," with reference to the height of the stack, means the greater of:

1. 65 meters, measured from the ground-level elevation at the base of the stack;

2. a. For stacks in existence on January 12, 1979, and for which the owner had obtained all applicable permits or approvals required under 9VAC5-80 (Permits for Stationary Sources),

Hg = 2.5H,

provided the owner produces evidence that this equation was actually relied on in establishing an emissions limitation;

b. For all other stacks,

Hg = H + 1.5L,

where:

Hg = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s) provided that the board may require the use of a field study or fluid model to verify GEP stack height for the source; or

3. The height demonstrated by a fluid model or a field study approved by the board, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

"Hazardous air pollutant" means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an

increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Initial emission test" means the test required by any regulation, permit issued pursuant to 9VAC5-80 (Permits for Stationary Sources), control program, compliance schedule or other enforceable mechanism for determining compliance with new or more stringent emission standards or permit limitations or other emissions limitations requiring the installation or modification of air pollution control equipment or implementation of a control method. Initial emission tests shall be conducted in accordance with 9VAC5-40-30.

"Initial performance test" means the test required by (i) 40 CFR Part 60 for determining compliance with standards of performance, or (ii) a permit issued pursuant to 9VAC5-80 (Permits for Stationary Sources) for determining initial compliance with permit limitations. Initial performance tests shall be conducted in accordance with 9VAC5-50-30 and 9VAC5-60-30.

"Isokinetic sampling" means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

"Locality" means a city, town, county or other public body created by or pursuant to state law.

"Maintenance area" means any geographic region of the United States previously designated as a nonattainment area and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan and designated as such in 9VAC5-20-203.

"Malfunction" means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Metropolitan statistical area" means any area designated as such in 9VAC5-20-202.

"Monitoring device" means the total equipment used to measure and record (if applicable) process parameters.

"Nearby" as used in the definition of good engineering practice (GEP) is defined for a specific structure or terrain feature and:

1. For purposes of applying the formulae provided in subdivision 2 of the GEP definition means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile); and

2. For conducting demonstrations under subdivision 3 of the GEP definition means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed two miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40% of the GEP stack height determined by the formulae provided in subdivision 2 b of the GEP definition or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

"Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in 40 CFR Part 60.

"Nonattainment area" means any area which is shown by air quality monitoring data or, where such data are not available, which is calculated by air quality modeling (or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant including, but not limited to, areas designated as such in 9VAC5-20-204.

"One hour" means any period of 60 consecutive minutes.

"One-hour period" means any period of 60 consecutive minutes commencing on the hour.

"Organic compound" means any chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic disulfide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

"Owner" means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a source.

"Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

"Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"PM_{10} emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"Performance test" means a test for determining emissions from new or modified sources.

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

"Pollutant" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable.

"Prevention of significant deterioration area" means any area not designated as a nonattainment area in 9VAC5-20-204 for a particular pollutant and designated as such in 9VAC5-20-205.

"Proportional sampling" means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 2.2-4007.02 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in 9VAC5-30 (Ambient Air Quality Standards): The applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16.

2. For emission standards in 9VAC5-40 (Existing Stationary Sources) and 9VAC5-50 (New and Modified Stationary Sources): Appendix M of 40 CFR Part 51 or Appendix A of 40 CFR Part 60.

3. For emission standards in 9VAC5-60 (Hazardous Air Pollutant Sources): Appendix B of 40 CFR Part 61 or Appendix A of 40 CFR Part 63.

"Regional director" means the regional director of an administrative region of the Department of Environmental Quality or a designated representative.

"Regulation of the board" means any regulation adopted by the State Air Pollution Control Board under any provision of the Code of Virginia.

"Regulations for the Control and Abatement of Air Pollution" means 9VAC5-10 (General Definitions) through 9VAC5-80 (Permits for Stationary Sources).

"Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials publication, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)" (see 9VAC5-20-21).

"Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

"Section 111(d) plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with § 111(d)(1) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with § 111 (d)(2) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.

"Section 111(d)/129 plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with §§ 111(d)(1) and 129(b)(2) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with §§ 111(d)(2) and 129(b)(3) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.

"Shutdown" means the cessation of operation of an affected facility for any purpose.

"Source" means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

"Stack" means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct, but not including flares.

"Stack in existence" means that the owner had:

1. Begun, or caused to begin, a continuous program of physical on site construction of the stack; or

2. Entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner, to undertake a program of construction of the stack to be completed in a reasonable time.

"Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm of Hg (29.92 inches of Hg).

"Standard of performance" means any provision of 9VAC5-50 (New and Modified Stationary Sources) which prescribes an emissions limitation or other requirements that control air pollution emissions.

"Startup" means the setting in operation of an affected facility for any purpose.

"State enforceable" means all limitations and conditions which are enforceable by the board or department, including, but not limited to, those requirements developed pursuant to 9VAC5-20-110; requirements within any applicable regulation, order, consent agreement or variance; and any permit requirements established pursuant to 9VAC5-80 (Permits for Stationary Sources).

"State Implementation Plan" means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental Protection Agency, under § 110 of the federal Clean Air Act, and which implements the requirements of § 110.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21).

"These regulations" means 9VAC5-10 (General Definitions) through 9VAC5-80 (Permits for Stationary Sources).

"Total suspended particulate (TSP)" means particulate matter as measured by the reference method described in Appendix B of 40 CFR Part 50.

"True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute (API) publication, "Evaporative Loss from External Floating-Roof Tanks" (see 9VAC5-20-21). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates of true vapor pressure may be used in special cases such as these.

"Urban area" means any area consisting of a core city with a population of 50,000 or more plus any surrounding localities with a population density of 80 persons per square mile and designated as such in 9VAC5-20-201.

"Vapor pressure," except where specific test methods are specified, means true vapor pressure, whether measured directly, or determined from Reid vapor pressure by use of the applicable nomograph in American Petroleum Institute publication, "Evaporative Loss from Floating-Roof Tanks" (see 9VAC5-20-21).

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Volatile organic compound" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

1. This includes any such organic compounds which have been determined to have negligible photochemical reactivity other than the following:

a. Methane;

b. Ethane;

c. Methylene chloride (dichloromethane);

d. 1,1,1-trichloroethane (methyl chloroform);

e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);

f. Trichlorofluoromethane (CFC-11);

g. Dichlorodifluoromethane (CFC-12);

h. Chlorodifluoromethane (H CFC-22);

i. Trifluoromethane (H FC-23);

j. 1,2-dichloro 1,1,2,2,-tetrafluoroethane (CFC-114);

k. Chloropentafluoroethane (CFC-115);

l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);

m. 1,1,1,2-tetrafluoroethane (HFC-134a);

n. 1,1-dichloro 1-fluoroethane (HCFC-141b);

o. 1-chloro 1,1-difluoroethane (HCFC-142b);

p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);

q. Pentafluoroethane (HFC-125);

r. 1,1,2,2-tetrafluoroethane (HFC-134);

s. 1,1,1-trifluoroethane (HFC-143a);

t. 1,1-difluoroethane (HFC-152a);

u. Parachlorobenzotrifluoride (PCBTF);

v. Cyclic, branched, or linear completely methylated siloxanes;

w. Acetone;

x. Perchloroethylene (tetrachloroethylene);

y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);

z. 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);

aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);

bb. Difluoromethane (HFC-32);

cc. Ethylfluoride (HFC-161);

dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);

ee. 1,1,2,2,3-pentafluoropropane (HFC-245ca);

ff. 1,1,2,3,3-pentafluoropropane (HFC-245ea);

gg. 1,1,1,2,3-pentafluoropropane (HFC-245eb);

hh. 1,1,1,3,3-pentafluoropropane (HFC-245fa);

ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);

jj. 1,1,1,3,3-pentafluorobutane (HFC-365mfc);

kk. Chlorofluoromethane (HCFC-31);

ll. 1 chloro-1-fluoroethane (HCFC-151a);

mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);

nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100);

oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-hepta-fluoropropane ($(CF_3)_2CFCF_2OCH_3$);

pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE-7200);

qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-hepta-fluoropropane ($(CF_3)_2CFCF_2OC_2H_5$);

rr. Methyl acetate; ss. 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane ($n\text{-}C_3F_7OCH_3$) (HFE-7000);

tt. 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500);

uu. 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);

vv. methyl formate ($HCOOCH_3$);

ww. (1) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);

xx. propylene carbonate;

yy. dimethyl carbonate; and

~~xx.~~ zz. Perfluorocarbon compounds which fall into these classes:

(1) Cyclic, branched, or linear, completely fluorinated alkanes;

(2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

2. For purposes of determining compliance with emissions standards, volatile organic compounds shall be measured by the appropriate reference method in accordance with the provisions of 9VAC5-40-30 or 9VAC5-50-30, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as a volatile organic compound if the amount of such compounds is accurately quantified, and such exclusion is approved by the board.

3. As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the board may require an owner to provide monitoring or testing methods and results demonstrating, to the satisfaction of the board, the amount of negligibly reactive compounds in the emissions of the source.

4. Exclusion of the above compounds in this definition in effect exempts such compounds from the provisions of emission standards for volatile organic compounds. The compounds are exempted on the basis of being so inactive that they will not contribute significantly to the formation of ozone in the troposphere. However, this exemption does not extend to other properties of the exempted compounds which, at some future date, may require regulation and limitation of their use in accordance with requirements of the federal Clean Air Act.

5. The following compound is a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements that apply to VOCs and shall be uniquely identified in emission reports, but is not a VOC for purposes of VOC emission standards, VOC emissions limitations, or VOC content requirements: t-butyl acetate.

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

VA.R. Doc. No. R10-1982; Filed December 15, 2009, 10:44 a.m.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **10VAC5-110. Credit Counseling (adding 10VAC5-110-30).**

Statutory Authority: §§ 6.1-363.14 and 12.1-13 of the Code of Virginia.

Effective Date: January 1, 2010.

Agency Contact: Gerald Fallen, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P. O. Box 640, Richmond, VA 23218, telephone (804) 371-9699, FAX (804) 371-9416, or email gerald.fallen@scc.virginia.gov.

Summary:

The State Corporation Commission is adopting a regulation that prescribes the annual fees to be paid by credit counseling agencies licensed under Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1 of the Code of Virginia to defray the costs of their examination, supervision, and regulation. The adopted final regulation revises the schedule contained in the proposed version of the regulation. Under the final regulation, if a licensee maintains less than 250 debt management plans for Virginia residents as of December 31 of the calendar year preceding the year of assessment, the licensee will be required to pay an annual fee of $0 plus $4.33 per debt management plan. If a licensee maintains 250 or more debt management plans for Virginia residents as of December 31 of the calendar year preceding the year of assessment, the licensee will be required to pay an annual fee of $500 plus $4.33 per debt management plan.

AT RICHMOND, DECEMBER 9, 2009

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2009-00276

Ex Parte: In re: annual fees for
licensed credit counseling agencies

ORDER ADOPTING A REGULATION

On April 17, 2009, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to adopt a regulation pursuant to § 6.1-363.14 of the Code of Virginia. The proposed regulation, 10 VAC 5-110-30, sets forth a schedule of annual fees to be paid by credit counseling agencies licensed under Chapter 10.2 of Title 6.1 of the Code of Virginia ("licensees") in order to defray the cost of their examination, supervision, and regulation. The Order and proposed regulation were published in the Virginia Register of Regulations on May 11, 2009, posted on the Commission's website, and mailed to all licensees. Licensees and other interested parties were afforded the opportunity to file written comments or request a hearing on or before May 20, 2009.

Comments on the proposed regulation were filed by Credit Card Management Services, Inc., the Center for Child & Family Services d/b/a Consumer Credit Counseling Services of Hampton Roads ("CCCSHR"), American Debt Counseling, Inc., Family Credit Counseling Service, Inc. d/b/a Family Credit Management Services, and Virginia State Senator John Miller. Additionally, the American Association of Debt Management Organizations ("AADMO") filed comments on the proposed regulation and requested a hearing.

On October 28, 2009, the Commission convened a hearing to consider the adoption of the proposed regulation. Michael Edmonds, Executive Director of CCCSHR, offered testimony supporting the written comments filed on behalf of CCCSHR and indicated, among other things, that (i) CCCSHR is a non-profit agency that offers credit counseling services through nine credit counseling employees and administers debt management plans for 496 clients, (ii) the proposed assessment schedule unfairly imposes additional fees on the non-profit community and penalizes smaller non-profits by charging the highest fees to those who have fewer clients, and (iii) the Commission should consider waiving the fee for non-profit agencies with fewer than 600 clients whose main offices are in Virginia.

In support of the proposed regulation, the Commissioner of Financial Institutions expressed in a letter to AADMO dated October 16, 2009 that in addition to the direct costs associated with the examination of licensees, the Bureau incurs other expenses including a share of the operation and maintenance of the agency's headquarters building, the

procurement, configuration, and support of its information technology resources, legal support, accounting, and fringe benefit administration. All of these costs are defrayed through annual assessments and other fees paid by licensees and other types of institutions that are supervised and regulated by the Bureau. The Commissioner of Financial Institutions also pointed out that although Chapter 10.2 of Title 6.1 of the Code of Virginia has been in effect for five years, licensees have yet to pay any annual fees in order to defray the costs of their examination, supervision, and regulation. Moreover, the Bureau has conducted 50 examinations of licensees during this period, thereby incurring direct and associated costs of $89,923. In addition to these examination expenses, the Commissioner of Financial Institutions indicated that the total annual overhead cost allocated to licensees is $36,166.

The Bureau concluded that a total annual assessment of $117,144 was required for the oversight of licensees and offered into the record several proposed schedules designed to generate the target amount of income ("Schedule" or "Schedules"). The initial Schedule, which was set forth in the proposed regulation, prescribed a base fee of $500 plus an additional amount per debt management plan ("DMP") which varied based on the total number of DMPs maintained by a licensee for Virginia residents as of December 31 of the calendar year preceding the year of assessment. At the hearing Staff counsel introduced a document containing three alternative assessment Schedules, which was accepted into the record as Exhibit 2. The three alternative assessment Schedules contained in Exhibit 2 set forth a base fee of either $0 or $500, plus an additional amount of between $3.93 and $4.69 per DMP. Another alternative assessment Schedule was accepted into the record as late-filed Exhibit 3 and set forth a base fee of either $250 (if a licensee maintained less than 250 DMPs) or $500 (if a licensee maintained at least 250 DMPs) plus an additional amount of $4.13 per DMP.

NOW THE COMMISSION, having considered the proposed regulation, the record herein, and applicable law, concludes that the proposed regulation should be modified to reflect the second alternative described in Exhibit 2, and that the proposed regulation, as modified, should be adopted with an effective date of January 1, 2010. Under this alternative, a licensee will be required to pay an annual fee that is comprised of the sum of (i) a base fee of $0 if the licensee maintained less than 250 DMPs for Virginia residents as of December 31 of the calendar year preceding the year of assessment, or a base fee of $500 if the licensee maintained 250 DMPs or more for Virginia residents as of December 31 of the calendar year preceding the year of assessment; and (ii) $4.33 per DMP maintained by the licensee for Virginia residents as of December 31 of the calendar year preceding the year of assessment.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation, 10 VAC 5-110-30, as modified herein and attached hereto, is adopted effective January 1, 2010.

(2) This Order and the attached regulation shall be posted on the Commission's website at http://www.scc.virginia.gov/case.

(3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulation, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Paul Donohue, Credit Card Management Services, Inc., 4611 Okeechobee Boulevard, Suite 114, West Palm Beach, Florida 33417; Michael Edmonds, Executive Director, Center for Child & Family Services d/b/a Consumer Credit Counseling Services of Hampton Roads, P.O. Box 7315, 2021 Cunningham Drive, Suite 400, Hampton, Virginia 23666; Alan Silverberg, Chief Executive Officer, American Debt Counseling, Inc., 14051 NW 14th Street, Sunrise, Florida 33323; Patrick F. Steva, Legal Compliance Coordinator, Family Credit Counseling Service, Inc. d/b/a Family Credit Management Services, 4306 Charles Street, Rockford, Illinois 61108; Mark Guimond, Executive Director, American Association of Debt Management Organizations, 5210 Laurelwood Drive, Kingwood, Texas 77345; and to the Commissioner of Financial Institutions, who shall mail a copy of this Order and the attached regulation to all licensed credit counseling agencies and any applicants currently seeking a license under Chapter 10.2 of Title 6.1 of the Code of Virginia.

10VAC5-110-30. Schedule of annual fees for the examination, supervision, and regulation of credit counseling agencies.

Pursuant to § 6.1-363.14 of the Code of Virginia, the commission sets the following schedule of annual fees to be paid by persons licensed under Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1 of the Code of Virginia. The fees are to defray the costs of examination, supervision, and regulation of licensees by the Bureau of Financial Institutions.

SCHEDULE

[~~The annual fee shall be $500 plus the following additional amount based on the total number of debt management plans maintained in Virginia as of December 31 of the calendar year preceding the year of assessment:~~

~~Total Number of Debt Management Plans~~	~~Amount~~
~~Less than 501~~	~~$5.00 per debt management plan~~

~~501 to 1,000~~	~~$4.00 per debt management plan~~
~~1,001 to 2,000~~	~~$3.00 per debt management plan~~
~~2,001 to 3,000~~	~~$2.50 per debt management plan~~
~~Over 3,000~~	~~$2.00 per debt management plan~~

If a licensee maintained less than 250 debt management plans for Virginia residents as of December 31 of the calendar year preceding the year of assessment, the licensee shall pay an annual fee of $0 plus $4.33 per debt management plan.

If a licensee maintained 250 or more debt management plans for Virginia residents as of December 31 of the calendar year preceding the year of assessment, the licensee shall pay an annual fee of $500 plus $4.33 per debt management plan.]

The fee assessed using the above schedule shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before June 1 for the current calendar year. The fee shall be paid on or before July 1.

The annual report, due March 25 each year, of each licensee provides the basis for its assessment. In cases where a license has been granted between January 1 and March 25 [~~of the year of assessment~~], the licensee's [initial] annual fee shall be $250.

Fees prescribed and assessed by this schedule are apart from, and do not include, the reimbursement for expenses permitted by subsection B of § 6.1-363.14 of the Code of Virginia.

VA.R. Doc. No. R09-1919; Filed December 16, 2009, 10:31 a.m.

TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Final Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4; however, under the provisions of § 2.2-4031, it is required to publish all proposed and final regulations.

Title of Regulation: **13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13VAC10-180-60; repealing 13VAC10-180-80).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: January 1, 2010.

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, or email judson.mckellar@vhda.com.

Summary:

The amendments (i) add a source of financing to the subsidized funding category, (ii) add a negative point category to discourage construction of new rental space in areas anticipated to have little or no increase in rent-burdened households, (iii) add a point category to encourage new rental space in urban development growth areas or zoned areas with an affordable dwelling unit bonus, (iv) revise the amenity category for high efficiency heat pumps and gas furnaces, (v) add a point amenity category for geothermal heat pump systems, (vi) add a point amenity category for solar electric systems, (vii) revise the point category for units for persons with disabilities with federal project-based subsidy, (viii) delete the point category for a LEED-certified design team member, (ix) suspend the preservation pool for credit year 2010, and (x) make other miscellaneous administrative clarification changes.

13VAC10-180-60. Review and selection of applications; reservation of credits.

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) which is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and

2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such

qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than $750,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the

proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness.

a. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points; applicants receiving points under this subdivision 1 a are not eligible for points under subdivision 5 a below)

b. Written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)

2. Housing needs characteristics.

a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (minus 50 points for failure to make timely submission)

b. (1) A letter dated within three months prior to the application deadline addressed to the authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, the following:

"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for that development." (50 points)

(2) No letter from the chief executive officer of the locality in which the proposed development is to be located, or a letter addressed to the authority and signed by such chief executive officer stating neither support (as described in subdivision b (1) above) nor opposition (as described in subdivision b (3) below) as to the allocation of credits to the applicant for the development. (25 points)

(3) A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. (0 points)

c. Documentation in a form approved by the authority from the chief executive officer (or the equivalent) of the local jurisdiction in which the development is to be located (including the certification described in the definition of revitalization area in 13VAC10-180-10) that the area in which the proposed development is to be located is a revitalization area and the proposed development is an integral part of the local government's plan for revitalization of the area. (30 points)

d. If the proposed development is located in a qualified census tract as defined in § 42(d)(5)(C)(ii) of the IRC and is in a revitalization area. (5 points)

e. Commitment by the applicant to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of $3,600 or 2.5 times the portion of rent to be paid by such tenants.)

f. Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, Commonwealth of Virginia Department of Behavioral Health and [~~Development~~ Developmental] Services funds from Item 315-Z of the 2008-2010 Appropriation Act, or the Rural Development for a below-market rate loan or grant or Rural Development's interest credit used to reduce the interest rate on the loan financing the proposed development; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; or (iii) a commitment to donate land, buildings or waive tap fee waivers from the local government. (The amount of such financing or dollar value of local support will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

g. Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515

program, at the time of application. (20 points, unless the applicant is, or has any common interests with, the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to any developer's fee and any other fees associated with the acquisition and rehabilitation (or rehabilitation only) of the development unless permitted by the executive director for good cause.)

h. Any development receiving (i) a real estate tax abatement on the increase in the value of the development or (ii) new project-based subsidy from HUD or Rural Development for the greater of 5 units or 10% of the units of the proposed development. (10 points)

i. Any proposed development located in a census tract that has less than a 10% poverty rate (based upon Census Bureau data) with no other tax credit units in such census tract. (25 points)

j. Any proposed development listed in the top 25 developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the authority. (15 points)

k. Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) located in a pool identified by the authority as a pool with little or no increase in rent-burdened population. (up to minus 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool. The executive director may make exceptions in the following circumstances:

(1) Specialized types of housing designed to meet special needs that cannot readily be addressed utilizing existing residential structures;

(2) Housing designed to serve as a replacement for housing being demolished through redevelopment; or

(3) Housing that is an integral part of a neighborhood revitalization project sponsored by a local housing authority.)

l. Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) that is located in a pool identified by the authority as a pool with an increasing rent-burdened population and is also in an urban development area as defined in § 15.2-2223.1 of the Code of Virginia or participating in a locally adopted affordable housing dwelling unit program as described in either § 15.2-2304 or 15.2-2305 of the Code of Virginia. (up to 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool)

3. Development characteristics.

a. The average unit size. (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given unit type divided by the total number of units in the proposed development, times (ii) the quotient of the average actual gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director. If the average actual gross square footage per unit for a given unit type is less than the lowest gross square footage per unit for a given unit type established by the executive director or greater than the highest gross square footage per unit for a given unit type established by the executive director, the lowest or highest, as the case may be, gross square footage per unit for a given unit type established by the executive director shall be used in the above calculation rather than the actual gross square footage per unit for a given unit type.)

b. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If 2-bedroom units have 1.5 bathrooms and 3-bedroom units have 2 bathrooms. (15 points multiplied by the percentage of units meeting these requirements)

(b) If a community/meeting room with a minimum of 749 square feet is provided. (5 points)

(c) Brick covering 30% or more of the exterior walls. (20 points times the percentage of exterior walls covered by brick)

(d) If all kitchen and laundry appliances meet the EPA's Energy Star qualified program requirements. (5 points)

(e) If all the windows meet the EPA's Energy Star qualified program requirements. (5 points)

(f) If every unit in the development is heated and ~~air conditioned~~ cooled with either (i) heat pump ~~units~~ equipment with both a SEER rating of ~~14.0~~ 15.0 or more and a HSPF rating of ~~8.2~~ 8.5 or more ~~and a variable speed air handling unit or thru-the-wall heat pump equipment that has an EER rating of 11.0 or more~~ or (ii) air conditioning ~~units~~ equipment with a SEER rating of ~~14.0~~ 15.0 or more ~~and a variable speed air handling unit~~, combined with a gas furnace with an AFUE rating of 90% or more. (10 points)

(g) If the water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)

(h) If each bathroom contains only low-flow faucets and showerheads as defined by the authority. (3 points)

(i) If each unit is provided with the necessary infrastructure for high-speed cable, DSL or wireless Internet service. (1 point)

(j) ~~Beginning January 1, 2009, if~~ If all the water heaters meet the EPA's Energy Star qualified program requirements. (5 points)

(k) If every unit in the development is heated and cooled with a geothermal heat pump that meets the EPA's Energy Star qualified program requirements. (5 points)

(l) If the development has a solar electric system that will remain unshaded year-round, be oriented to within 15 degrees of true south, and be angled horizontally within 15 degrees of latitude. (1 point for each 2.0% of the development's electrical load that can be met by the solar electric system, up to 5 points)

(2) The following points are available to applications electing to serve elderly and/or physically disabled tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all units have an emergency call system. (3 points)

(c) If all bathrooms have an independent or supplemental heat source. (1 point)

(d) If all entrance doors to each unit have two eye viewers, one at 48 inches and the other at standard height. (1 point)

(3) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 b of this section is ~~60~~ 70 points.

c. Any nonelderly development in which (i) the greater of 5 units or 10% of the units ~~(i) provide~~ will be subject to federal project-based rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; and (ii) the greater of 5 units or 10% of the units will conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act~~,~~ and ~~(iii) are~~ be actively marketed to people with special needs in accordance with a plan submitted as part of the application for credits ~~(if special needs includes mobility impairments~~ (all the units described in (ii) above must include roll-in showers and roll-under sinks and ~~ranges)~~ ranges, unless agreed to by the authority prior to the applicant's submission of its application). (50 points)

d. Any nonelderly development in which the greater of 5 units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard; (ii) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) are actively marketed to people with mobility impairments including HCV holders in accordance with a plan submitted as part of the application for credits. (30 points)

e. Any nonelderly development in which 4.0% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to people with mobility impairments in accordance with a plan submitted as part of the application for credits. (15 points)

f. Any development located within one-half mile of an existing commuter rail, light rail or subway station or one-quarter mile of one or more existing public bus stops. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for northern Virginia, in which case, the development will receive 20 points if the development is ranked against other developments in such northern Virginia pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

g. Any development for which the applicant agrees to obtain either (i) EarthCraft certification or (ii) US Green Building Council LEED green-building certification prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's architect is on the Authority's list of LEED/EarthCraft certified architects. The executive director may, if needed, designate a proposed development as requiring an increase in credit in order to be financially feasible and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving points under this subdivision and 60 points under either subdivision 7 a or b of this section, provided however, any resulting increase in such development's eligible basis shall be limited to 5.0% of the development's eligible basis. (30 points)

h. Any development for which the applicant agrees to use an authority-certified property manager to manage the development. (25 points)

i. If units are constructed to meet the authority's universal design standards, provided that the proposed development's architect is on the Authority's list of universal design certified architects. (15 points, if all the units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for nonelderly developments)

j. Any development in which the applicant proposes to produce less than 100 low-income housing units. (20 points for producing 50 low-income housing units or less, minus.4 points for each additional low-income housing unit produced down to 0 points for any development that produces 100 or more low-income housing units.)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

a. Evidence that the principal or principals, as a group or individually, for the proposed development have developed, as controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments that contain at least the number of housing units in the proposed development. (50 points; applicants receiving points under this subdivision 5 a are not eligible for points under subdivision 1 a above)

b. Evidence that the principal or principals for the proposed development have developed at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

c. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for an uncorrected life-threatening hazard under HUD's Uniform Physical Condition Standards. (minus 50 points for a period of three years after the violation has been corrected)

d. Any applicant that includes a principal that was a principal in a development that either (i) at the time the authority reported such development to the IRS for noncompliance ~~that has not been~~ had not corrected such noncompliance by the time a Form 8823 ~~is~~ was filed by the authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the authority. (minus 15 points for a period of three years after the time the authority filed Form 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant)

e. Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the item or items not built or minus 20 points for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority (minus 10 points a period of three years after the credits are returned to the authority).

f. Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the compliance period and extended use period of such development. (minus 25 points)

~~g. Evidence that a US Green Building Council LEED certified design professional participated in the design of the proposed development. (10 points)~~

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (180 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based

upon the number of such unit types in the proposed development. (75 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development, and the per unit credit amount for any building documented by the applicant to be located in both a revitalization area and either (i) a qualified census tract or (ii) difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding any use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of credits as provided in the IRC.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (The product of (i) 50 points multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (The product of (i) 25 points (50 points for proposed developments in low-income jurisdictions) multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70 ~~and give the qualified nonprofit veto power over any refinancing of the development~~. Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (60 points; plus 5 points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Any application that is assigned a total number of points less than a threshold amount of ~~450 points for calendar year 2008, and~~ 500 points ~~after January 1, 2009 (425~~ (475 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits hereunder ~~for calendar year 2008, and 475 points for~~

~~such developments after January 1, 2009),~~) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

During its review of the submitted applications, the authority may conduct its own analysis of the demand for the housing units to be produced by each applicant's proposed development. Notwithstanding any conclusion in the market study submitted with an application, if the authority determines that, based upon information from its own loan portfolio or its own market study, inadequate demand exists for the housing units to be produced by an applicant's proposed development, the authority may exclude and disregard the application for such proposed development.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 10% of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either

substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

Not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible nonelderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments. The above limitation of credits available for elderly housing shall not include elderly housing developments with project-based subsidy providing rental assistance for at least 20% of the units that are submitted as rehabilitation developments or assisted living facilities licensed under Chapter 17 of Title 63.2 of the Code of Virginia.

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director may move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development, or developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if

party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director. ~~The executive director shall, as a condition to the binding commitment, require each applicant to obtain a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by each applicant's proposed development.~~

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the authority.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may (i) terminate the reservation of such credits and draw on any good faith deposit, or (ii) substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year, if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional

terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits to any applicant that proposes a nonelderly development that (i) provides rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for at least 50% of the units in the development. Any such reservations made in any calendar year may be up to 6.0% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

Notwithstanding the provisions of this section, the executive director may, except in calendar year 2010 make a reservation of credits, to any applicant that proposes to acquire and rehabilitate a nonelderly development that the executive director determines (i) cannot be acquired within the schedule for the competitive scoring process described in this section and (ii) cannot be financed with tax-exempt bonds using the authority's normal underwriting criteria for its multifamily tax-exempt bond program. Any proposed development subject to an application submitted under this paragraph must meet the following criteria: (i) at least 20% of the units in the development must be low-income housing units for residents at 50% of the area median income or less, (ii) the development must be eligible for points under subdivision 3 b (1) (g) of this section or a combination of at least 20 points under subdivisions 3 b (1) (b) through 3 b (1) (j), excluding subdivision 3 b (1) (c), (iii) the executive director's review of the application must confirm that the portion of the developer's fee to be deferred is at least 5.0% of the total development costs, (iv) participation by the local government in the form of low-interest loan/grant moneys from such locality's affordable housing funds in an amount equal to or greater than 20% of the total development costs, and (v) the application for the development must obtain as many points as the lowest ranked development that could have received a partial reservation of credits from the geographic pool in which the applicant would have been ranked in the most recent competitive scoring round. Any such reservations made in any calendar year may be up to 15% of the Commonwealth's annual state housing credit ceiling for the applicable credit year, of which at least 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year will be reserved for developments within Arlington County, Fairfax County, Alexandria City, Fairfax City or Falls Church City. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

13VAC10-180-80. ~~Reservation and allocation of additional credits.~~ (Repealed.)

~~Prior to the initial determination of the qualified basis (as defined in the IRC) of the qualified low-income buildings of a development pursuant to the IRC, an applicant to whose buildings' credits have been reserved may submit an application for a reservation of additional credits. Subsequent to such initial determination of the qualified basis, the applicant may submit an application for an additional allocation of credits by reason of an increase in qualified basis based on an increase in the number of low-income housing units or in the amount of floor space of the low-income housing units. Any application for an additional allocation of credits shall include such information, opinions, certifications and documentation as the executive director shall require in order to determine that the applicant's buildings or development will be entitled to such additional credits under the IRC and this chapter. The application shall be submitted, reviewed, ranked and selected by the executive director in accordance with the provisions of 13VAC10-180-60, and any allocation of credits shall be made in accordance with 13VAC10-180-70. For the purposes of such review, ranking and selection and the determinations to be made by the executive director under the rules and regulations as to the financial feasibility of the development and its viability as a qualified low-income development during the credit period, the amount of credits previously reserved to the application or allocated to the buildings or development (or, in the case of any development or building to be financed by certain tax-exempt bonds in an amount so as not to require an allocation of credits hereunder, the amount of credit which may be claimed by the applicant) shall be included with the amount of such credits so requested.~~

VA.R. Doc. No. R10-2185; Filed December 16, 2009, 4:48 p.m.

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TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

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.

Titles of Regulations: **14VAC5-310. Rules Governing Actuarial Opinions and Memoranda (amending 14VAC5-310-90).**

14VAC5-321. Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits (amending 14VAC5-321-30).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: December 31, 2009.

Agency Contact: Raquel C. Pino-Moreno, Principal Insurance Analyst, Bureau of Insurance, State Corporation Commission, 1300 East Main Street, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino-moreno@scc.virginia.gov.

Summary:

The revisions allow the Bureau of Insurance to authorize insurance companies to use the 2001 CSO Mortality Table for policies issued on or after January 1, 2004 (14VAC5-321). The current provision is applicable for policies issued on or after July 1, 2004. The revisions also require an appointed actuary to produce a report attesting to the fact that a company has booked reserves satisfying the minimum reserve requirements and describing how they reached their conclusion regarding adequacy (14VAC5-310). The revisions to the rules are based on the National Association of Insurance Commissioner's (NAIC) revisions to its Actuarial Opinion and Memorandum Regulation Model, which was adopted by the NAIC on September 23, 2009, and its Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits Model Regulation, which was adopted by the NAIC in 2002. The revisions were adopted as proposed.

AT RICHMOND, DECEMBER 4, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2009-00230

Ex Parte: In the matter of Adopting
Revisions to the Rules Governing
Actuarial Opinions and Memoranda
and Use of the 2001 CSO Mortality Table
in Determining Reserve Liabilities
and Nonforfeiture Benefits

ORDER ADOPTING RULES

By Order To Take Notice entered October 21, 2009, all interested persons were ordered to take notice that subsequent to November 29, 2009, the State Corporation Commission ("Commission") would consider the entry of an order adopting amendments to the regulations entitled Rules Governing Actuarial Opinions and Memoranda and Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits ("Regulations"), proposed by the Bureau of Insurance ("Bureau") which amend the regulations at 14 VAC 5-310-90 and 14 VAC 5-321-30, unless on or before November 29, 2009, any person objecting to the adoption of the proposed amendments to the Regulations filed a request for a hearing with the Clerk of the Commission ("Clerk").

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to the proposed amendments to the Regulations on or before November 29, 2009.

No request for a hearing was filed with the Clerk. By letter dated November 5, 2009, Transamerica Life Insurance Company ("Transamerica") filed comments with the Clerk. The comments filed by Transamerica did not address the proposed amendments to the Regulations. Instead, the comments addressed the fact that § 38.2-3127.1 of the Code of Virginia requires that the Actuarial Opinion and accompanying Regulatory Asset Adequacy Issues Summary be filed with the Bureau annually rather than upon the request of the Bureau.

The Bureau does not recommend further changes to the proposed amendments to the Regulations and further recommends that the amendments to the rules be adopted as proposed.

THE COMMISSION, having considered the Bureau's recommendation, is of the opinion that the attached amendments to the Regulations should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the regulations entitled Rules Governing Actuarial Opinions and Memoranda and Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits at 14 VAC 5-310-90 and 14 VAC 5-321-30 which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective December 31, 2009.

(2) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(3) The Commission's Division of Information Resources shall make available this Order and the adopted rules on the Commission's website, http://www.scc.virginia.gov/case.

(4) AN ATTESTED COPY hereof, together with a copy of the amended regulations, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the amendments to the regulations by mailing a copy of this Order, together with the amended regulations, to all licensed life insurers, burial societies, fraternal benefit societies, qualified reinsurers, and certain interested parties designated by the Bureau.

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

14VAC5-310-90. Description of actuarial memorandum issued for an asset adequacy analysis and regulatory asset adequacy issues summary.

A. The following general provisions shall apply with respect to the preparation and submission of the asset adequacy memorandum required by § 38.2-3127.1 of the Code of Virginia.

1. In accordance with § 38.2-3127.1 of the Code of Virginia, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his opinion regarding the reserves. The memorandum shall be made available for examination by the commission upon its request but shall be returned to the company after such examination and shall not be considered a record of the Bureau of Insurance or subject to automatic filing with the commission.

2. In preparing the memorandum, the appointed actuary may rely on, and include as a part of his memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of 14VAC5-310-50 B, with respect to the areas covered in such memoranda, and so state in their memoranda.

3. If the commission requests a memorandum and no such memorandum exists or if the commission finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this chapter, the commission may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commission.

4. The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the commission; ~~provided,~~ however, ~~that~~ any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commission and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the commission pursuant to the statute governing this chapter. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this chapter for any one of the current year or the preceding three years.

5. In accordance with § 38.2-3127.1 of the Code of Virginia, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in subsection C of this section. The regulatory asset adequacy issues summary shall be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

B. A section of the memorandum shall document asset adequacy testing by demonstrating that the analysis has been done in accordance with the standards for asset adequacy referred to in 14VAC5-310-50 D and any additional standards under this chapter. It shall specify:

1. For reserves:

a. Product descriptions including market description, underwriting and other aspects of a risk profile, and the specific risks the appointed actuary deems significant;

b. Source of liability in force;

c. Reserve method and basis;

d. Investment reserves;

e. Reinsurance arrangements;

f. Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis; and

g. Documentation of assumptions to test reserves for (i) lapse rates, whether base or excess, (ii) interest crediting rate strategy, (iii) mortality, (iv) policyholder dividend strategy, (v) competitor or market interest rate, (vi) annuitization rates, (vii) commission and expenses, and (viii) morbidity.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumption.

2. For assets:

a. Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;

b. Investment and disinvestment assumptions;

c. Source of asset data;

d. Asset valuation bases; and

e. Documentation of assumptions made for (i) default costs, (ii) bond call function, (iii) mortgage prepayment function, (iv) determining market value for assets sold due to disinvestment strategy, and (v) determining yield on assets acquired through the investment strategy.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumption.

3. For the analysis basis:

a. Methodology;

b. Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;

c. Rationale for degree of rigor in analyzing different blocks of business, including the rationale for the level of "materiality" that was used in determining how rigorously to analyze different blocks of business;

d. Criteria for determining asset adequacy, including in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice; and

e. Whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis.

4. Summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;

5. Summary of results; and

6. Conclusion.

C. The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion. The regulatory asset adequacy issues summary also shall include each of the following:

1. Descriptions of the scenarios tested, including whether those scenarios are stochastic or deterministic, and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in-force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that reasonably can be expected to arise from the assets and liabilities remaining in force;

2. The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different from the assumptions used in the previous asset adequacy analysis;

3. The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

4. Comments on any interim results that may be of significant concern to the appointed actuary. For example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods;

5. The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and

6. Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability, including but not limited to those affecting cash flows embedded in fixed income securities, and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

D. The actuarial methods, considerations, and analyses shall conform to appropriate standards of practice and the memorandum shall include the following statement:

"Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

E. An appropriate allocation of assets in the amount of Interest Maintenance Reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default shall include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets shall not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks shall include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR shall be disclosed in

the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

14VAC5-321-30. 2001 CSO Mortality Table.

A. At the election of the insurer for any one or more specified plans of insurance and subject to the conditions stated in this chapter, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after ~~July~~ January 1, 2004, and before the date specified in subsection B of this section to which subdivision 1 of § 38.2-3130 and § 38.2-3209 of the Code of Virginia are applicable. If the insurer elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

B. Subject to the conditions stated in this chapter, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which subdivision 1 of § 38.2-3130 and § 38.2-3209 of the Code of Virginia are applicable.

C. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of 14VAC5-322, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of this chapter.

VA.R. Doc. No. R10-2018; Filed December 8, 2009, 3:17 p.m.

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TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **20VAC5-317. Rates for Standby Service Furnished to Certain Renewable Cogeneration Facilities Pursuant to § 56-235.1:1 of the Code of Virginia (adding 20VAC5-317-10 through 20VAC5-317-50).**

Statutory Authority: §§ 12.1-13 and 56-235.1:1 of the Code of Virginia.

Effective Date: January 1, 2010.

Agency Contact: Cody Walker, Assistant Director, Energy Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9611, FAX (804) 371-9350, or email cody.walker@scc.virginia.gov.

Summary:

As directed by Chapter 745 of the 2009 Acts of Assembly, codified as § 56-235.1:1 of the Code of Virginia, the regulation establishes a regulatory framework for electric utility standby service to customers that operate cogeneration facilities in the Commonwealth generating renewable energy, as defined in § 56-576 of the Code of Virginia. The legislation further states that such regulations must allow electric utilities to recover all of the costs that are identified by these utilities and determined by the commission to be related to the provision of standby service. Chapter 745 specifically states that these costs include, but are not limited to, the costs of transformers and other equipment required to provide standby service and the costs of capacity and generation, including, but not limited to, fuel costs. Chapter 745 also directs that within 90 days of the effective date of regulations adopted pursuant to this legislation, each public utility providing electric service in the Commonwealth must submit to the commission a plan setting forth how the utility will comply with the regulations if it does not already have standby provisions approved by the commission that comply with the regulations. The regulation (i) identifies costs that may be recovered by utilities under standby rates from utility customers operating cogeneration facilities generating renewable energy and (ii) establishes requirements for utilities' compliance plans to be submitted within 90 days of the regulation's effective date.

Changes to the proposed regulation are principally clarifying in nature and include establishing an April 1, 2010, deadline for utilities to submit their plans for compliance with § 56-235.1:1 of the Code of Virginia and this regulation.

AT RICHMOND, DECEMBER 2, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE-2009-00080

Ex Parte: In the matter of establishing
rules of the State Corporation Commission
governing rates for stand-by service furnished
to certain renewable cogeneration facilities

ORDER PROMULGATING REGULATIONS

This Order promulgates State Corporation Commission ("Commission") rules required by HB 2152 as enacted by the 2009 Session of the Virginia General Assembly.[1] HB 2152 directs the Commission in § 56-235.1:1 of the Code of Virginia ("Code") (a new statutory provision enacted in

HB 2152) to establish a regulatory framework for electric utility stand-by service provided by electric utilities to "customers that operate a cogeneration facility in the Commonwealth that generates renewable energy, as defined in § 56-576." Section 56-235.1:1 of the Code further requires that such regulations must "allow the electric utility to recover all of the costs that are identified by the electric utility and determined by the Commission to be related to the provision of the stand-by service, including but not limited to the costs of transformers and other equipment required to provide stand-by service and the costs of capacity and generation, including but not limited to fuel costs."

Within 90 days of the effective date of the regulations promulgated under this Order, § 56-235.1:1 of the Code requires each public utility providing electric service in the Commonwealth to "submit a plan setting forth how the utility will comply with the regulations if it does not already have stand-by provisions approved by the Commission that comply with the regulations." Id. Thereafter, the Commission will, after notice and an opportunity for a hearing, "determine whether a utility's plan complies with the regulations." Id.

On August 19, 2009, the Commission issued an order establishing this docket ("August 19, 2009 Order"). Attached to that order were proposed rules prepared by the Commission's Staff ("Staff") implementing the rulemaking requirements of § 56-235.1:1 of the Code ("Proposed Rules"). The Proposed Rules, inter alia, set forth costs that may be recovered, under stand-by rates, by utilities from their customers operating cogeneration facilities generating renewable energy. The Proposed Rules also establish requirements for utilities' compliance plans to be submitted within 90 days of such rules' effective date.

The Commission's August 19, 2009 Order directed that on or before September 11, 2009, the Commission's Division of Information Resources should secure publication of notice concerning this proceeding in newspapers of general circulation throughout the Commonwealth of Virginia. The August 19, 2009 Order also permitted interested persons to comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules on or before October 2, 2009. The Order further permitted the Staff to file a report with the Clerk of the Commission on or before October 28, 2009, concerning comments submitted to the Commission by interested persons addressing the Proposed Rules.

Comments concerning the Proposed Rules were received from Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion" or "Dominion Virginia Power"); Appalachian Power Company ("Appalachian"); and certain Virginia electric cooperatives[2] filing jointly with the Virginia, Maryland, and Delaware Association of Electric Cooperatives (collectively, "Virginia Cooperatives" or "Cooperatives"). No party requested a hearing, and the Staff did not file comments in this proceeding.

The comments received from Dominion Virginia Power,[3] Appalachian, and the Virginia Cooperatives were principally supportive of the Proposed Rules, proposed only editorial changes for purposes of clarification, or described how these rules would or should be implemented.

Dominion's comments, for example, indicated that company's support for the Proposed Rules and offered no suggested changes or modifications thereto. Dominion did state, however, that stand-by service encompassed by this rulemaking can be accommodated under most, if not all, of Dominion's current rate schedules. Dominion Comments at 5. Thus, Dominion asserts that "[g]iven the Company's currently approved tariffs and those proposed in the 2009 Rate Case Filing [(Case No. PUE-2009-00019)], most customers will have alternative rate options for securing stand-by service and will have a choice of selecting the rate schedule that best fits their individual stand-by service requirements." Id. In this regard, Dominion states regarding 20 VAC 5-317-20 in the Proposed Rules that this rule "should not be interpreted as requiring a utility to provide rates specifically designed for stand-by service to customers that operate cogeneration facilities that generate renewable energy, where other tariffs properly apply to such customers." Id. at 6.

Appalachian states in its comments that it supports the Proposed Rules, but has offered changes it characterizes as minor to "ensure the clear applicability of the Rules." Appalachian Comments at 1. These suggested changes include substituting the term "customer charges" for "metering charges" in Subdivision 1 of 20 VAC 5-317-30 of the Proposed Rules (id.); modifying Subdivision 2 of 20 VAC 5-317-30 concerning its scope to specify that utilities' recoverable distribution service charges are those associated with "owning and operating" distribution facilities (id. at 2); and making minor clarifying edits in Subdivision 4 of 20 VAC 5-317-30 (id.).

The comments filed by the Virginia Cooperatives state that "[h]istorically, the Cooperatives have negotiated stand-by rates on an individual case basis to recover the costs of installing and maintaining the distribution facilities necessary to serve the customer and providing as-needed generation supply service. We believe that the Proposed Rules would continue to allow this approach." Cooperatives Comments at 4. These comments also provided illustrations of this approach as experienced by three Virginia cooperatives. Id. at 4-5. The Virginia Cooperatives further state that "[t]he Proposed Rules appear to endorse the notion that the generator to whom stand-by service is supplied is responsible for the increased costs associated with that service, and the Cooperatives support the Proposed Rules."[4] Id. at 6.

NOW UPON CONSIDERATION of the comments filed herein, we find that we should adopt and promulgate the rules

appended hereto as Attachment A, governing rates for stand-by service furnished to certain renewable cogeneration facilities, such rulemaking having been directed by § 56-235.1:1 of the Code enacted in Chapter 745 of the 2009 Acts of Assembly.

The Commission notes, first of all, that the Proposed Rules were broadly supported by the parties filing comments in this docket: Dominion Virginia Power, Appalachian, and the Virginia Cooperatives. Second, we will adopt—either verbatim or in substance—nearly all of the suggested editorial changes to the Proposed Rules by Appalachian. They clarify the final rules we approve in this docket. However, we will not adopt the amendment proposed by Appalachian to Subdivision 2 of 20 VAC 5-317-30 (concerning its scope to specify that utilities' recoverable distribution service charges are those associated with "owning and operating" distribution facilities); the language in that subdivision is sufficiently clear without those modifiers, and it is that language we adopt in our final rules.

We will also address Dominion's concerns, described above, that 20 VAC 5-317-20 in the Proposed Rules should not be interpreted as requiring a utility "to provide rates specifically designed for stand-by service to customers that operate cogeneration facilities that generate renewable energy, where other tariffs properly apply to such customers." Specifically, Dominion states that its existing tariffs or those proposed in its pending rate case (PUE-2009-00019) are or will be sufficient to the task. The Commission would observe that Dominion will be required to submit a compliance plan under these rules (20 VAC 5-317-40) within 90 days of their promulgation in which Dominion may seek this Commission's ruling, inter alia, that such tariffs are sufficient to satisfy the requirements of § 56-235.1:1 of the Code and the Commission's rules implementing this new statute that we adopt herein. Similarly, the Virginia Cooperatives may submit for Commission review under 20 VAC 5-317-40, their current practice of negotiating stand-by rates "on an individual case basis" to recover their costs associated with providing that service—if that is their proposed compliance plan under these rules.

Put simply, the rules we adopt in this order (implementing § 56-235.1:1 of the Code) require that within 90 days of the effective date of these rules, electric utilities subject to their provisions must submit compliance plans to the Commission for review and approval, subject to notice and an opportunity for hearing. It is at that time that the Commission will "determine whether a utility's plan complies with the regulations." Section 56-235.1:1 B of the Code. Consequently, we do not reach in this order whether Dominion's or the Cooperative's intended compliance strategies—evidently previewed in their comments filed in this docket—satisfy the requirements of § 56-235.1:1 of the Code and the regulations we adopt herein. That determination must await their filings required by 20 VAC 5-317-40 of these regulations.

Accordingly, IT IS ORDERED THAT:

(1) We hereby adopt and promulgate the Commission's rules governing Rates for Stand-by Service Furnished to Certain Renewable Cogeneration Facilities, pursuant to § 56-235.1:1 of the Code of Virginia to be set forth in a new Chapter 317 (20 VAC 5-317-10 et seq.) in Title 20 of the Virginia Administrative Code, appended hereto as Attachment A, all to become effective on January 1, 2010.

(2) A copy of this Order and the rules adopted herein shall be promptly forwarded for publication in the Virginia Register of Regulations.

(3) This case is dismissed and the papers filed herein shall be placed in the file for end causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Pamela A. Walker, Deputy General Counsel, Dominion Virginia Power, Law Department PH-1, P.O. Box 26532, Richmond, Virginia 23261-6532; Barry L. Thomas, Director, Regulatory Affairs, Appalachian Power Company, 1051 East Cary Street, Suite 702, Richmond, Virginia 23219; Kendrick R. Riggs, Esquire, Stoll Keenon Ogden, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202; Jeffery P. Trout, Esquire, Allegheny Power, 800 Cabin Hill Road, Greensburg, Pennsylvania 15601; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; all Virginia electric cooperatives as listed in Appendix A attached hereto; and a copy shall be delivered to the Commission's Office of General Counsel and Division of Energy Regulation.

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[1] Chapter 745 of the 2009 Acts of Assembly.

[2] A & N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative; Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative.

[3] Dominion requested the opportunity to file reply comments in order to respond to the comments of other parties and to those of the Staff. However, in light of the comments filed by the other parties supporting the Proposed Rules, and the Staff's election to not file comments in this proceeding, we find that reply comments are not necessary.

[4] The Cooperatives elaborate on generator responsibility by stating that "[o]ftentimes, a cooperative's interest in protecting its other customers results in (i) the stand-by service customer being required to make a CIAC payment, and (ii) necessarily high monthly rates to ensure cost recovery on both the distribution and supply sides of the utility's operations." Cooperatives' Comments at 6.

CHAPTER 317
RATES FOR STANDBY SERVICE FURNISHED TO CERTAIN RENEWABLE COGENERATION FACILITIES PURSUANT TO § 56-235.1:1 OF THE CODE OF VIRGINIA

20VAC5-317-10. Applicability and scope.

This chapter is promulgated pursuant to the provisions of § 56-235.1:1 of the Code of Virginia. It is applicable to (i) Virginia's electric utilities ("utilities" or "utility") subject to the provisions of § 56-235.1:1 [,] and (ii) utilities' customers that operate cogeneration facilities that generate renewable energy, as that term is defined in § 56-576 of the Code of Virginia, and desire to obtain standby service from utilities.

20VAC5-317-20. Duty to provide rate for [~~stand-by~~ standby] service.

Every utility subject to the provisions of § 56-235.1:1 of the Code of Virginia shall provide a rate for standby service to customers in its certificated territory that operate a cogeneration facility in the Commonwealth that generates renewable energy as defined in § 56-576 of the Code of Virginia.

20VAC5-317-30. Costs to be recovered in [~~stand-by~~ standby] rates.

Costs to be recovered in utility rates for standby service provided to cogeneration facilities generating renewable energy shall include, but are not limited to, the following:

1. [~~Metering~~ Customer] charges [, including, but not limited to, metering charges] to recover utility costs associated with metering facilities, meter reading (where appropriate), processing, communication equipment (where appropriate), and administration.

2. Distribution service charges to recover utility costs associated with distribution facilities including [, but not limited to,] the costs of transformers and other distribution equipment necessary to provide standby service.

3. Transmission service charges to recover utility costs (i) for transmission services provided to the utility by the regional transmission entity of which the utility is a member, as determined under applicable rates, terms, and conditions approved by the Federal Energy Regulatory Commission [,] and (ii) charged to the utility that are associated with demand response programs approved by the Federal Energy Regulatory Commission and administered by the regional transmission entity of which the utility is a member.

4. Electricity supply service charges to recover [(i)] utility fixed costs and nonfuel-related operating and maintenance expenses associated with investments in generating units and [(ii)] capacity payments associated with power purchases including, but not limited to, a return on the undepreciated generating unit investments, associated income taxes, depreciation expenses, operations and maintenance expenses, and property taxes.

5. Fuel charges to recover utility fuel costs including purchased power costs.

20VAC5-317-40. Initial implementation of standby rates.

On or before [~~within 90 days of the effective date of these regulations~~ April 1, 2010] , each utility shall submit to the State Corporation Commission (commission) a plan setting forth the utility's plan for compliance with this chapter. A utility may submit its existing standby provisions as its proposed plan for compliance with this chapter. Thereafter, following notice and an opportunity for hearing, the commission will determine whether a utility's plan complies with this chapter.

20VAC5-317-50. Waiver.

The commission may waive any or all parts of this chapter for good cause shown.

VA.R. Doc. No. R10-2091; Filed December 7, 2009, 12:46 p.m.

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TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Proposed Regulation

Title of Regulation: **22VAC40-601. Food Stamp Program (amending 22VAC40-601-10, 22VAC40-601-40; adding 22VAC40-601-50, 22VAC40-601-60).**

Statutory Authority: § 63.2-217 of the Code of Virginia.

Public Hearing Information:

February 17, 2010 - 10 a.m. - Department of Social Services, 801 East Main Street, 2nd Floor, Richmond, VA

Public Comment Deadline: March 5, 2010.

Agency Contact: Celestine Jackson, Program Consultant, Department of Social Services, Division of Benefit Programs, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7376, FAX (804) 726-7356, TTY (800) 828-1120, or email celestine.jackson@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia requires the State Board of Social Services to adopt regulations necessary or desirable to operate assistance programs in Virginia. The federal government delegates authority to state agencies in 7 CFR 271.4 to administer the program within the states.

The Food, Conservation, and Energy Act of 2008 (Pub. L. No. 110-246) (FCEA) contains a provision allowing states to expand transitional benefits to cases with children who

receive state maintenance-of-effort (MOE) funds or state funds that do not count toward the state MOE requirements.

Federal regulation, 7 CFR 273.2(h), allows states an option to either deny food stamp applications after 30 days or to extend the pending status.

Purpose: This regulatory action will change how food stamp applications are handled when an application is not processed after 30 days because information is lacking due to the fault of the household. The purpose is to reduce the number of administrative matters held open by local eligibility workers. The amount of benefits households receive, and the number of eligible households, will not be affected by the change in how applications are processed.

Citizens who seek food stamp benefits must apply for them in the city or county where they live. Local eligibility workers have 30 days to process an application for food stamp benefits. Benefits are calculated from the application date, so eligible households will receive a higher benefit if the application is filed early in the month. Currently, if the eligibility worker is unable to process the application at the end of 30 days because of the applicant's failure to provide information or to take other needed actions, the eligibility worker must extend the processing period by an additional 30 days. If the applicant supplies the information or takes the needed actions during the second 30 day period, benefits are prorated from the date the information is supplied. The application is denied if information is still needed at the end of the 60th day.

Approximately 30% of food stamp applications that are held for the extended period are processed, while the majority of the pending applications are ultimately denied because of the failure of the applicant household to provide needed information.

This regulatory action will create a new section, 22VAC40-60-50, that will require applications for Supplemental Nutrition Assistance Program (SNAP) benefits to be disposed of within 30 days. Eligibility workers will be required to reopen the denied application if an applicant provides the information before the 60th day. If the household is eligible, benefits will be calculated from the date the last verification was provided.

This regulatory action will also create a second new section, 22VAC40-60-60, providing that transitional SNAP benefits will apply to households with children whose state-funded MOE program benefits or benefits from a state funded program that does not count toward MOE programs or benefits end in the same manner as federally funded public assistance benefits. The transitional benefits component allows eligibility for SNAP benefits to be determined without considering current circumstances to allow the recipient to adjust to the loss of the public assistance income source. Transitional SNAP benefits are a means to provide up to five months of SNAP benefits to households leaving Temporary Assistance for Needy Families (TANF) cash assistance without requiring the household to submit additional paperwork or information. The federal Food, Conservation, and Energy Act of 2008 (FCEA) contains a provision that allows states an option to expand transitional benefits to cases with children who receive state MOE funds or state funds that do not count toward the state MOE requirements. The Department of Social Services would like to expand transitional benefits to include the closure of state-funded programs that count toward the TANF MOE requirement, such as the VIEW Transitional Payment (VTP) component, or state-funded programs that do not count toward the TANF MOE requirement, such as the General Relief Program.

FCEA renamed the Food Stamp Program the Supplemental Nutrition Assistance Program on a national basis. This change acknowledges the transformation that has occurred in the delivery of benefits. Benefits are no longer issued through paper coupons or stamps but are instead issued electronically. FCEA does not mandate adoption of the SNAP name by states; however, adoption of the name will lessen confusion as all references, guidance documents, and instructions provided by the U.S. Department of Agriculture will identify the program as SNAP. The name change is also important because it focuses on the importance of SNAP in meeting the nutritional needs of low-income Virginians. Further, it reduces the stigma associated with receiving food stamps. The Department of Social Services will be phasing in the program name change gradually.

These amendments will not affect the health or safety of citizens.

Substance: New 22VAC40-601-50 mandates that applications for SNAP benefits be disposed of within 30 days. If an application cannot be processed by the 30th day because information needed to determine eligibility is lacking due to the fault of the household, the application must be denied. The eligibility worker must reinstate the application and prorate benefits to the date the verification was provided if the applicant provides the information during the next 30 days. Applicants will not be required to submit a new application to have the local department of social services reopen the case and consider any newly submitted information. Federal regulation 7 CFR 273.10(g)(ii) requires that the eligibility worker send applicants a notice that details the actions or information needed and inform the applicant that the denial will be cancelled if the applicant provides the information within 30 days.

New 22VAC40-601-60 provides that transitional SNAP benefits will apply to households with children whose state-funded programs or benefits end in the same manner as federally funded public assistance benefits. The transitional benefits component allows eligibility for SNAP benefits to be determined without considering current circumstances to

allow the recipient to adjust to the loss of the public assistance income source. Transitional food stamp benefits allow eligible households to receive benefits for up to five months without a new application while the households adjust to the terminated TANF benefit.

This regulatory action also changes all references in the regulation from "Food Stamp Program" and "food stamps" to "Supplemental Nutrition Assistance Program (SNAP)" and "SNAP benefits."

Issues: This regulatory action will benefit workers of local departments of social services by allowing them to dispose of SNAP applications that likely will be abandoned by the applicant. Instead of holding an application in pending status for up to 60 days, the application would be denied after 30 days if the applicant has failed to provide requested verification or information to process the application. If the applicant subsequently provides the requested verification or information, the local department must reactivate the application and continue the processing, so it does not result in any lost benefits to the household. Eligible households will receive the same amount of benefits with implementation of new 22VAC40-601-50 as they would under the current process.

New 22VAC40-601-60 provides advantages to recipient SNAP households whose TANF or state-funded programs end when the SNAP benefit amount is held constant for up to five months, regardless of the current circumstances. Households may elect to withdraw from the transitional benefits component in order to have current circumstances evaluated if substantial changes exist in addition to the loss of the public assistance income. This provision does not offer any advantages or disadvantages to the local social services staff.

Low-income Virginia households that may not have applied for food stamp benefits because of the perceived stigma of receiving a "welfare" benefit are benefited by changing the program. The name change also benefits participant families by emphasizing the importance of the program in supplementing families' budgets to assist them in meeting their nutritional needs.

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

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to: 1) change the name of the program from "Food Stamp Program" to "Supplemental Nutrition Assistance Program" (SNAP) and the name of the benefits from "food stamps" to "SNAP benefits," 2) expand transitional SNAP benefits to children who receive state maintenance-of-effort (MOE) funds or state funds that do not count toward the state MOE requirement, and 3) mandate that applications for SNAP benefits be processed within 30 days, rather than the current 60 day period in which they remain open.

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

Estimated Economic Impact

Name change

The federal Food, Conservation, and Energy Act of 2008 (FCEA) renamed the Food Stamp Program the Supplemental Nutrition Assistance Program on a national basis. This change acknowledges the transformation that has occurred in the delivery of benefits. Benefits are no longer issued through paper coupons or stamps but are instead issued electronically. FCEA does not mandate adoption of the SNAP name by states; however, adoption of the name will lessen confusion as all references, guidance documents, and instructions provided by the U.S. Department of Agriculture will identify the program as SNAP. The name change is also important because it focuses on the importance of SNAP in meeting the nutritional needs of low-income Virginians. Further, it reduces the stigma associated with receiving food stamps. The Virginia Department of Social Services (DSS) will be phasing in the program name change gradually.

Expand Transitional Benefits

The Board proposes to provide that transitional SNAP benefits will apply to households with children whose state-funded MOE program benefits or benefits from a state funded program that does not count toward MOE end in the same manner as federally funded public assistance benefits. The transitional benefits component allows eligibility for SNAP benefits to be determined without considering current circumstances to allow the recipient to adjust to the loss of the public assistance income source. Transitional SNAP benefits are a means to provide up to five months of SNAP benefits to households leaving TANF cash assistance without requiring the household to submit additional paperwork or information. The FCEA contains a provision that allows states an option to expand transitional benefits to cases with children that receive state MOE funds or state funds that do not count toward the state MOE requirements. Approximately 3,600 TANF cases are closed per month.[1] According to DSS, at least half those households will be eligible for the proposed transitional benefits. Since all of the additional transitional benefits are paid for with federal dollars, this is unambiguously a net benefit for the Commonwealth.

SNAP Application Processing

The Board also proposes to change how SNAP benefit applications are handled when an application is not processed after 30 days because information is lacking due to the fault of the household. The purpose of this proposed regulatory action is to reduce the number of administrative matters held

open by local eligibility workers. According to DSS, the amount of benefits households receive, and the number of eligible households, will not be affected by the change in how applications are processed.

Citizens who seek SNAP benefits must apply for them in the city or county where they live. Local eligibility workers have 30 days to process an application for SNAP benefits. Benefits are calculated from the application date, so eligible households will receive a higher benefit if the application is filed early in the month. Currently, if the eligibility worker is unable to process the application at the end of 30 days because of the applicant's failure to provide information or to take other needed actions, the eligibility worker must extend the processing period by an additional 30 days. If the applicant supplies the information or takes the needed actions during the second 30 day period, benefits are prorated from the date the information is supplied. The application is denied if information is still needed at the end of the 60th day.

Approximately 30% of SNAP applications that are held for the extended period are processed, while the majority (or about 1,000 per month) of the pending applications are ultimately denied because of the failure of the applicant household to provide needed information. The Board proposes to require that applications for SNAP benefits be disposed of within 30 days. Eligibility workers will be required to reopen the denied application if an applicant provides the information before the 60th day. If the household is eligible, benefits will be calculated from the date the last verification was provided.

Under the proposed amended system, local departments of social services will save an estimated 15 to 30 minutes of staff time for each of the approximate 1,000 applications that are ultimately denied because of the failure of the applicant household to provide needed information. That works out to about a range of 250 to 500 hours of staff time saved per month. Since the amount of benefits households receive and the number of eligible households will not be affected by the change in how applications are processed, while there is a significant reduction in cost due to reduced staff time expended, this proposal should produce a net benefit.

Businesses and Entities Affected. The proposed amendments affect the state and local departments of social services, and SNAP recipients and applicants.

Localities Particularly Affected. The proposed amendments affect Virginia localities. Localities with proportionately more residents receiving SNAP benefits will be particularly affected.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed new transitional benefits will moderately increase the net worth of households who receive this aid.

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

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

Real Estate Development Costs. The proposed amendments will 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.

[1] Estimate based on data provided by the Virginia Department of Social Services

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

This regulatory action changes the title name and all references in the regulation from "Food Stamp Program" and "food stamps" to "Supplemental Nutrition Assistance Program (SNAP)" and "SNAP benefits."

It creates a new section, 22VAC40-601-50, that mandates applications for SNAP benefits be disposed of within 30 days. If an application cannot be processed by the 30th day because information needed to determine eligibility is lacking due to the fault of the household, the application

must be denied. The eligibility worker must reinstate the application and prorate benefits to the date the verification was provided if the applicant provides the information during the next 30 days.

A second new section, 22VAC40-601-60, which provides that transitional SNAP benefits to households with children whose state-funded maintenance-of-effort (MOE) program benefits or benefits from a state funded program that does not count toward MOE end in the same manner as federally funded Temporary Assistance for Needy Families (TANF) benefits. The transitional benefits component allows eligibility for SNAP benefits to be determined without considering current circumstances to allow the recipient to adjust to the loss of the public assistance income source.

CHAPTER 601
~~FOOD STAMP~~ SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

22VAC40-601-10. Definitions.

The following words and terms when used in these guidelines will have the following meaning unless the context clearly indicates otherwise:

"Access device" means any card, plate, code, account number, or other means of access that can be used alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value, or that can be used to initiate a transfer of funds under the Food Stamp Act of 1977, as amended.

"Administrative disqualification hearing" or "ADH" means an impartial review by a hearing officer of a household member's actions involving an alleged intentional program violation for the purpose of rendering a decision of guilty or not guilty of committing an intentional program violation (IPV).

"Authorization to participate" or "ATP" means a document authorizing a household to receive a ~~food stamp~~ SNAP allotment in a specific amount for a specific entitlement period from an authorized food coupon issuance agent.

"Hearing officer" means an impartial representative of the state who receives requests for administrative disqualification hearings or fair hearings. The hearing officer has the authority to conduct and control hearings and to render decisions.

"Intentional program violations" or "IPV" means any action by an individual who intentionally made a false or misleading statement to the local department, either orally or in writing, to obtain benefits to which the household is not entitled; concealed information or withheld facts to obtain benefits to which the household is not entitled; or committed any act that constitutes a violation of the Food Stamp Act, ~~Food Stamp~~ SNAP regulations, or any state statutes relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons, authorization to participate cards, access devices, or ~~food stamp~~ SNAP benefits.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"SNAP" means Supplemental Nutrition Assistance Program.

22VAC40-601-40. Administrative disqualification hearing.

A. The local department is responsible for investigating any case of alleged intentional program violation and ensuring that appropriate cases are acted upon either through referral for an administrative disqualification hearing or for prosecution by a court of appropriate jurisdiction.

B. In order for a local department to request an ADH, there must be clear and convincing evidence that demonstrates a household member committed or intended to commit an IPV.

C. The local department shall ensure that evidence against the household member alleged to have committed an IPV is reviewed by either an eligibility supervisor or the local department director to certify that the evidence warrants referral for an ADH.

D. Before submitting the referral for an ADH to the state hearing manager, the local department shall send a notice to the person suspected of an IPV that the member may waive the right to a hearing. The person must sign a waiver request and return it to the local department within 10 days from the date the notice was sent to the household member in order to avoid the submission of the ADH referral.

E. If the local department receives a signed waiver, there will not be a hearing but the person will be disqualified for the length of time prescribed by federal policy.

F. The hearing officer will schedule a date for the ADH and provide written notice to the household member suspected of an IPV by certified mail - return receipt requested or first class mail. The notice must be mailed at least 30 days in advance of the date the ADH scheduled. If the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held. The hearing officer must compare the household's address on the local department referral with other documents associated with the case. A revised notice must be provided to the household member if an error is discovered in the address used for the original notice of the hearing.

G. The requirement to notify the individual about the ADH will be met if there is proof of receipt of the advance notice of the ADH or if there is proof that the person refused to accept the notice.

H. The time and place of the ADH shall be arranged so that the hearing is acceptable to the person suspected of an IPV.

I. The person or representative may request a postponement of the ADH if the request for postponement is made at least 10 days in advance of the date of the scheduled hearing.

J. The ADH may be held even if the person or representative subsequently cannot be located or fails to appear without good cause.

K. If the hearing officer finds that a household member committed an IPV but the hearing officer later determines there was good cause for not appearing, including that the notice was sent to an incorrect address, the previous decision will no longer be valid. A new ADH shall be conducted.

L. A pending ADH shall not affect the household or an individual's right to be certified and participate in ~~the Food Stamp Program~~ SNAP.

M. The hearing officer shall:

1. Identify those present for the record.

2. Advise the person or representative that he may refuse to answer questions during the hearing.

3. Explain the purpose of the ADH, the procedure, how and by whom a decision will be reached and communicated, and the option of either the local department or the household to request an administrative review of the hearing officer's decision. The hearing officer shall also explain that only the household may seek a change to the hearing officer's decision through a court of appropriate jurisdiction.

4. Consider all relevant issues. Even if the person or representative is not present, the hearing officer must carefully consider the evidence and determine if any IPV was committed based on clear and convincing evidence.

5. Request, receive and make part of the record all evidence determined necessary to render a decision.

6. Regulate the conduct and course of the hearing consistent with the process to ensure an orderly hearing.

N. The person alleged to have committed an IPV and the representative shall be given adequate opportunity to:

1. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well as during the ADH.

2. Present the case or have it presented by legal counsel or another person.

3. Bring witnesses.

4. Advance arguments without undue interference.

5. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses.

6. Submit evidence to establish all pertinent fact and circumstances in the case.

O. The hearing officer is responsible for rendering a decision based on clear and convincing evidence from the hearing record that can be substantiated by supporting evidence and applicable regulations.

P. The hearing officer shall prepare a written report of the substance of the findings, conclusions, decisions, and appropriate recommendations.

Q. The hearing officer shall notify the person of the decision in writing and of the household's right to seek an administrative review or court appeal of the decision.

R. If the hearing officer finds that the individual did commit an IPV, the written decision shall advise that household that disqualification shall occur.

S. The determination of IPV by the hearing officer cannot be reversed by a subsequent fair hearing decision.

T. Upon receipt of the notice of a decision from the hearing officer that the household member is guilty of an IPV, the local department shall inform the household of the reason for the disqualification and the date the disqualification will take effect.

22VAC40-601-50. Application processing.

Applications for SNAP benefits must be disposed of within 30 days. Applicants have 30 days to provide verification or information needed to determine eligibility of the household. If an application cannot be processed by the 30th day because such information is lacking due to the fault of the household, the application must be denied. If the applicant provides the information during the next 30 days, the eligibility worker must reinstate the application and prorate benefits to the date the last verification was provided.

22VAC40-601-60. Transitional benefits.

Transitional SNAP benefits will apply to households whose state-funded programs or benefits end in the same manner as federally funded public assistance programs. Transitional SNAP benefits will apply only to households with children. The state-funded programs may or may not be counted toward the maintenance-of-effort requirements needed for the Temporary Assistance for Needy Families block grant.

VA.R. Doc. No. R09-1977; Filed December 15, 2009, 10:43 a.m.

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TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Final Regulation

Title of Regulation: **23VAC10-210. Retail Sales and Use Tax (amending 23VAC10-210-1020).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Effective Date: February 3, 2010.

Agency Contact: Bland Sutton, Analyst, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2332, FAX (804) 371-2355, or email bland.sutton@tax.virginia.gov.

Summary:

Chapter 121 of the Acts of Assembly amended the definition of "retail sale" and "sale at retail" set forth in § 58.1-602 of the Code of Virginia to include separately stated charges for materials used in automotive refinishing and repair when such materials become permanently attached to the vehicle being refinished or repaired. This change in the definition of "retail sale" and "sale at retail" is a departure from the Department of Taxation's longstanding policy that treats automotive refinishers and painters as service providers and the taxable user or consumer of tangible personal property used in providing their service. The amended regulation allows automotive refinishers and repairers the option of continuing to operate as service providers or to be treated as retailers by separately stating their charge for materials.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

23VAC10-210-1020. Motor vehicle refinishers, painters and car washers.

A. Generally. Motor vehicle refinishers ~~and,~~ painters, and washers are generally engaged ~~primarily~~ in rendering personal services, and their gross receipts are not subject to ~~the~~ tax. ~~However, they~~ As personal service providers, motor vehicle refinishers, painters, and washers are the users and consumers of the materials used in their business and are required to pay tax on their purchases. When motor vehicle refinishers ~~and,~~ painters, and washers go beyond the rendition of services and sell tangible personal property such as accessories, parts, seatcovers, paint, etc., they are required to register and collect and ~~pay~~ remit the tax on those retail sales. ~~This section also applies to car washers.~~

B. Optional tax treatment for motor vehicle refinishers and painters. Effective July 1, 2005, the definition of "retail sale" and "sale at retail" was amended to include separately stated charges made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair. This definitional change affords motor vehicle refinishers and painters the option of either continuing to be treated as a personal service provider with respect to paint, clearcoat, sealants, and other similar items that become a component part of a motor vehicle during the refinishing or repair of the motor vehicle, or to be treated as a retailer with respect to such items. The election to be treated as a retailer is solely at the discretion of the motor vehicle refinisher or painter.

C. Motor vehicle refinishers and painters electing to operate as a retailer. A motor vehicle refinisher or painter electing to operate as a retailer is required to register with the Department of Taxation as a licensed dealer and collect and remit to the Department of Taxation the retail sales tax on all sales of tangible personal property made, including separately stated charges for automotive refinish repair materials. As a licensed dealer, a motor vehicle refinisher or painter may purchase all tangible personal property that becomes a component part of a motor vehicle during the refinishing, painting, or repair of the motor vehicle exempt of the tax for resale. Once a motor vehicle refinisher or painter elects to treat himself as a retailer, such election and tax application must be uniformly applied to all motor vehicle refinishing and repair work performed by such dealer.

D. Consumables and equipment. Regardless of whether the optional tax treatment is elected or not, motor vehicle refinishers, painters, and washers are liable for the tax on purchases of all tangible personal property used or consumed in the performance of their work, and that does not transfer to the customer.

VA.R. Doc. No. R07-250; Filed December 3, 2009, 9:22 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Commonwealth Transportation Board is exempt from the Administrative Process Act in accordance with § 2.2-4002 B 3 of the Code of Virginia, which exempts regulations relating to the location, design, specifications, or construction of public buildings or other facilities.

Title of Regulation: **24VAC30-510. Frontage Roads (repealing 24VAC30-510-10).**

Statutory Authority: § 33.1-61 of the Code of Virginia.

Effective Date: December 10, 2009.

Agency Contact: David L. Roberts, Program Administration Specialist III, Department of Transportation, Policy Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-3620, FAX (804) 225-4700, or email david.roberts@vdot.virginia.gov.

Summary:

This chapter is repealed because the content has been incorporated into the Road Design Manual, which is incorporated by reference into the Access Management Regulations: Principal Arterials (24VAC30-72) and Access

Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC30-73). As a result, the Frontage Roads regulation is no longer needed.

VA.R. Doc. No. R10-2261; Filed December 10, 2009, 3:47 p.m.

EXECUTIVE ORDER NUMBER 102 (2009)

REISSUANCE OF EXECUTIVE ORDER REGARDING USE OF VIRGINIA RECOVERY ZONE VOLUME CAP ALLOCATIONS PROVIDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Background

The American Recovery and Reinvestment Act of 2009 ("ARRA") created Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds (together, "Recovery Zone Bonds"), that must be issued before January 1, 2011 (the "Expiration Date"). Recovery Zone Bonds are intended to lower the costs of borrowing for purposes of promoting job creation and economic recovery in areas designated as Recovery Zones. Pursuant to ARRA and as described in Notice 2009-50 of the Internal Revenue Service ("Notice 2009-50"), the Commonwealth of Virginia (the "Commonwealth") received volume cap allocations of $104,396,000 in Recovery Zone Economic Development Bonds and $156,595,000 in Recovery Zone Facility Bonds (together, the "Commonwealth Allocation"). Notice 2009-50 further provides that the Commonwealth Allocation be initially allocated among counties and cities of the Commonwealth as provided on Exhibit A (the "Originally Awarded Localities" and the "Original Allocations").

Together, the ARRA and Notice 2009-50 provide that all or any portion of the Original Allocations may be waived or deemed waived by the Originally Awarded Localities, and upon such waiver, the state shall be authorized to re-allocate the waived volume cap in any reasonable manner as it shall determine in good faith in its discretion. For additional information on Recovery Zone Bonds please visit: http://www.irs.gov/pub/irs-drop/n-09-50.pdf.

It is critical that the Commonwealth and its localities take advantage of this financing mechanism to create jobs, foster economic development, and develop critical infrastructure. Therefore, to the extent any Original Allocation will not be used by the Originally Awarded Localities, it is imperative to provide for the re-allocation of such unused amounts to projects that would promote economic recovery of the Commonwealth prior to the Expiration Date.

On September 30, 2009, I issued Executive Order Number 94 to establish a procedure for the waiver of allocations by Originally Awarded Localities, and further to direct my Chief of Staff to serve as re-allocation director (the "Re-allocation Director") to establish a process for the re-allocation of such allocations waived by the Originally Awarded Localities. Since September 30, 2009, my office has received a number of requests and comments from Originally Awarded Localities and other interested parties concerning Executive Order Number 94, particularly regarding paragraph 3) under the heading "Waiver Requirements."

In response to these requests and comments and by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and Sections 2.2-103 and 2.2-435.7 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby rescind my previously-issued Executive Order Number 94 and reissue it in the form of this order to establish the following procedure for the waiver of allocations by Originally Awarded Localities, and further to direct my Chief of Staff to serve as re-allocation director (the "Re-allocation Director") to establish a process for the re-allocation of such allocations waived by the Originally Awarded Localities. The only changes to Executive Order Number 94 are set forth below in paragraph 3) under the heading "Waiver Requirements" and provide an extension of the filing deadline contained therein and additional flexibility with respect to the commitment letter filing requirement.

Waiver Requirements

1) By November 2, 2009, Originally Awarded Localities intending to utilize all or any portion of the Original Allocations must file a completed Notice of Intent with the Re-allocation Director. The amount so indicated will be reserved for such locality (the "Reserved Amount"). The form for such Notice of Intent is available from the Virginia Association of Counties, the Virginia Municipal League, and at www.stimulus.virginia.gov.

2) Failure by any Originally Awarded Locality to file such Notice of Intent shall be deemed a waiver of its entire Original Allocation. Any amounts so waived, with any amounts in excess of Reserved Amounts and such other amounts described herein, will be considered waived by the Originally Awarded Locality (together, "Waived Amounts").

3) By January 12, 2010, any Originally Awarded Locality with a Reserved Amount must file a Project Verification Report with the Re-Allocation Director. Such documentation will include, as applicable, (i) a resolution or action designating the Recovery Zone in accordance with Section 1400-U-1 through 1400U-3 of the ARRA, (ii) a resolution of the issuer approving the project, which may take the form of a reimbursement resolution or an inducement resolution, (iii) documentation of the appropriate governing bodies' or elected official's approval of the project, in conformity with applicable federal and state law, (iv) an opinion of bond counsel, and (v) a commitment letter from a purchaser or underwriter of the subject bonds or such other evidence of the Originally Awarded Locality's ability to sell the subject bonds before March 15, 2010, as may be reasonably acceptable to the Re-Allocation Director (such as, for example, a letter from the financial advisor to an Originally Awarded Locality stating that the Locality reasonably expects, based on the Locality's credit ratings, to be able to sell the subject bonds

in a competitive or negotiated sale). The form for such Project Verification Report including applicable attachments is available from the Virginia Association of Counties, the Virginia Municipal League, and at www.stimulus.virginia.gov.

4) Failure to provide a Project Verification Report shall be deemed a waiver of the Reserved Amount, and such amount so waived shall be included in the Waived Amounts.

5) Within 30 days of issuance of any Recovery Zone Bonds, the Originally Awarded Locality (or the entity issuing Recovery Zone Bonds on its behalf) shall provide to the Re-allocation Director the completed Internal Revenue Service reporting form then in effect for the type of Recovery Zone Bonds being issued.

6) Any Original Allocation, including any Reserved Amount, of Recovery Zone Bonds not issued by March 15, 2010 will be deemed waived, and such amount so waived shall be included in the Waived Amounts.

Any Waived Amounts, including amounts voluntarily waived, deemed waived or returned to the Re-allocation Director pursuant to the process, will be available for re-allocation by the Re-allocation Director to another locality or issuer ("Subsequent Awarded Entity"). Notwithstanding anything herein to the contrary, any Originally Awarded Locality or any Subsequent Awarded Entity may voluntarily waive its allocation at any time by providing notice to the Re-allocation Director.

Re-Allocation Process

1) The Re-allocation Director shall develop a process for the application, evaluation and re-allocation of the Waived Amounts to maximize the use of this financing mechanism to stimulate jobs and develop critical infrastructure within the Commonwealth.

2) The Re-allocation Director is hereby authorized to delegate to any official or agency or department of the Commonwealth any matter or task described herein, to take any action that he, as the Re-allocation Director, deems necessary or desirable to affect the purposes hereof, and to create an advisory committee consistent with, and in furtherance of, this Executive Order.

3) Determination of compliance with the procedures and requirements set forth herein or in the additional guidance, including any filings to be made and the timing and substance thereof, shall be subject to the sole discretion of the Re-allocation Director. The Re-allocation Director shall have sole discretion as to the manner and location of any on-line postings required herein or pursuant to such further rules and procedures promulgated by him so long as such posting are on an official website of the Commonwealth.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until December 31, 2011, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 4th day of December 2009.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 103 (2009)

CABINET RESPONSIBILITY FOR THE VIRGINIA PUBLIC BROADCASTING BOARD

Importance of the Issue

The Virginia Public Broadcasting Board serves as a conduit for state financial support of public television and radio stations, including the radio reading service. It provides grants and contracts with public broadcasting stations to implement instructional television programming for K-12 schools and community interest programs. Public broadcasting stations are a leading provider of digital learning content for pre-K-12 educators and offer a broad array of other educational services to teachers, parents and children.

For organizational purposes, the Public Broadcasting Board has been under the oversight of the Secretary of Administration. While this arrangement has served the Commonwealth well, educational and cultural services could be further improved by transferring the Public Broadcasting Board to the Secretary of Education. Education is a core value of public broadcasting and the Public Broadcasting Board has long been a partner with higher education to provide quality distance learning to students and faculty.

The transfer will facilitate greater cooperation between the Public Broadcasting Stations and Virginia's schools, colleges and universities as new emerging digital technology promises to provide additional tools to address curriculum objectives.

Transfer of the Public Broadcasting Board to the Secretary of Education

Section 2.2-203 of the Code of Virginia assigns the Virginia Public Broadcasting Board to the Secretary of Administration. Section 2.2-203 also permits the Governor, by executive order, to assign any agency listed in this section to another secretary. Accordingly, I hereby transfer responsibility for the Virginia Public Broadcasting Board from the Secretary of Administration to the Secretary of Education.

This Executive Order shall become effective upon its signing and shall remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 7th day of December 2009.

/s/ Timothy M. Kaine
Governor

DEPARTMENT OF CONSERVATION AND RECREATION

Proposed Consent Special Order for Kenbridge Construction Co., Inc.

Purpose of notice: To seek public comment on the terms of a proposed consent special order (order) issued to Kenbridge Construction Co., Inc. (Kenbridge).

Public comment period: January 4, 2010, through February 2, 2010.

Summary of proposal: The order describes a settlement between the Virginia Soil and Water Conservation Board and Kenbridge that resolves alleged past violations of the Virginia Stormwater Management Act and regulations at the Dinwiddie High School construction project located in Dinwiddie County. The proposed order requires payment of $19,948.

How to comment: The Department of Conservation and Recreation accepts written comments from the public by mail, email, or facsimile. All comments must include the name, address, and telephone number of the person commenting. Comments must be received before the end of the comment period on February 2, 2010. A copy of the order is available on request.

Contact for copies of documents (e.g., proposed order) or other information: David Kearney, Department of Conservation and Recreation, 203 Governor Street, Suite 206, Richmond, VA 23219, telephone (804) 225-2558, FAX (804) 786-1798, or email at david.kearney@dcr.virginia.gov.

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

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

2009 Changes to Entry-Level Law Enforcement Training Standards

The Committee on Training of the Criminal Justice Services Board has approved changes to the training objectives, criteria, and lesson plan guides of the compulsory minimum training standards for entry level law-enforcement officers as part of its annual review under 6VAC20-20-25. Copies of the changes may be obtained by contacting Judith Kirkendall at Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, or judith.kirkendall@dcjs.virginia.gov. A copy may be downloaded from the agency's website by going to www.dcjs.virginia.gov, click on Standards and Training under Quick Links, click on Compulsory Minimum Training Standards in the left column, click on Law Enforcement in the center column, and click on 2009 Changes to Entry-level Law Enforcement Training Standards at the top of the table of contents.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order for Augusta County Service Authority

An enforcement action has been proposed for Augusta County Service Authority for violations in Augusta County. A proposed consent order describes a settlement to resolve wetland reporting violations at its Augusta Regional Landfill. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Steven W. Hetrick will accept comments by email at steven.hetrick@deq.virginia.gov, FAX (540) 574-7878, or postal mail Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from January 4, 2010, to February 3, 2010.

Proposed Consent Special Order for Haven Hollow Farm

An enforcement action has been proposed for Haven Hollow Farm for violations in Buckingham County, Virginia. A special order by consent will address and resolve violations of environmental law and regulations. A description of the proposed action is available at the DEQ 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 January 5, 2010, to February 3, 2010.

Notice of Availability of 2008 and 2009 Fish Tissue Monitoring Data

Pursuant to § 62.1-44.19:6 A 3 of the Code of Virginia, the Virginia Department of Environmental Quality (DEQ) is giving notice that new data concerning the presence of toxic contaminants in fish tissue are available for calendar years 2008 and 2009. Fish monitoring in 2008 was performed at selected sites in the following river basins in Virginia: the York River watershed (Mattaponi River, South Anna, and North Anna including Lake Anna and Pamunkey River drainages), the Chesapeake Bay Small Coastal and Atlantic Ocean Small Coastal drainages, and the Potomac River and James River watersheds. A special study of Kepone in fish tissue was conducted in the Lower James River watershed in 2009.

The new data have been posted on the DEQ website at http://www.deq.virginia.gov/fishtissue/fishtissue.html and http://www.deq.virginia.gov/fishtissue/kepone.html. All other

data for fish and/or sediments analyzed by DEQ between 1993 and 2008 also can be found on this website.

For additional information contact Gabriel Darkwah at (804) 698-4127, toll free 1-800-592-5482, or by email gabriel.darkwah@deq.virginia.gov.

Notice of Citizen Nomination of Surface Waters for Water Quality Monitoring

In accordance with § 62.1-44.19:5 F of the Code of Virginia, the Water Quality Monitoring Information and Restoration Act, the Virginia Department of Environmental Quality (DEQ) has developed guidance for requests from the public regarding specific segments that can be nominated for consideration to be included in the Virginia Department of Environmental Quality (DEQ's) annual Water Quality Monitoring Plan.

Any citizen of the Commonwealth who wishes to nominate a water body or stream segment for inclusion in DEQ's Water Quality Monitoring Plan should refer to the guidance in preparation and submission of their requests. All nominations must be received by April 30, 2010, to be considered for the 2011 calendar year. Copies of the guidance document and nomination form are available online at http://www.deq.virginia.gov/cmonitor/.

Contact Information: Stuart Torbeck, Department of Environmental Quality, Water Quality Data Liaison, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4461, or email charles.torbeck@deq.virginia.gov.

Restore Water Quality in the North Fork Holston River

Announcement of a public meeting and an effort to restore water quality in the North Fork Holston River in Smyth County, Virginia.

Public meeting location: The meetings will be held at Friend's Community Church, 145 Palmer Avenue, Saltville, Virginia on January 25, 2010, from 6 p.m. to 8 p.m. and at Hilton Elementary School, 303 Academy Road, Hiltons, Virginia on January 26, 2010. In case of inclement weather the snow dates will be February 8, 2010, at Friend's Community Church in Saltville, Virginia and February 11, 2010, at Hilton Elementary School in Hiltons, Virginia.

Purpose of notice: To seek public comment and announce a public meeting on a water quality improvement study by the Virginia Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation for the North Fork Holston River.

Meeting description: Final public meeting on a study to restore water quality.

Description of study: DEQ has identified sources of mercury contamination in fish in the waters of the North Fork Holston. The "impaired" stream segments total approximately 81 miles. The stream is impaired based on exceedences of the screening value for mercury in fish tissue.

During the study, the sources of the mercury contamination were identified and total maximum daily loads (TMDLs) developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels must be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes public meetings and a public comment period for the draft study report. After public comments are considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, January 25, 2010, to March 1, 2010. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available on the impaired waters from the contacts below or on the DEQ website at www.deq.virginia.gov/tmdl.

Contact for additional information: Shelley Williams, Regional TMDL Coordinator, Virginia Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4845, FAX (276) 676-4899, or email sdwilliams@deq.virginia.gov.

Total Maximum Daily Load for Accotink Creek

Announcement of a Total Maximum Daily Load (TMDL) study to restore water quality in a portion of Accotink Creek that has an aquatic life use impairment.

Purpose of notice: The United States Environmental Protection Agency (EPA), Virginia Department of Environmental Quality (DEQ), and the Virginia Department of Conservation and Recreation announce the third Technical Advisory Committee (TAC) meeting for the Accotink Creek benthic TMDL study.

TAC meeting: Tuesday, January 19, 2010, 10:30 a.m. - 12:30 p.m., Fairfax County Government Center, Conference Rooms 4 and 5, 12000 Government Center Parkway, Fairfax, VA 22035.

Meeting description: This is the third TAC 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: A portion of Accotink Creek has been identified as impaired on the federal Clean Water Act § 303(d) list for not supporting the aquatic life use due to poor health in the benthic biological community. EPA, with the assistance of Virginia agencies, is working to identify the benthic stressors causing the aquatic life use impairment on Accotink Creek. The Accotink Creek watershed lies within the Town of Vienna, City of Fairfax, and Fairfax County. Below is a description of the impaired portion of Accotink Creek that will be addressed in this study:

Stream Name	Watershed Location	Impair-ment	Area (miles)	Upstream Limit	Down-stream Limit
Accotink Creek	Fairfax County Fairfax City Town of Vienna	Aquatic Life Use Benthic Macro-invertebrates	7.35	Conflu-ence of Accotink Creek with Calamo Branch	Start of the tidal waters of Accotink Bay

During the study, EPA will develop a TMDL for the impaired watershed. 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 January 19, 2010, to February 18, 2010. 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: Charles Martin, Virginia Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4462, FAX (804) 698-4116, or email charles.martin@deq.virginia.gov.

Total Maximum Daily Load for 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 third Technical Advisory Committee (TAC) meeting for the Tidal Four Mile Run bacteria TMDL study.

TAC meeting: Thursday, January 21, 2010, 10:30 a.m. - noon, Shirlington Branch Library, Campbell Meeting Room, 4200 Campbell Avenue, Arlington, VA 22206.

Meeting description: This is the third 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 federal 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	Impair-ment	Area ($miles^2$)	Upstream Limit	Down-stream Limit
Four Mile Run (Tidal Waters)	Arlington County City of Alexandria	Recrea-tional use Impair-ment due to E. coli bacteria	0.0516	Tidal waters of Four Mile Run, approxi-mately 1.46 river-miles upstream from the mouth of the river	Conflu-ence 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 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 January 21, 2010, to February 20, 2010. 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, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, or email katie.conaway@deq.virginia.gov.

Water Quality Improvement Plan for Ash Camp Creek and Twittys Creek

The Department of Conservation and Recreation and the Department of Environmental Quality (DEQ) seek written and oral comments from interested persons on a Water Quality Improvement Plan for the following benthic impaired streams - 2.36 miles of Ash Camp Creek and 7.25 miles of Twittys Creek. The impaired stream segments are located in

the south central region of Virginia in Charlotte County. The impaired water bodies are tributaries to the Roanoke Creek in the Roanoke River Basin.

Total maximum daily loads (TMDLs) of impaired segments of the Ash Camp Creek and Twittys Creek were approved by EPA on April 26, 2004, and on September 30, 2004, respectively. Approved reports can be found on DEQ's websites at: http://www.deq.virginia.gov/tmdl/apptmdls/roankrvr/accbc.pdf and http://www.deq.virginia.gov/tmdl/apptmdls/roankrvr/twittybc.pdf.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an Implementation Plan (IP) for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality standards. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The second public meeting for the development of the IP will be held on Wednesday, January 13, 2010, at 6:30 p.m. in the Charlotte County Board of Supervisor room in the Charlotte County Administration Office Building located at 250 LeGrande Ave., Suite A, Charlotte Courthouse, VA 23923. If county schools are closed due to inclement weather, the meeting will be held on Wednesday, January 20, 2010, at 6:30 p.m. The IP addresses corrective actions and incentives to reduce sediment loadings from agricultural land (pasture), and transitional and urban/commercial lands.

The public comment period will end on February 12, 2010. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and be sent to Dr. Ram Gupta, Department of Conservation and Recreation, 101 North 14th Street, 11th Floor, James Monroe Building, Richmond, VA 23219, telephone (804) 371-0991, email address ram.gupta@dcr.virginia.gov.

Restore Water Quality for Upper York River and Recreation Use Areas of Lower Mattaponi and Lower Pamunkey Rivers

Public meeting: January 20, 2010, at the West Point Library at 712 Main Street, West Point, VA 23181. An afternoon public meeting will be held from 2 p.m. to 4 p.m. and the evening public meeting from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation are announcing a study to restore water quality for a shellfish growing area, a public comment opportunity, and two public meetings.

Meeting description: First public meetings on a study to restore water quality for shellfish growing area of the Upper York River near West Point and the recreational use areas of the Lower Mattaponi and Lower Pamunkey Rivers, which are impaired due to bacterial violations.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in a shellfish growing areas of the Upper York and the recreational use areas of the Lower Mattaponi and Lower Pamunkey Rivers. The shellfish condemnation area includes a total area of approximately 7mi^2 in the York River and the impaired recreational use area is total of approximately 7mi^2 in the Pamunkey and Mattaponi Rivers. All impairments lie within portions of King and Queen, King William, and New Kent Counties. These streams are impaired for failure to meet the designated use of shellfish consumption or recreational use because of bacterial water quality standard violations.

The study reports the current status of the creeks via sampling performed by the Virginia Department of Health, Division of Shellfish Sanitation, and DEQ and the possible sources of bacterial contamination. The study recommends total maximum daily loads (TMDLs) for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will expire on February 20, 2010. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Virginia Department of Environmental Quality, Piedmont Regional Office, 4949 A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email margaret.smigo@deq.virginia.gov.

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 December 4, 2009, December 14, 2009, and December 16, 2009. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Final Rules for Game Operation:

Director's Order Number Eighty-Seven (09)

Virginia Lottery Retailer Incentive Program Rules "Have You Played?" Final Rules for Game Operation (effective 12/3/09)

Director's Order Number Eighty-Eight (09)

Virginia Lottery Retailer Incentive Program Rules "Be A VIP With The Redskins" Final Rules for Game Operation (effective 12/8/09)

Director's Order Number Eighty-Nine (09)

Virginia Lottery Retailer Incentive Program Rules With Miller Mart Chain "Just In Time For The Big Game Promotion" Final Rules for Game Operation (effective 12/8/09)

Director's Order Number Ninety (09)

Virginia's Instant Game Lottery 1158; "Find The 9's Tripler" Final Rules for Game Operation (effective 12/15/09)

Director's Order Number Ninety-One (09)

Virginia's Instant Game Lottery 1163; "$15,000 Payday" Final Rules for Game Operation (effective 12/15/09)

Director's Order Number Ninety-Two (09)

"Subscriptions Movie Fun Pack Sweepstakes" Final Rules for Game Operation (effective 12/10/09)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

The Virginia Family Planning Demonstration Waiver (Plan First)

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to continue and expand Medicaid coverage of family planning waiver services through the program known as Plan First. The Plan First family planning program is authorized by the Centers for Medicare and Medicaid Services (CMS) under an 1115 demonstration waiver that expires September 30, 2010. DMAS may request continuation and expansion of the demonstration beyond this date. One requirement for continuation is to obtain input from all interested parties regarding the possibility of continuation of the demonstration program.

The Plan First family planning demonstration waiver provides access to medical family planning services to low-income women and men who would normally not have public or private health coverage. Plan First provides these families the means for obtaining medical family planning services to prevent unintended pregnancies and space intended pregnancies for healthier mothers and children. Family planning services do not cover abortion services or referrals for abortions. Plan First is not available to individuals under 19 years of age; they can be enrolled for full Medicaid or FAMIS benefits.

In addition to continuing this project, DMAS plans to modify the waiver in the areas of eligibility, eligibility renewal, and services codes. The proposed modifications reflect changes authorized through the Appropriation Act and CMS policy revisions.

Eligibility

DMAS intends to expand eligibility for Medicaid coverage of family planning services to individuals with a family income up to 200% of the federal poverty level in accordance with item 306 JJ of the 2009 Appropriation Act. Currently, eligibility is limited to individuals with family income up to 133% of the federal poverty level.

In 2007, CMS mandated that DMAS change eligibility policy not to allow for individuals to be eligible if they have other creditable health care coverage. DMAS has requested to remove this requirement. DMAS will enforce that Medicaid is payer of last resort. This policy is already in place and is monitored and edited through the Medical Management Information System.

DMAS currently does not allow retroactive coverage due to a prior CMS mandate. This mandate required DMAS to remove retroactive coverage of individuals in the waiver, up to three months from the date the application is received. DMAS has requested approval to allow retroactive coverage for up to three months again. Retroactive coverage is consistent with Medicaid eligibility policy.

Eligibility Renewal

DMAS does not allow ex parte renewal for the waiver due to a prior CMS mandate. DMAS has requested approval of the ex parte renewal process. An ex parte renewal is an internal review of eligibility based on available information. By relying on information already available, the eligibility worker can avoid unnecessary and repetitive requests for information from individuals that can add to administrative burdens, make it difficult for individuals to retain coverage, and cause eligible individuals to lose coverage. The enrollee is not required to complete and sign a renewal form when all information necessary to redetermine eligibility can be obtained through an ex parte renewal process. This process is identical to the Medicaid renewal process utilizing ex parte reviews.

Service Codes

In addition to changing the eligibility requirements, DMAS has requested the addition of service codes to the current benefit package to include a more comprehensive service package of direct family planning services.

This notice is intended to satisfy the State Notice Procedures set forth in Vol. 59, No. 186 of the Federal Register (September 27, 1994). A copy of this notice is available for public review from Ashley Barton at Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia 23219, telephone (804) 371-7824, FAX (804) 225-

3961, email ashley.barton@dmas.virginia.gov 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 Ms. Barton and such comments are available for review at the same address.

Contact Information: Ashley Barton, Department of Medical Assistance Services, Maternal and Child Health Division, East Broad Street, Richmond, VA 23219, email ashley.barton@dmas.virginia.gov, telephone (804) 371-7824, FAX (804)225-3961.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for City of Bedford's Sewage Collection and Transmission System

An enforcement action has been proposed for the City of Bedford, regarding the City's sewage collection and transmission system, for alleged violations of the Virginia State Water Control Law. The proposed enforcement action requires corrective action. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX (540) 562-6725, or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from January 4, 2010, to February 3, 2010.

Proposed Enforcement Action for Craig-New Castle Public Service Authority

An enforcement action has been proposed for the Craig-New Castle Public Service Authority (PSA), regarding the PSA's wastewater treatment plant, for alleged violations of the Virginia State Water Control Law. The proposed enforcement action requires corrective action. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX (540) 562-6725, or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from January 4, 2010, to February 3, 2010.

Proposed Enforcement Action for Dare to Care Charities, Inc.

An enforcement action has been proposed for the Dare to Care Charities, Inc. (DTCC), regarding DTCC's wastewater treatment plant, for alleged violations of the Virginia State Water Control Law. The proposed enforcement action requires a civil charge and corrective action. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX (540) 562-6725, or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from January 4, 2010, to February 3, 2010.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed

Beginning with Volume 26, Issue 1 of the Virginia Register of Regulations dated September 14, 2009, the Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed will no longer be published in the Virginia Register of Regulations. The cumulative table may be accessed on the Virginia Register Online webpage at http://register.dls.virginia.gov/cumultab.htm.

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

MARINE RESOURCES COMMISSION

Title of Regulation: **4VAC20-252-10. Pertaining to the Taking of Striped Bass.**

Publication: 24:10 VA.R. 1278-1281 January 21, 2008.

Correction to Final Regulation:

Page 1279, 4VAC20-252-160 B, line 3, add a comma after "subsection"

VA.R. Doc. R08-1101

STATE BOARD OF HEALTH

Title of Regulation: **12VAC5-421. Food Regulations.**

Publication: 26:7 VA.R. 830-870 December 7, 2009.

Correction to Final Regulation:

Page 841, 12VAC5-421-50, change the paragraph numbering and cross reference in the first paragraph of 12VAC5-421-50 as follows:

A. Except as specified in subsection B...

B. In a food establishment with two...

VA.R. Doc. R09-1079