



# VIRGINIA

## REGISTER OF REGULATIONS

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**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, and notices of public hearings on regulations.

## **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.

A 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. **26:20 VA.R. 2510-2515 June 7, 2010**, refers to Volume 26, Issue 20, pages 2510 through 2515 of the *Virginia Register* issued on June 7, 2010.

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

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **Bill Janis**, Vice Chairman; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Patricia L. West**.

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

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## PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the *Register's* Internet home page (<http://register.dls.virginia.gov>).

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### May 2011 through June 2012

| <u>Volume: Issue</u> | <u>Material Submitted By Noon*</u>   | <u>Will Be Published On</u> |
|----------------------|--------------------------------------|-----------------------------|
| 27:18                | April 20, 2011                       | May 9, 2011                 |
| 27:19                | May 4, 2011                          | May 23, 2011                |
| 27:20                | May 18, 2011                         | June 6, 2011                |
| 27:21                | June 1, 2011                         | June 20, 2011               |
| 27:22                | June 15, 2011                        | July 4, 2011                |
| 27:23                | June 29, 2011                        | July 18, 2011               |
| 27:24                | July 13, 2011                        | August 1, 2011              |
| 27:25                | July 27, 2011                        | August 15, 2011             |
| 27:26                | August 10, 2011                      | August 29, 2011             |
| 28:1                 | August 24, 2011                      | September 12, 2011          |
| 28:2                 | September 7, 2011                    | September 26, 2011          |
| 28:3                 | September 21, 2011                   | October 10, 2011            |
| 28:4                 | October 5, 2011                      | October 24, 2011            |
| 28:5                 | October 19, 2011                     | November 7, 2011            |
| 28:6                 | November 2, 2011                     | November 21, 2011           |
| 28:7                 | November 15, 2011 ( <b>Tuesday</b> ) | December 5, 2011            |
| 28:8                 | November 30, 2011                    | December 19, 2011           |
| 28:9                 | December 13, 2011 ( <b>Tuesday</b> ) | January 2, 2012             |
| 28:10                | December 27, 2011 ( <b>Tuesday</b> ) | January 16, 2012            |
| 28:11                | January 11, 2012                     | January 30, 2012            |
| 28:12                | January 25, 2012                     | February 13, 2012           |
| 28:13                | February 8, 2012                     | February 27, 2012           |
| 28:14                | February 22, 2012                    | March 12, 2012              |
| 28:15                | March 7, 2012                        | March 26, 2012              |
| 28:16                | March 21, 2012                       | April 9, 2012               |
| 28:17                | April 4, 2012                        | April 23, 2012              |
| 28:18                | April 18, 2012                       | May 7, 2012                 |
| 28:19                | May 2, 2012                          | May 21, 2012                |
| 28:20                | May 16, 2012                         | June 4, 2012                |

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 2. AGRICULTURE PESTICIDE CONTROL BOARD

### Initial Agency Notice

Title of Regulation: **2VAC20-51. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act.**

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Name of Petitioner: Robert Taylor.

Nature of Petitioner's Request: The petitioner is requesting that the Pesticide Control Board exempt cotton boll weevil trappers working under the auspices of the Virginia Department of Agriculture and Consumer Services from having to hold or obtain pesticide applicator or registered technician certification.

Agency's Plan for Disposition of Request: The Pesticide Control Board will consider this request at its next quarterly meeting following the public comment period.

Public Comment Deadline: May 30, 2011.

Agency Contact: Liza Fleeson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, Oliver Hill Building, 102 Governor Street, Richmond, VA 23219, telephone (804) 371-6559, or email liza.fleeson@vdacs.virginia.gov.

VA.R. Doc. No. R11-30; Filed April 14, 2011, 8:45 a.m.

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### Agency Decision

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

**9VAC5-50. New and Modified Stationary Sources.**

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

Name of Petitioner: Southern Appalachia Mountain Stewards and the Sierra Club.

Nature of Petitioner's Request: The Southern Appalachia Mountain Stewards and the Sierra Club petitioned the State Air Pollution Control Board to amend the fugitive dust emissions standards for existing and new and modified stationary sources. The petitioners requested that additional language be added to the fugitive dust standards to clarify what is meant by "reasonable precautions" and that the fugitive dust standard provide additional examples of

reasonable precautions specific to the type of activities that contributed to the documented dust problem in Roda. Further, the petitioners stated that the proposed amendments would strengthen and clarify the fugitive dust standard without imposing significant burdens on regulators or on the facilities subject to the regulations.

The specific requested amendments are identical for both Chapter 40 and Chapter 50. The text follows, and the requested amendments are the addition of the second sentence in the first paragraph and the addition of numbered items 6, 7, and 8:

No owner or other person shall cause or permit any materials or property to be handled, transported, stored, used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. In determining what is reasonable, consideration will be given to factors such as the proximity of dust emitting operations to human habitations and/or activities, and to atmospheric conditions which might affect the movement of particulate matter. Such reasonable precautions may include, but are not limited to, the following:

1. Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;
2. Application of asphalt, water, or suitable chemicals on dirt roads, materials stockpiles and other surfaces which may create airborne dust; the paving of roadways and the maintaining of them in a clean condition;
3. Installation and use of hoods, fans and fabric filters to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting or other similar operations;
4. Open equipment for conveying or transporting materials likely to create objectionable air pollution when airborne shall be covered, or treated in an equally effective manner at all times when in motion;
5. The prompt removal of spilled or tracked dirt or other materials from paved streets and of dried sediments resulting from soil erosion;
6. The use of water to wash the wheels, undercarriage, and other parts of every vehicle that hauls coal or other materials before or immediately after the vehicle leaves a dusty, dirty, or muddy surface, including but not limited to haul roads at a mining or processing facility;
7. Cleaning the empty bed and/or any other part of a vehicle that had recent contact with material capable of emitting dust; and
8. Installation and use of rumble strips, speed bumps, or other devices designed to reduce vehicle speed and to

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# Petitions for Rulemaking

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dislodge mud and other materials from tires and vehicle bodies before vehicles enter public roads.

Agency Decision: Request denied.

Statement of Reason for Decision: Based on the board book material, staff presentation, public comments and board discussions, the board, on a motion by Mr. Rives, unanimously voted to deny the petition for rulemaking and requested that the director, or his designee, issue a guidance document regarding fugitive dust generated by coal mining, processing, handling or transportation activities that incorporates the following concepts:

1. Notes the lead role of the Department of Mines, Mineral and Energy and the existence of the Department of Mines, Mineral and Energy/Department of Environmental Quality Memorandum of Agreement.
2. That if, in the opinion of the Department of Environmental Quality, reasonable precautions were not being taken and the resulting conditions cause or contribute to the endangerment of human health and the Department of Mines, Minerals and Energy does not take enforcement action, the Department of Environmental Quality would consider doing so pursuant to the existing regulations.
3. That, when determining appropriate reasonable precautions, the Department of Environmental Quality will consider the potential impact on human health, i.e., proximity of the fugitive dust release to human habitation and activities.
4. That reasonable precautions to minimize the amount of coal dust and other dust becoming airborne may include washing down loaded trucks before they leave the mine and rinsing out the beds of emptied trucks and installation of rumble strips or similar devices to remove material from wheels and undercarriages before leaving a permitted site.
5. That street sweeping or other measures to remove accumulated fugitive dust from public roadways may also be a reasonable precaution when necessary to prevent the dust from becoming airborne or re-entrained into the atmosphere.

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

VA.R. Doc. No. R10-27; Filed April 20, 2011, 8:50 a.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF SOCIAL WORK

#### Initial Agency Notice

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

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

Name of Petitioner: MSW II Students of Norfolk State University.

Nature of Petitioner's Request: To include a grandfather clause for educational requirements for a licensed clinical social worker. Students matriculating on or before May 7, 2011, have met the educational requirements detailed in the January 7, 2010, regulations, which were in place at the beginning of the Advanced Year of clinical study. All students who began or finished their advanced year of clinical course work at an accredited school of social work prior to March 2, 2011, should be eligible to apply for licensure supervision.

Agency's Plan for Disposition of Request: The board will discuss whether the request could be accomplished by a change in regulation at its meeting on June 24, 2011, at 9960 Mayland Drive, 2nd Floor Conference Center, Richmond, VA.

Public Comment Deadline: May 30, 2011.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R11-31; Filed April 7, 2011, 10:12 a.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHARMACY

#### 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 Pharmacy intends to consider amending the following regulation: **18VAC110-20, Virginia Board of Pharmacy Regulations**. The purpose of the proposed action is to address when the data entry of on-hold prescriptions must be performed. Some pharmacies store these prescriptions in a single file until needed. Others perform data entry of the prescription and file by the date of entry into the computer, which is noncompliant with the current regulation, but find it burdensome to retrieve and move the prescription to the file associated with the date of initial dispensing. Additionally, when the data entry is performed on a separate date than the date of initial dispensing, a pharmacist may not be verifying the accuracy of the data entered at the time of entry. The board will consider amendments to clarify the requirements.

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

Statutory Authority: § 54.1-2400 and Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Public Comment Deadline: June 8, 2011.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email [caroline.juran@dhp.virginia.gov](mailto:caroline.juran@dhp.virginia.gov).

VA.R. Doc. No. R11-2768; Filed April 7, 2011, 10:57 a.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 5. CORPORATIONS

### STATE CORPORATION COMMISSION

#### Proposed 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:** **5VAC5-30. Uniform Commercial Code Filing Rules (amending 5VAC5-30-20 through 5VAC5-30-70).**

**Statutory Authority:** §§ 8.9A-526 and 12.1-13 of the Code of Virginia.

**Public Hearing Information:** A public hearing will be scheduled upon request.

**Public Comment Deadline:** May 23, 2011.

**Agency Contact:** Joel Peck, Clerk of the Commission, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9733, FAX (804) 371-9012, or email joel.peck@scc.virginia.gov.

#### Summary:

*The proposed regulations amend the filing rules for Uniform Commercial Code financing statements in a number of ways. The amendments (i) facilitate the use of electronic commerce for increased customer service, (ii) authorize the Clerk of the Commission to act in accordance with law with regard to personal identifiable information, (iii) clarify certain provisions and make appropriate technical amendments, and (iv) delete obsolete definitions.*

AT RICHMOND, APRIL 14, 2011

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2011-00003

Ex Parte: In re: Uniform Commercial Code Filing rules

#### ORDER TO TAKE NOTICE

Section 8.9A-526 of the Code of Virginia requires the State Corporation Commission ("Commission") to promulgate

rules necessary to implement Title 8.9A of the Code of Virginia, Uniform Commercial Code - Secured Transactions. The existing rules are codified as 5 VAC 5-30 ("Chapter 30") of Title 5 of the Virginia Administrative Code. The Office of the Clerk of the Commission ("Clerk") has reported to the Commission that certain amendments to Chapter 30 are necessary and desirable to update the existing rules and to facilitate the use of electronic commerce for increased customer service.

NOW THE COMMISSION, based on information supplied by the Clerk, proposes to adopt a regulation revising Chapter 30.

Accordingly, IT IS ORDERED THAT:

(1) The proposed revised regulation, entitled "Uniform Commercial Code Filing Rules," is appended hereto and made a part of the record herein.

(2) Comments or requests for a hearing on the proposed regulation must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before May 23, 2011. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. CLK-2011-00003. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) This Order and the attached proposed regulation shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(4) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached proposed regulation, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

AN ATTESTED COPY hereof shall be sent to the Clerk of the Commission, who shall forthwith mail a copy of this Order, including a copy of the proposed regulation, to interested parties as he may designate.

#### 5VAC5-30-20. Definitions.

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

~~"Active record" means a UCC record that has not reached the one-year anniversary of its lapse date.~~

"Amendment" means a UCC record that amends the information contained in a financing statement. Amendments also include (i) assignments and (ii) continuation and termination statements.

"Assignment" means an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

"Continuation statement" shall have the meaning prescribed by § 8.9A-102(a)(27) of the Code of Virginia.

"Correction statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.

"File number" shall have the meaning prescribed by § ~~8.9A-519(b)~~ 8.9A-102(a)(36) of the Code of Virginia.

"Filing office" means the Clerk's Office of the State Corporation Commission.

"Filing officer" means the Clerk of the State Corporation Commission.

"Filing officer statement" means a statement entered into the ~~filing office's~~ UCC information management system to correct describe the correction of an error or inaccuracy made by the filing office.

"Financing statement" shall have the meaning prescribed by § 8.9A-102(a)(39) of the Code of Virginia.

~~"Inactive record" means a UCC record that has reached the first anniversary of its lapse date.~~

"Individual" means a natural person, living or deceased.

"Initial financing statement" means a UCC record containing the information required to be in an initial financing statement and that causes the filing office to establish the initial record of existence of a financing statement.

"Organization" means a legal person that is not an individual.

"Personal identifiable information" shall have the meaning prescribed by § 12.1-19 B of the Code of Virginia.

"Remitter" means a person who tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

"Secured party of record" shall have the meaning prescribed by § 8.9A-511 of the Code of Virginia.

"Termination statement" shall have the meaning prescribed by § 8.9A-102(a)(79) of the Code of Virginia.

"Through date" means the most recent date that all submissions for a specified day have been indexed in the UCC information management system.

"UCC" means the Uniform Commercial Code - Secured Transactions (§ 8.9A-101 et seq. of the Code of Virginia).

"UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements.

"UCC record" means an initial financing statement, an amendment, and a correction or filing officer statement, and shall not be deemed to refer exclusively to paper or paper-based writings.

## **5VAC5-30-30. General filing and search requirements.**

A. UCC records may be tendered for filing at the filing office as follows:

1. By personal delivery, at the filing office street address;
2. By courier delivery, at the filing office street address; ~~or~~
3. By postal delivery, to the filing office mailing address; ~~or~~
4. By electronic delivery method provided and authorized by the filing office.

B. The filing time for a UCC record delivered by ~~any of the foregoing methods~~ personal, courier, or postal delivery is the time the UCC record is date-and-time stamped by the filing office even though the UCC record may not yet have been accepted for filing and may be subsequently rejected. The filing time for a UCC record delivered by authorized electronic delivery method is the date and time the UCC information management system receives the record and determines that all the required elements of the transmission have been received in the required format.

C. UCC search requests may be delivered to the filing office by ~~any of the methods by which UCC records may be delivered to the filing office~~ personal, courier, or postal delivery.

## **5VAC5-30-40. Forms, fees, and payments.**

A. Forms.

1. The filing office shall only accept forms for UCC records that conform to the requirements of this chapter.
2. The forms set forth in § 8.9A-521 of the Code of Virginia shall be accepted.
3. The forms approved by the International Association of Commercial Administrators as they appear on the filing office's website



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# Regulations

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([http://www.scc.virginia.gov/division/clk/fee\\_uce.htm](http://www.scc.virginia.gov/division/clk/fee_uce.htm))  
(<http://www.scc.virginia.gov/division/clk/uccfile.aspx>)  
shall be accepted.

4. The filing officer may approve other forms for acceptance, including additional forms ~~promulgated~~ approved by the International Association of Commercial Administrators.

## B. Fees.

1. The fee for filing and indexing a UCC record ~~communicated on paper~~ is \$20.

2. The fee for submitting a UCC search request ~~communicated on paper~~ is \$7.00.

3. The fee for furnishing UCC search copies is \$.50 for each page. The fee for affixing the seal of the commission to a certificate is \$3.00.

C. Methods of payment. Filing fees and fees for services provided under this ~~regulation~~ chapter may be paid by the following methods:

1. Payment in cash shall be accepted if paid in person at the filing office.

2. Personal checks, cashier's checks and money orders made payable to the State Corporation Commission or Treasurer of Virginia shall be accepted for payment if drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.

3. Payment by credit card acceptable to the filing office or electronic check shall be accepted for the filing or submission of documents delivered by authorized electronic method.

## D. Overpayment and underpayment policies.

1. The filing officer shall notify the remitter of the amount of any overpayment exceeding \$24.99 and send the remitter the appropriate procedure and form for requesting a refund. The filing officer shall refund an overpayment of \$24.99 or less only upon the written request of the remitter. A request for a refund shall be delivered to the filing office within 12 months from the date of payment.

2. Upon receipt of a UCC record with an insufficient filing fee, the filing officer shall return the record to the remitter with a notice stating the deficiency and ~~shall~~ may retain the filing fee.

E. Federal liens. A notice of lien, certificate and other notice affecting a federal tax lien or other federal lien presented to the filing office pursuant to the provisions of the Uniform Federal Lien Registration Act (§ 55-142.1 et seq. of the Code of Virginia) shall be treated as the most analogous UCC record unless the Uniform Federal Lien Registration Act or federal law provides otherwise.

## Part II Record Requirements

### **5VAC5-30-50. Acceptance and refusal of records; continuation statements.**

A. The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to this chapter, the filing officer does none of the following:

1. Determine the legal sufficiency or insufficiency of a record;

2. Determine that a security interest in collateral exists or does not exist;

3. Determine that information in the record is correct or incorrect, in whole or in part; or

4. Create a presumption that information in the record is correct or incorrect, in whole or in part.

B. The first day on which a continuation statement may be filed is the day of the month corresponding to the date upon which the related financing statement would lapse in the sixth month preceding the month in which the financing statement would lapse. If there is no such corresponding date, the first day on which a continuation statement may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse. The last day on which a continuation statement may be filed is the date upon which the financing statement lapses. If the lapse date falls on a Saturday, Sunday, or other day on which the filing office is not open, then the last day on which a continuation statement may be filed, if tendered for filing by personal, courier, or postal delivery, is the last day the filing office is open prior to the lapse date. An authorized electronic delivery method may be available to file a continuation statement on a Saturday, Sunday, or other day on which the filing office is not open. The relevant anniversary for a February 29 filing date shall be March 1 in the fifth or 30th year following the date of filing.

C. Except as provided in 5VAC5-30-40 D, if the filing officer finds grounds to refuse a UCC record, the filing officer shall return the record to the remitter and ~~shall~~ may retain the filing fee.

D. Nothing in this chapter shall prevent ~~a~~ the filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing ~~officer~~ office is under no obligation to do so and may not, in fact, have the resources to identify potential defects. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

E. The filing officer may act in accordance with § 12.1-19 B of the Code of Virginia with respect to submissions that contain personal identifiable information.

E. If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been refused, the filing officer shall file the UCC record as provided in this chapter with a filing date and time assigned when the record was originally tendered for filing. The filing officer shall also file a filing officer statement that states the effective date and time of filing, which shall be the date and time the UCC record was originally tendered for filing.

Part III  
Record Filing and Searches

**5VAC5-30-60. Filing and data entry procedures.**

A. The filing office may correct errors made by its personnel in the UCC information management system at any time. If the correction occurs after the filing officer has issued a certification, the filing officer shall file a filing officer statement in the UCC information management system identifying the record to which it relates, the date of the correction, and explaining the nature of the corrective action taken. The record shall be preserved as long as the record of the initial financing statement is preserved in the UCC information management system.

B. An error by a filer or remitter is the responsibility of that person. It can be corrected by filing an amendment or it can be disclosed by filing a correction statement pursuant to § 8.9A-518 of the Code of Virginia. A correction statement shall be made only on a Statement of Claim form (Form UCC5).

C. 1. A UCC record tendered for filing shall designate whether a name is a name of an individual or an organization. If the name is that of an individual, the first, middle and last names and any suffix shall be given.

2. Organization names are entered into the UCC information management system exactly as set forth in the UCC record, even if it appears that multiple names are set forth in the record or if it appears that the name of an individual has been included in the field designated for an organization name.

3. The filing office will only accept forms that designate separate fields for individual and organization names and separate fields for first, middle, and last names and any suffix. Such forms diminish the possibility of filing office error and help assure that filers' expectations are met. However, the inclusion of names in an incorrect field or the failure to transmit names accurately to the filing office may cause a financing statement to be ineffective.

D. The filing officer shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding

involving a debtor ~~named~~ included in the UCC information management system.

**5VAC5-30-70. Search requests and reports.**

A. The filing officer maintains for public inspection a searchable index for all UCC records. The index shall provide for the retrieval of all filed records by the name of the debtor and by the file number of the initial financing statement.

B. Search requests shall be made only on the National Information Request ~~Form form~~ (Form UCC11) and shall ~~contain the following information include:~~

1. The name of the debtor to be searched, specifying whether the debtor is an individual or organization. A search request will be processed using the exact name provided by the requestor.
2. The name and address of the person to whom the search report is to be sent.
3. ~~The Payment of the~~ appropriate fee, which shall be enclosed, payable made by a method ~~described herein set forth in this chapter.~~

C. Search requests may ~~contain the following information include:~~

1. A request that copies of records found in the search be included with the search report, ~~or~~ and
2. Instructions on the mode of delivery desired, if other than by ~~ordinary mail~~ postal delivery, which ~~request shall be honored followed~~ if the ~~requested~~ desired mode is ~~available~~ acceptable to the filing office.

D. Search results are produced by the application of standardized search logic to the name presented to the filing officer. The following criteria apply to searches:

1. There is no limit to the number of matches that may be returned in response to the search request.
2. No distinction is made between upper and lower case letters.
3. Punctuation marks and accents are disregarded.
4. "Noise words" are limited to "an," "and," "for," "of," and "the." The word "the" ~~always will be is~~ disregarded ~~and other.~~ Other noise words appearing anywhere except at the beginning of an organization name ~~will be are~~ disregarded. Certain business words are modified to a standard abbreviation: company to "co," corporation to "corp," limited to "ltd," incorporated to "inc."
5. All spaces are disregarded.
6. After using the preceding criteria to modify the name to be searched, the search will reveal names of debtors that are contained in unlapsd or all initial financing statements in an alphabetical list.

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# Regulations

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E. Reports created in response to a search request shall include the following:

1. The date and time the report was generated.
2. Identification of the name searched.
3. The through date as of the date and time the report was generated.
4. For an organization, the name as it appears after application of the standardized search logic.
5. Identification of each unexpired initial financing statement or all initial financing statements filed on or prior to the report date and time corresponding to the search criteria, by name of debtor, by ~~identification~~ file number, and by file date and file time.
4. 6. For each initial financing statement on the report, a listing of all related UCC records filed by the filing officer on or prior to the report date.
- ~~5.~~ 7. Copies of all UCC records revealed by the search and requested by the requestor.

F. The filing office may provide access to the searchable index via the Internet that produces search results beyond exact name matches. Search results obtained via the Internet shall not constitute an official search and will not be certified by the filing office.

VA.R. Doc. No. R11-2808; Filed April 19, 2011, 4:36 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

#### Final Regulation

**REGISTRAR'S NOTICE:** The Board of Funeral Directors and Embalmers is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Funeral Directors and Embalmers will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-436).**

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

**Effective Date:** June 8, 2011.

**Agency Contact:** Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4637, or email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

**Summary:**

*The amendments (i) specify all of the parties permitted to authorize a cremation; (ii) remove the 24-hour waiting period for cremation when a visual identification is not made and allow the crematory to use other means of positive identification as an alternative to visual identification; and (iii) change the temperature of refrigeration from 40° Fahrenheit to approximately 40° Fahrenheit when cremation is not made within 24 hours of the crematory taking custody of remains.*

**18VAC65-20-436. Standards for registered crematories or funeral establishments that operate a crematory.**

A. Authorization to cremate.

1. In accordance with § 54.1-2818.1 of the Code of Virginia, a crematory shall require a cremation authorization form executed in person or electronically in a manner that provides a copy of an original signature of the next-of-kin ~~or the person designated pursuant to § 54.1-2825 of the Code of Virginia~~ or his representative, who may be any person designated to make arrangements for the decedent's burial or the disposition of his remains pursuant to § 54.1-2825 of the Code of Virginia; an agent named in an advance directive pursuant to § 54.1-2984; or a sheriff, upon court order, if no next-of-kin, designated person, or agent is available.

2. The cremation authorization form shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph signed by the person making the identification. The identification attestation shall either be given on the cremation authorization form or on an identification form attached to the cremation authorization form.

3. In the event visual identification is not ~~made feasible~~, a crematory ~~shall observe a 24 hour waiting period between the time of death and the cremation~~ may use other positive identification of the deceased as a prerequisite for cremation pursuant to § 54.1-2818.1 of the Code of Virginia.

B. Standards for cremation. The following standards shall be required for every crematory:

1. Every crematory shall provide evidence at the time of an inspection of a permit to operate issued by the Department of Environmental Quality (DEQ).

2. A crematory shall not knowingly cremate a body with a pacemaker, defibrillator or other potentially hazardous implant in place.

3. A crematory shall not cremate the human remains of more than one person simultaneously in the same retort, unless the crematory has received specific written authorization to do so from the person signing the cremation authorization form.

4. A crematory shall not cremate nonhuman remains in a retort permitted by DEQ for cremation of human remains.

5. Whenever a crematory is unable to cremate the remains within 24 hours upon taking custody thereof, the crematory shall maintain the remains in refrigeration at ~~40 degrees~~ approximately 40° Fahrenheit or less, unless the remains have been embalmed.

C. Handling of human remains.

1. Human remains shall be transported to a crematory in a cremation container and shall not be removed from the container unless the crematory has been provided with written instructions to the contrary by the person who signed the authorization form. A cremation container shall substantially meet all the following standards:

- a. Be composed of readily combustible materials suitable for cremation;
- b. Be able to be closed in order to provide complete covering for the human remains;
- c. Be resistant to leakage or spillage; and
- d. Be rigid enough for handling with ease.

2. No crematory shall require that human remains be placed in a casket before cremation nor shall it require that the cremains be placed in a cremation urn, cremation vault or receptacle designed to permanently encase the cremains after cremation. Cremated remains shall be placed in a plastic bag inside a rigid container provided by the crematory or by the next-of-kin for return to the funeral establishment or to the next-of-kin. If cremated remains are placed in a biodegradable container, a biodegradable bag shall be used. If placed in a container designed for scattering, the cremated remains may be placed directly into the container if the next-of-kin so authorized in writing.

3. The identification of the decedent shall be physically attached to the remains and appropriate identification placed on the exterior of the cremation container. The crematory operator shall verify the identification on the remains with the identification attached to the cremation container and with the identification attached to the cremation authorization. The crematory operator shall also verify the identification of the cremains and place evidence of such verification in the cremation record.

D. Recordkeeping. A crematory shall maintain the records of cremation for a period of three years from the date of the cremation that indicate the name of the decedent, the date and time of the receipt of the body, and the date and time of the cremation and shall include:

- 1. The cremation authorization form signed by the person authorized by law to dispose of the remains and the form on which the next-of-kin or ~~his designee~~ the person authorized by § 54.1-2818.1 of the Code of Virginia to make the identification has made a visual identification of the deceased or evidence of positive identification if visual identification is not feasible;
- 2. The permission form from the medical examiner;
- 3. The DEQ permit number of the retort used for the cremation and the name of the retort operator; and
- 4. The form verifying the release of the cremains, including date and time of release, the name of the person and the entity to whom the cremains were released and the name of the decedent.

VA.R. Doc. No. R11-2807; Filed April 14, 2011, 9:44 a.m.

**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:** **20VAC5-415. Rules Governing Telecommunications Relay Service (repealing 20VAC5-415-10, 20VAC5-415-20).**

**Statutory Authority:** § 12.1-13 of the Code of Virginia.

**Effective Date:** May 1, 2011.

**Agency Contact:** Robert Gillespie, Associate General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9780, FAX (804) 371-9211, or email robert.gillespie@scc.virginia.gov.

**Summary:**

*Effective January 1, 2007, the statutory authority over the collection or disbursement of funds related to the functioning of the Virginia telecommunications relay service was transferred to other state agencies. Because of*

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# Regulations

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*the repeal of the statutory authority and the successful transition of all telecommunications relay service operations to other agencies, the State Corporation Commission has repealed this chapter.*

AT RICHMOND, APRIL 13, 2011

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUC-2010-00069

Ex Parte: In the Matter of Revoking Rules  
Governing Telecommunications Relay Service,  
20 VAC 5-415-10 *et seq.*

## ORDER REPEALING RULES

Effective January 1, 2007, Virginia Code §§ 56-484.4 - 484.6 were repealed by operation of 2006 Acts of Assembly, ch. 780. Since that date, the State Corporation Commission ("Commission") has not exercised any authority over the collection or disbursement of funds related to the functioning of the Virginia telecommunications relay service. Those functions, by statute, were transferred to the Department for the Deaf and Hard-of-Hearing, the Virginia Information Technologies Agency, and the Virginia Tax Commissioner.

Because of the repeal of the statutory authority and the successful transition of all telecommunications relay service operations, the Commission issued its Order for Notice and Comment on January 4, 2011, to determine if there was a need to retain the Commission's Rules Governing Telecommunications Relay Service, 20 VAC 5-415-10, *et seq.*

Pursuant to that Order, the proposed revocation was published in the Virginia Register of Regulations. Interested persons were directed to file any comments regarding the proposed revocation on or before February 28, 2011. No comments were received, so there was no need for the Commission Staff to file a Response, which was permitted on or before March 18, 2011.

NOW THE COMMISSION, having considered the repeal of statutory authority, the successful transition of all telecommunications relay service funding and operations to other agencies, and the lack of comments herein, finds that there is no need to retain any portion of the Rules Governing Telecommunications Relay Service, 20 VAC 5-415-10, *et seq.*

Accordingly, IT IS ORDERED THAT:

(1) Effective May 1, 2011, the Commission's Rules Governing Telecommunications Relay Service, 20 VAC 5-415-10, *et seq.* are repealed.

(2) The Commission's Division of Information Resources shall forward a copy of this order to the Registrar of Regulations.

(3) This case is dismissed from the Commission's docket and the record developed herein shall be forwarded to the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; all local exchange carriers certificated in Virginia as set out in Appendix B; and a copy shall be sent to the Commission's Office of General Counsel and Division of Communications.

VA.R. Doc. No. R11-2709; Filed April 13, 2011, 2:58 p.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 32 (2011)

### **The Governor's Commission on Government Reform and Restructuring, Phase II**

#### Importance of the Issue

The Commonwealth of Virginia continues to face budgetary management challenges and increasing demands for core public services. Citizens and businesses in Virginia are entitled to a limited and effective state government. Revenues collected from Virginia taxpayers must be spent in the most efficient manner possible. It is incumbent on those charged with providing government services to protect the public from harm and theft, educate our citizenry, foster economic opportunity, provide necessary infrastructure, preserve fundamental rights and perform other essential functions in a manner that avoids duplication, delay, waste, and unnecessary regulation and bureaucracy.

Throughout the course of my administration, we will conduct a comprehensive review to make certain that duplicative, outdated, unnecessary and ineffective services and service delivery methods are eliminated and that state revenues are dedicated to the core functions of government. Consequently, my second act as Governor on Inauguration Day was to establish the Governor's Commission on Government Reform & Restructuring to conduct a comprehensive, systematic and ongoing evaluation of the effectiveness and need for the state's existing agencies, governing bodies, programs, and services.

During the Commission's first year of work, members listened to Virginia citizens and state employees by holding public town halls in all regions of the Commonwealth, receiving more than 1,700 comments and ideas for consideration. The report issued in December 2010 made 134 recommendations that would improve transparency and customer service, review and eliminate unnecessary mandates on localities, consolidate office operations, rightsize manager to employee ratios, privatize non-core government functions, and properly account for all Commonwealth-owned property.

The Commission's work is far from complete. The way forward is to build on our progress by eliminating and consolidating programs that are inefficient or duplicative and make state government more transparent and accountable.

#### Governor's Commission on Government Reform and Restructuring

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.2-134 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby extend the

Governor's Commission on Government Reform and Restructuring ("Commission").

The Commission will conduct a thorough review of Virginia state government:

- Identify opportunities for creating efficiencies in state government, including streamlining, consolidating, or eliminating redundant and unnecessary agency services, governing bodies, regulations and programs;
- Explore innovative ways to deliver state services at the lowest cost and best value to Virginia taxpayers;
- Seek out means to more effectively and efficiently perform core state functions, including potential privatization of government operations where appropriate, and restore focus on core mission oriented service;
- Examine ways for state government to be more transparent, user friendly and accountable to the citizens of the Commonwealth; and
- Work with the cabinet and state executive branch agencies to implement these recommendations proposed by the Commission.

The Commission will consist of up to 20 citizen members appointed by the Governor and serving at his pleasure. The Governor shall designate a Chairman and a Vice-Chairman from among the citizen members. Three members of the Virginia House of Delegates and two members of the Virginia Senate shall also be invited to be members. The Governor may appoint other members to the Commission as necessary. The Secretaries of Administration and Finance, and the Vice-Chair of the Council on Virginia's Future, shall serve as ex officio, non-voting members of the Commission.

The Commission shall submit a final report of its activities and recommendations by November 1, 2011. I direct all executive branch agencies and institutions to cooperate fully with the work of the Commission.

Staff support as is necessary for the conduct of the Commission's work during the term of its existence shall be furnished by the Office of the Governor, the Offices of the Governor's Cabinet Secretaries, the Department of Planning and Budget, and such other executive agencies as the Governor may designate. An estimated 2,000 hours of staff time will be required to support the commission on an annual basis. Such funding as is necessary for the term of the Commission's existence shall be provided from sources, including both private and appropriated funds, contributed or appropriated for purposes related to the work of the Commission, as authorized by Section 2.2-135(13) of the Code of Virginia. Direct expenditures for the Commission's

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# Governor

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work are estimated to be \$15,000 annually, exclusive of staff support.

Effective Date of the Executive Order

This Executive Order shall become effective upon its signing and shall remain in full force and effect until April 12, 2012, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 12th day of April, 2011.

/s/ Robert F. McDonnell  
Governor

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# GENERAL NOTICES/ERRATA

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## AIR POLLUTION CONTROL BOARD

### Public Comment Period - Proposed State Implementation Plan Revision (General Conformity)

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia state implementation plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation to EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulation of the board affected by this action is Regulations for General Conformity (9VAC5-20-21, Rev. F10).

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: May 9, 2011, to June 8, 2011.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 a of the Administrative Process Act because they are necessary to conform to Virginia statutory law. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: The proposed revision will consist of amendments to existing regulation provisions concerning general conformity, 9VAC5-160. The major provisions of the proposal are summarized as follows: The federal Clean Air Act requires that federal plans, programs, and projects conform with state and federal air quality implementation plans. That is, federal agencies must make determinations that general federal actions, such as prescribed burning, military base closings, and real estate developments, conform with Virginia's SIP. On

July 17, 2006 (71 FR 40420), EPA revised its general conformity regulations to add PM<sub>2.5</sub> de minimis emission levels for general conformity applicability. On April 5, 2010 (75 FR 17254), EPA further revised its general conformity requirements in order to address a number of implementation issues, and to improve the program's ability to facilitate federal agency compliance with conforming their activities to the SIPs, thereby preventing violations of the national ambient air quality standards (NAAQS). EPA deleted 40 CFR 51.850 and 40 CFR 51.51.852 through 51.860, since those sections merely repeated the language in 40 CFR 93.150 and 40 CFR 93.152 through 93.160. EPA then included a requirement in 40 CFR 51.851 that the general conformity SIP must meet the requirements in 40 CFR Part 93, subpart B, which were in turn revised to effect the needed program changes. The Virginia general conformity regulation must meet these new federal requirements.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week. All testimony, exhibits, and documents received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.state.va.us/air/permitting/planotes.html>). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070,
- 2) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,
- 3) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and
- 4) Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.



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## General Notices/Errata

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

### **Public Comment Period - Proposed State Implementation Plan Revision (Transportation Conformity)**

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia state implementation plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation to EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulation of the board affected by this action is Regulation for Transportation Conformity (9VAC5-151, Rev. E10).

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: May 9, 2011, to June 8, 2011.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 a of the Administrative Process Act because they are necessary to conform to Virginia statutory law. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: The proposed revision will consist of amendments to existing regulation provisions concerning transportation conformity, 9VAC5-151. The major provisions of the proposal are summarized as follows: The federal Clean Air Act requires that federally-funded transportation plans, programs, and projects conform to state air quality implementation plans (SIPs). Metropolitan planning

organizations and the United States Department of Transportation must demonstrate that such plans, programs, and projects conform to Virginia's SIP. "Conformity" means that the activity conforms to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards (NAAQS) and achieving expeditious attainment of such standards, and will not (i) cause or contribute to any new violation of any standard, (ii) increase the frequency or severity of any existing violation of any standard, or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones. Under 40 CFR 51.390, Virginia is required to submit to the EPA a revision to the SIP that establishes conformity criteria and procedures consistent with the transportation conformity regulation promulgated by EPA at 40 CFR Part 93.

EPA promulgated amendments to the federal transportation regulation on March 24, 2010 (75 FR 14260). In this action, EPA amended the transportation conformity rule to finalize provisions that were proposed on May 15, 2009, and to address hot-spot analyses as a result of a remand from the Court of Appeals for the District of Columbia Circuit. EPA updated the transportation conformity regulation in light of the October 17, 2006, final rule that strengthened the 24-hour PM<sub>2.5</sub> NAAQS and revoked the annual PM<sub>10</sub> NAAQS (71 FR 61144). However, the October 2006 rule did not revoke the 1997 annual or 24-hr PM<sub>2.5</sub> NAAQS; therefore, the designations for the 2006 PM<sub>2.5</sub> NAAQS remain separate from the existing designations for the 1997 PM<sub>2.5</sub> NAAQS. Transportation conformity applies for the NAAQS for which an area is designated nonattainment; the transportation conformity regulation must address all PM<sub>2.5</sub> designations.

The federal transportation conformity regulations address the following: (i) determining the baseline year for certain 2006 PM<sub>2.5</sub> nonattainment areas, (ii) regional conformity tests in 2006 PM<sub>2.5</sub> nonattainment areas that do not have adequate or approved SIP budgets for the 1997 PM<sub>2.5</sub> NAAQS, (iii) regional conformity tests in 2006 PM<sub>2.5</sub> areas that have 1997 PM<sub>2.5</sub> SIP budgets, (iv) other conformity requirements for 2006 PM<sub>2.5</sub> areas, (v) transportation conformity in PM<sub>10</sub> nonattainment and maintenance areas in light of the revocation of the annual PM<sub>10</sub> NAAQS, and (vi) response to the December 2007 hot-spot court decision.

In order to implement the federal transportation conformity requirements, the Virginia regulation must reflect the recent revisions made to the federal regulations. To this end, 9VAC5-151 needs to be amended to include the most recent federal revisions.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the

federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week. All testimony, exhibits, and documents received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.state.va.us/air/permitting/planotes.html>). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070,
- 2) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,
- 3) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and
- 4) Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

## STATE CORPORATION COMMISSION

### Bureau of Insurance

April 12, 2011

Administrative Letter 2011-01

TO: All Insurers Licensed to Write Accident and Sickness Insurance in Virginia, and All Health Services Plans and Health Maintenance Organizations Licensed in Virginia

RE: 14VAC5-190-10 et seq.: Rules Governing the Reporting of Cost and Utilization Data Relating to Mandated Benefits and Mandated Providers - 2010 Reporting Period

The purpose of this Administrative Letter is to assist carriers in the preparation of the Annual Report of Cost and Utilization Data relating to Mandated Benefits and Providers required pursuant to 14VAC5-190-10 et seq. and § 38.2-

3419.1 of the Code of Virginia, and to remind all affected carriers of the reporting requirements applicable to mandated benefits and providers for the 2010 reporting year. Carriers should refer to 14VAC5-190-40 for an explanation of the circumstances under which a full and complete or an abbreviated report must be filed, or under which a company may be exempt from filing a report. The Virginia total annual written premiums for all accident and sickness policies or contracts referred to in the regulation is the amount reported to the Commission on the company's Annual Statement for the year ending December 31, 2010. This is the amount used to determine if a report is required. Each affected carrier must submit a completed Form MB-1 to furnish the required information. It is not acceptable to submit more than one Form MB-1 for a single carrier or to consolidate information from different carriers on one form.

The completed Form MB-1 (cover sheet and sections) is due on or before May 1, 2011 and may be submitted electronically. The due date may not be extended for any reason, including the inability to file the reports electronically. The instructions, representative CPT and ICD-9-CM codes, and forms for the 2010 reporting period are available on the Bureau of Insurance's website at: <http://www.scc.virginia.gov/division/boi/webpages/boimanda tedforms.htm>.

The instructions explain the type of information necessary to complete Form MB-1. All sources of information, including 14VAC5-190-10 et seq., §§ 38.2-3408 through 38.2-3418.15, as applicable, § 38.2-4221, and CPT and ICD-9-CM codes, should be consulted in the preparation of this report. Please note that the CPT and ICD-9-CM codes are not intended to exhaust all medical codes that may be used in collecting data for Form MB-1, but are representative of some of the more common codes associated with the mandated benefits.

Carriers are reminded that failure to submit a substantially complete and accurate report pursuant to the provisions of 14VAC5-190-10 et seq., by May 1, 2011, may be considered a violation subject to a penalty as set forth in § 38.2-218 of the Code of Virginia. Lack of notice, lack of information, lack of means of producing the required data, or other such reasons will not be accepted for not submitting a complete and accurate report in a timely manner.

Correspondence regarding reporting requirements should be directed to Mary Ann Mason, Senior Insurance Market Examiner, Forms and Rates Section, Bureau of Insurance, Life and Health Division, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9348, FAX (804) 371-9944, or email [maryann.mason@scc.virginia.gov](mailto:maryann.mason@scc.virginia.gov). System related questions or problems should be directed to Andrew Iverson, Insurance Analyst, Bureau of Insurance, Automated Systems, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9851, FAX (804) 371-9516, or email [andrew.iverson@scc.virginia.gov](mailto:andrew.iverson@scc.virginia.gov).

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# General Notices/Errata

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/s/ Jacqueline K. Cunningham  
Commissioner of Insurance

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AT RICHMOND, APRIL 15, 2011

COMMONWEALTH OF VIRGINIA,  
At the relation of the  
STATE CORPORATION COMMISSION

CASE NO. PUE-2011-00033

Ex Parte: In the matter of determining  
appropriate regulation of pole attachments  
and cost sharing in Virginia

## ORDER ESTABLISHING PROCEEDING AND SCHEDULING HEARING

During the 2011 Session of the Virginia General Assembly ("General Assembly"), the House of Delegates Commerce and Labor Committee ("House Committee") considered HB 1439, which would have given the State Corporation Commission ("Commission") jurisdiction over rates, terms and conditions of pole attachments by cable and telephone companies on electric cooperative poles after negotiations failed to produce agreements. As introduced, HB 1439 required the Commission to set the rates, terms, and conditions for pole attachments using the principles established by the Federal Communications Commission ("FCC") in regulations and case law pursuant to 47 U.S.C. § 244. HB 1439 also stated that the Commission could not establish a pole attachment rate higher than the highest rate for a similar attachment charged by a nearby investor-owned utility. A similar bill, SB 890, was considered by the Senate Commerce and Labor Committee. Subsequently, the House Committee elected to defer consideration of HB 1439 pending completion of a Commission study on the subject matter of the bill and related issues.

By letter dated January 31, 2011 ("January 31 Letter"), Delegate Terry G. Kilgore and Senator Richard L. Saslaw requested that the Commission "prepare and issue a report to the House Committee on or before November 1, 2011, containing detailed standards and recommendations on electric cooperative pole attachment issues in the Commonwealth."<sup>1</sup> Accordingly, the Commission will undertake an investigation of the issues related to electric cooperative pole attachments and will receive public comment to enable a comprehensive report on such issues.

NOW THE COMMISSION is of the opinion that we should receive input from the broadest range of persons and organizations having an interest in issues related to pole attachment agreements within the Commonwealth. Accordingly, we will direct that notice of this proceeding be given to the Office of the Attorney General, Division of

Consumer Counsel, and to the following incumbent electric utilities, cooperative and municipal providers of electric service, and telecommunications service providers: A&N Electric Cooperative, B-A-R-C Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Old Dominion Electric Cooperative, Powell Valley Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, Southside Electric Cooperative, Virginia Electric and Power Company, Appalachian Power Company, Kentucky Utilities Company, Amelia Telephone Corporation, Buggs Island Telephone Cooperative, Burke's Garden Telephone Exchange, Central Telephone Company of Virginia, Citizen's Telephone Cooperative, Highland Telephone Cooperative, MGW Telephone Company, New Castle Telephone Company, New Hope Telephone Cooperative, NTELOS Telephone Inc., Pembroke Telephone Cooperative, Peoples Mutual Telephone Company, Roanoke and Botetourt Telephone Company, Scott County Telephone Cooperative, Virginia Telephone Company, Shenandoah Telephone Company, Verizon Virginia Inc., Verizon South Inc., Central Telephone Company of Virginia, and United Telephone Southeast LLC (collectively "Utility Pole Owners").

We will direct the Clerk of the Commission to provide the Utility Pole Owners with copies of the Order Establishing Proceeding and Scheduling Hearing ("Scheduling Order"). Because the Commission has been asked to solicit information from any other interested persons or entities regarding pole attachment agreements, we will also require each of the Utility Pole Owners to provide a copy of this Scheduling Order to each entity that is a party to a pole attachment agreement with that Utility Pole Owner.

We further direct the Commission Staff ("Staff"), including the Divisions of Energy Regulation and Communications, to identify other persons or entities that potentially may have an interest in this proceeding and to provide them with copies of this Scheduling Order by electronic transmission or, when electronic transmission is not possible, by first class mail.

We will provide the Utility Pole Owners and any other interested person or entity an opportunity to provide written and/or oral comments on the issues under consideration in this proceeding as listed in the January 31 Letter. Specifically, we seek comments addressing the following questions:

1. Is it appropriate for the Commission to use the FCC methodology for establishing electric utility and cooperative charges for pole attachments by telephone, cable television and broadband providers? What revisions,

if any, to the FCC's methodology are necessary to produce appropriate charges for pole attachments?

2. Are there other more appropriate methodologies for determining appropriate charges for pole attachments by telephone, cable television and broadband providers? What are the required elements of any such formulae?

3. What are the necessary elements or terms of a model pole attachment agreement including any necessary restrictions or conditions concerning overlashing, pole replacements, safety and reliability?

4. Is there a need for penalties for unauthorized or inappropriate pole attachments? If so, what are the appropriate bases for any such penalties?

5. What framework should be applied for parties negotiating pole attachment agreements?

6. How should disputes related to the development or administration of pole attachment agreements be resolved?

7. Does the Commission have the necessary authority to establish rates charged by electric utilities and cooperatives for pole attachments by telephone, cable television and broadband providers?

8. What constitutes just and reasonable compensation for pole attachments?

9. Is proportionate sharing of the full costs of erecting, owning, operating and maintaining the entire pole including right of way maintenance by all users of a pole appropriate?

10. Are there safety and electric system reliability issues associated with pole attachments by non-electric utility service providers, including, without limitation, compliance with the National Electric Safety Code, Virginia Department of Transportation road crossing clearance requirements and other relevant safety codes and requirements, technical specifications, guying requirements and electric service interruption?

11. Is there a need for the establishment of pole attachment related planning, installation, operating or maintenance procedures for non-utility service providers and, if so, what are the required procedures?

12. Is there appropriate and effective Commission jurisdiction over all joint users of utility poles?

13. Does: a) the need for rural broadband deployment in the Commonwealth; b) the economic interests of governments and businesses; c) the interests of existing and potential cable, telephone and broadband customers; d) the interests of utility customers and owners of poles; e) the safety of utility infrastructure and workers on utility poles; or, f) efficiency in use of public and utility rights of way require

a particular methodology for establishing pole attachment rates and procedures?

Further, the January 31 Letter requested the Commission analyze pole attachment rates and aggregate pole attachment revenues. Accordingly, we will direct that the Utility Pole Owners file the following information, where available, with the Commission's Divisions of Energy Regulation and Communications as soon as possible but no later than May 27, 2011:

1. The rates charged each non-electric service provider for pole attachments.

2. The basis used to determine any such rates.

3. Aggregate pole attachment revenues received during the last three calendar years.

4. An estimate of the contribution of aggregate pole attachment revenue to the electric utility's return on equity or cooperative's tier.

5. An estimate of the contribution of pole attachment revenue to the electric cooperative's tier assuming that pole attachment charges were determined by use of the FCC methodology.

6. An estimate of the contribution of pole attachment revenue to the electric cooperative's tier, assuming that pole attachment charges were determined by a proportionate sharing of the full costs of erecting, owning, operating and maintaining the entire pole including rights of way maintenance, by all users of a pole.

Finally, we will direct that a public hearing be set to receive comments regarding the issues under consideration in this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUE-2011-00033.

(2) The Clerk of the Commission hereby is directed to provide a copy of this Scheduling Order to the above-named Utility Pole Owners subject to the Commission's jurisdiction.

(3) Within five (5) business days of the filing of this Scheduling Order with the Clerk of the Commission, the Staff shall transmit electronically or by first class mail copies of this Scheduling Order to those persons and entities, other than Utility Pole Owners, identified by the Staff as potentially having an interest in this proceeding. The Staff shall file with the Clerk of the Commission a certificate of transmission or mailing and include a list of names and addresses of the persons and entities to whom the Scheduling Order was transmitted or mailed.

(4) On or before May 10, 2011, all Utility Pole Owners shall provide a copy of this Scheduling Order to any entity

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## General Notices/Errata

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that is a party to a pole attachment agreement with such respondent.

(5) On or before May 27, 2011, all Utility Pole Owners shall provide proof of the provision of this Scheduling Order to parties to pole attachment agreements, as required in Ordering Paragraph (4).

(6) On or before June 15, 2011, interested persons or entities may file comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Comments shall refer to Case No. PUE-2011-00033 and address the specific questions and issues raised in this Scheduling Order. Those desiring to submit comments electronically may do so by following the instructions available at the Commission's website: [www.scc.virginia.gov/case](http://www.scc.virginia.gov/case).

(7) On or before June 15, 2011, all Utility Pole Owners shall file with the Commission's Division of Energy Regulation the six (6) pieces of information identified herein concerning pole attachment rates, revenue, and revenue contribution estimates, where such information is available.

(8) A public hearing shall be convened on July 13, 2011, at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive comments regarding the issues under consideration in this proceeding.

(9) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all entities as noted herein and to C. Meade Browder, Jr., Esquire, Senior Assistant Attorney General, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219. A copy shall be delivered to the Commission's Office of General Counsel and Divisions of Economics and Finance, Energy Regulation, and Communications.

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<sup>1</sup> A copy of the January 31 Letter is attached hereto.

### BOARD OF COUNSELING

#### Notice of Periodic Review of Regulations Request for Comment

The Virginia Board of Counseling is conducting a periodic review of its current regulations governing licensed professional counselors, marriage and family therapists, and licensed substance abuse professionals and is requesting comment on the following current regulations:

18VAC115-20, Regulations Governing the Practice of Professional Counseling

18VAC115-50, Regulations Governing the Practice of Marriage and Family Therapy

18VAC115-60, Regulations Governing the Licensure of Substance Abuse Treatment Practitioners

The board will consider whether the existing regulations are essential to protect the health, safety, and welfare of the public in providing assurance that licensed practitioners are competent to practice. Alternatives to the current regulations or suggestions for clarification of the regulation will also be received and considered.

Comment period begins on May 9, 2011, and ends on June 8, 2011.

If any member of the public would like to comment on these regulations, please send comments by the close of the comment period to: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233. Comments may also be emailed to [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or faxed to (804) 527-4434.

Regulations may be viewed online at [www.dhp.virginia.gov](http://www.dhp.virginia.gov) or copies will be sent upon request.

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### Proposed Consent Order for Petroleum Marketers, Inc.

An enforcement action has been proposed for Petroleum Marketers, Inc. (PMI) for a violation in Bedford County, Virginia. A PMI owned and operated tanker truck laden with oil ran off the road and down an embankment on October 14, 2010. An unpermitted discharge of oil to state waters resulted from the vehicular accident. The Special Order by Consent will address and resolve the 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](http://www.deq.virginia.gov). Jerry Ford, Jr. will accept comments by email at [jerry.ford@deq.virginia.gov](mailto:jerry.ford@deq.virginia.gov), or postal mail at Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from May 10, 2011, to June 8, 2011.

#### Restore Water Quality in the Clinch River

Announcement of an effort to restore water quality in the Clinch River including Plum Creek, Middle Creek and Coal Creek in Tazewell County, Virginia.

Public meeting location: Cedar Bluff Town Hall, 115 Central Avenue, Cedar Bluff, Virginia, on May 12, 2011, from 6:30 p.m. to 8:30 p.m. The Steering Committee will meet at 3:30 p.m.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ), the Virginia Department of Mines, Minerals and Energy and the Virginia Department of Conservation and

Recreation are announcing the final study report to restore water quality, a public comment opportunity, and public meeting.

Meeting description: Final public meeting on a study to restore water quality and first meeting to develop an implementation plan.

Description of study: DEQ has been working to identify sources of pollutants affecting the aquatic organisms and sources of bacteria contamination in the waters of the Clinch River including Plum Creek, Middle Creek, and Coal Creek in Tazewell County, Virginia. The Clinch River is impaired for failure to meet the recreational use because of fecal coliform bacteria violations, as well as violation of the E. coli standard from the Lincolnshire Branch confluence downstream to the Pounding Mill Branch confluence and from the Dry Branch confluence downstream to the Mill Creek confluence. Plum Creek, Middle Creek, and Coal Creek are also impaired for failure to meet the recreational use because of bacteria violations. Coal Creek is impaired for failure to meet the aquatic life use based on violations of the general standard for aquatic organisms as well.

During the study, the pollutants impairing the aquatic community have been identified and total maximum daily loads, or TMDLs, developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. DEQ also determined the sources of bacteria contamination and developed a TMDL for bacteria. To restore water quality, contamination levels must be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, May 12, 2011, to June 12, 2011. 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](http://www.deq.virginia.gov/tmdl).

Contact for additional information: Allen J. Newman, P.E., Water Permit Manager, 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 [martha.chapman@deq.virginia.gov](mailto:martha.chapman@deq.virginia.gov).

## Total Maximum Daily Load Studies in Southampton, Sussex, and Greensville Counties

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on water quality studies for several water bodies that are impaired due to not meeting dissolved oxygen water quality standards.

The meeting will be held on Thursday, May 19, 2011, and will start at 6:30 p.m. at the Capron Elementary School located at 18414 Southampton Parkway, Capron. The purpose of the meeting is to provide information and discuss the studies with interested local community members and local government.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a total maximum daily load 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, pollutant levels have to be reduced to the TMDL amount.

The waters listed below were identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the recreation use. The impairments are based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for E.coli.

|                     |                   |
|---------------------|-------------------|
| Flat Swamp          | VAT-K13R_FTS01A04 |
| Three Creek - Lower | VAT-K27R_TRE02A00 |
| Three Creek - Upper | VAT-K27R_TRE01A00 |
| Mill Swamp          | VAT-K28R_MSP01A06 |
| Darden Mill Run     | VAT-K30R_DMR01A02 |
| Tarrara Creek       | VAT-K13R_TRR01A00 |

Several impaired segments were also identified in the Assessment Report as needing an assessment to determine if natural conditions are the cause of the low DO and pH values. If it is determined that anthropogenic causes contribute to the impairments, a TMDL will be developed for each waterbody listed below:

|                 |                   |           |
|-----------------|-------------------|-----------|
| Flat Swamp      | VAT-K13R_FTS01A04 | DO        |
| Mill Swamp      | VAT-K28R_MSP01A06 | DO        |
| Darden Mill Run | VAT-K30R_DMR01A02 | DO and pH |

The public comment period on materials presented at this meeting will extend from May 20, 2011, to June 20, 2011. For additional information or to submit comments, contact Jennifer Howell, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email [jennifer.howell@deq.virginia.gov](mailto:jennifer.howell@deq.virginia.gov).

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Additional information is also available on the DEQ website at [www.deq.virginia.gov/tmdl](http://www.deq.virginia.gov/tmdl).

### **Uniform Environmental Covenants Act Regulation - Public Meeting and Public Comment Opportunity**

**Purpose of Notice:** The Department of Environmental Quality has scheduled a public meeting and informal public comment period to receive comment on the draft Uniform Environmental Covenants Act (UECA) Regulation, 9VAC15-80.

**Date and Location of Public Meeting:** May 2, 2011, at 1 p.m., Department of Environmental Quality, 629 East Main Street, 2nd Floor Conference Room, Richmond, VA 23219.

**Dates of Informal Public Comment Period:** April 15, 2011, to May 20, 2011. Written comments may be submitted until 11:59 p.m. on May 20, 2011, to the staff contact listed below.

**Background:** The Department of Environmental Quality is in the process of adopting a regulation to implement the Virginia Uniform Environmental Covenants Act (UECA). During the 2010 legislative session, the Virginia General Assembly passed SB 686 (Chapter 691 of the 2010 Acts of Assembly), which directs the department to implement, by regulation or other measures, the Uniform Environmental Covenants Act (UECA). According to the National Conference of Commissioners on Uniform State Law (NCCUSL), an environmental covenant is generally a servitude arising under an environmental response project that imposes activity and use limitations on future use of a contaminated real property. NCCUSL asserts that environmental covenants ensure public notice of these limitations, enhance enforcement of the limitations, and facilitate return of the sites to productive use.

According to Virginia's UECA statute, the actions of the Department of Environmental Quality relating to the adoption of regulations necessary to implement the provisions of this act are exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). However, the department is required to provide an opportunity for public comment on any such regulations prior to their adoption. The public meeting and informal public comment period announced herein are designed to provide this opportunity.

In June 2010, the department issued a Notice of Opportunity to Express Interest in Implementation of Uniform Environmental Covenants Act (UECA). Based on responses to this notice, the department established a list of interested persons who could be asked to review the subject legislation and draft regulation and provide input to the department on how parties may utilize an environmental covenant, provisions of a model covenant template, fees, and other UECA issues. In addition to publication of this notice in the Regulatory Town Hall, persons who responded to the June

2010 notice are also receiving individual copies of the notice and draft UECA regulation by electronic mail.

The department has been working to develop the draft UECA regulation since the summer of 2010. Department staff has consulted with parties who participated in the 2010 Virginia legislative process, staff of the Environmental Protection Agency (EPA) Region III, officials in other states who have already implemented UECA, staff and commissioners at NCCUSL (including the chief author of the model UECA statute), attorneys with the Department of Defense, and the Virginia Office of the Attorney General.

The results of the department's work and consultations appear in the draft UECA regulation, which includes a draft Virginia UECA template. The draft UECA regulation and this notice are posted on the department's website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

**Public Comment:** Prior to final action on the regulation, the Director of the Department of Environmental Quality will receive and consider staff's summary and response to comments that are submitted by members of the public on the draft UECA regulation. Although members of the public are welcome to submit comments at the public meeting on May 2, staff envisions the May 2 meeting as an opportunity to present and explain the draft regulation to meeting attendees, to answer questions, and to facilitate discussion of the draft proposal. Meeting attendees are encouraged to reiterate any oral comments they make at the public meeting in a written submission. Written comments are welcome from any member of the public during the informal public comment period until its close on May 20, 2011.

**Final Decision:** The director's final decision on the adoption of the regulation will occur at some time after the close of the informal public comment period, and the decision, along with the final regulation, will be published in the Virginia Register of Regulations and posted on the department's website.

**Contact Information:** Carol C. Wampler, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4579, FAX (804) 698-4346, or email [carol.wampler@deq.virginia.gov](mailto:carol.wampler@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 April 13, 2011, and April 20, 2011. 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.

Director's Order Number Twenty-Nine (11)

Virginia Lottery's "Cruise for Cash Sweepstakes" Final Rules for Game Operation (effective April 12, 2011)

Director's Order Number Thirty (11)

Virginia's Instant Game Lottery 1239; "Fast \$50S" Final Rules for Game Operation (effective April 12, 2011)

Director's Order Number Thirty-One (11)

Virginia's Instant Game Lottery 1258; "Solid Gold" Final Rules for Game Operation (effective April 20, 2011)

Director's Order Number Thirty-Two (11)

Virginia Lottery's "Virginia's Riches Sweepstakes" Final Rules for Game Operation (effective April 12, 2011)

Director's Order Number Thirty-Three (11)

Virginia Lottery's "Nascar®" Sweepstakes" Final Rules for Game Operation (effective April 12, 2011)

Director's Order Number Thirty-Four (11)

Virginia's Instant Game Lottery 1248; "Casino Cash" Final Rules for Game Operation (effective April 20, 2011)

Director's Order Number Thirty-Five (11)

Virginia's Instant Game Lottery 1250; "Instant Cash Monopoly" Final Rules for Game Operation (effective April 20, 2011)

Director's Order Number Thirty-Six (11)

Virginia's Instant Game Lottery 1259; "Summer Bucks" Final Rules for Game Operation (effective April 20, 2011)

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Notice of Periodic Reviews

Pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (2010), the Virginia Department of Mines, Minerals and Energy (DMME) is conducting a periodic review and invites public comment on the following regulations:

4VAC25-60, Rules and Regulations Governing the Installation and Use of Automated Temporary Roof Support Systems

4VAC25-70, Rules and Regulations Governing Disruption of Communications in Mines

4VAC25-90, Rules and Regulations Governing the Use of Diesel Powered Equipment in Underground Coal Mines

4VAC25-101, Regulation Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells

4VAC25-110, Rules and Regulations Governing Blasting in Surface Mining Operations

4VAC25-120, Rules and Regulations Governing Installation and Use of Cabs and Canopies

4VAC25-145, Regulations on the Eligibility of Certain Mining Operators to Perform Reclamation Projects

DMME will consider whether these existing regulations are essential to protect the health, safety, and welfare of the public. DMME will also consider the effect of these regulations on small business. DMME welcomes specific comments on the performance and effectiveness of these regulations and also requests suggestions to improve the content and organization of the regulations to make them more understandable and useful.

The comment period for this review begins on May 9, 2011, and ends at 5 p.m. on May 31, 2011. Comments may be submitted to Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, Division of Administration, 1100 Bank Street, 8th Floor, Richmond, VA 23219, or email [michael.skiffington@dmme.virginia.gov](mailto:michael.skiffington@dmme.virginia.gov). Regulations may be viewed online at the Virginia Regulatory Town Hall site located at <http://www.townhall.virginia.gov>, or copies will be sent upon request.

## STATE WATER CONTROL BOARD

### Proposed Consent Order for the Town of Crewe, Virginia

Purpose of notice: To seek public comment on a proposed consent order to be issued by the State Water Control Board to the Town of Crewe, Virginia.

Public comment period: May 9, 2011, to June 8, 2011

Consent order description: The State Water Control Board proposes to issue a consent order to the Town of Crewe to address violations of the State Water Control Law. The consent order requires the payment of a civil charge and the performance of certain corrective action to address the aforementioned violations.

How to comment: The Department of Environmental Quality (DEQ) accepts comments from the public by email, fax, or postal mail. All comments must be received by DEQ within the comment period. The public may review the proposed consent order at the office named below or on DEQ's website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: Kathleen F. O'Connell, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23223, telephone (804) 698-4273, FAX (804) 698-4277, or email [kathleen.oconnell@deq.virginia.gov](mailto:kathleen.oconnell@deq.virginia.gov).



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# General Notices/Errata

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## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available 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.

## VIRGINIA GAS AND OIL BOARD

### Regulatory Advisory Committee for Regulations Governing the Use of Arbitration to Resolve Coalbed Methane Gas Ownership Disputes

The Virginia Gas and Oil Board (board) published an Emergency regulation and a Notice of Intended Regulatory Action (NOIRA) concerning the use of arbitration to resolve coalbed methane gas ownership disputes (4VAC25-165) in the Virginia Register on January 17, 2011 (Volume 27, Issue 10). In the background document supporting the regulation, the board indicated its willingness to form a regulatory advisory committee to assist in drafting the permanent replacement regulation. During the comment period for the concurrently filed permanent NOIRA, the board received no offers to participate on the committee. Therefore, the board will proceed in drafting the permanent replacement regulation without the use of an advisory committee.

Contact Information: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TDD (800) 828-1120, or email [mike.skiffington@dmme.virginia.gov](mailto:mike.skiffington@dmme.virginia.gov).

## ERRATA

### SAFETY AND HEALTH CODES BOARD

Title of Regulation: **16VAC25-73. Tree Trimming Operations (adding 16VAC25-73-10 through 16VAC25-73-150).**

Publication: 27:15 VA.R. 1934-1964 March 28, 2011.

Correction to Final Regulation:

Page 1940, 16VAC25-73-40 D 5, strike 16VAC25-90-134 and insert 16VAC25-90-1910.134

Page 1943, 16VAC25-73-60 A 9, line 5, after maintenance, strike or inspection

VA.R. Doc. No. R08-1044; Filed April 20, 2011, 4:18 p.m.