



VIRGINIA

REGISTER OF REGULATIONS

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Virginia Code Commission

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, 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 V.A.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**; **Robert L. Tavenner**; **Patricia L. West**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

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

PUBLICATION SCHEDULE AND DEADLINES

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

October 2011 through November 2012

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 (Tuesday)	December 5, 2011
28:8	November 30, 2011	December 19, 2011
28:9	December 13, 2011 (Tuesday)	January 2, 2012
28:10	December 27, 2011 (Tuesday)	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
28:21	May 30, 2012	June 18, 2012
28:22	June 13, 2012	July 2, 2012
28:23	June 27, 2012	July 16, 2012
28:24	July 11, 2012	July 30, 2012
28:25	July 25, 2012	August 13, 2012
28:26	August 8, 2012	August 27, 2012
29:1	August 22, 2012	September 10, 2012
29:2	September 5, 2012	September 24, 2012
29:3	September 19, 2012	October 8, 2012
29:4	October 3, 2012	October 22, 2012
29:5	October 17, 2012	November 5, 2012
29:6	October 31, 2012	November 19, 2012

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Initial Agency Notice

Title of Regulation: 3VAC5-40. Requirements for Product Approval.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Name of Petitioner: W. R. Moore.

Nature of Petitioner's Request: The petitioner has requested that the board allow the use of growlers, reusable containers for the sale of beer, by gourmet shop licensees. Currently, only persons licensed to sell beer for both on-premises and off-premises consumption may sell beer in growlers, under the provisions of 3VAC5-40-40.

Agency's Plan for Disposition of Request: Following the public comment period, the board will consider amending 3VAC5-40-40 to allow the sale of beer in growlers by gourmet shop licensees.

Public Comment Deadline: October 31, 2011.

Agency Contact: W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409, or email curtis.coleburn@abc.virginia.gov.

VA.R. Doc. No. R12-05; Filed September 12, 2011, 10:57 a.m.



TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Agency Decision

Title of Regulation: None specified.

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

Name of Petitioner: Emma Serrels, Alec Loorz, and Victoria Loorz (Kids vs. Global Warming).

Nature of Petitioner's Request: The petitioner is requesting the State Air Pollution Control Board to adopt regulations to:

1. Ensure that carbon dioxide emissions from fossil fuels peak in the year 2012;
2. Adopt a carbon dioxide emissions reduction plan that, consistent with the best available science, reduces statewide fossil fuel carbon dioxide emissions by at least 6.0% annually until at least 2050 and expands Virginia's capacity for carbon sequestration;

3. Establish a statewide greenhouse gas emissions accounting, verification and inventory and issue annual progress reports so that the public has access to accurate data regarding the effectiveness of Virginia's efforts to reduce fossil fuel carbon dioxide emissions; and

4. Adopt any necessary policies or regulations to implement the greenhouse gas emissions reduction plan, as detailed in 1 and 2 above.

Agency Decision: Request denied.

Statement of Reason for Decision: The board at its meeting on September 9, 2011, adopted the following motion on a vote of 5 to 2:

That the board denies the Petition for the following reasons:

1. While the board has the legal authority to take the action sought by the petition, the board has undertaken such major regulatory actions in the past only when mandated by federal law or directed to do so by the General Assembly. The board should not change this practice with respect to the petition.

2. There is no Virginia authority supporting the application of the public trust doctrine to the regulation of air pollution.

3. The Commonwealth, through the Attorney General, is challenging the authority of EPA to regulate greenhouse gases. The board, following the lead of the Governor, supports the Attorney General's litigation. Prudence would dictate that to the extent possible any regulatory action of the type sought by the petition await judicial resolution of this matter.

4. On the merits of the petition, while temperature increases and changes in climate are well documented, their causes - as well as the nature and efficacy of any regulatory efforts necessary or appropriate to control or reverse them - are not.

5. Any major regulation of greenhouse gases should be carried out through coordination among the federal government and all the states.

6. For the Commonwealth to act alone on a matter of this nature would place Virginia and its regulated businesses at a disadvantage with respect to those of other states and would thereby jeopardize Virginia jobs and pose a serious threat to the economy of the state.

7. Since any program regulating greenhouse gases would have to be carefully designed by the Department of Environmental Quality (DEQ) to be enforceable and to produce the results requested, implementation of the petition will require significant new resources of staff time and money from DEQ. These resources are not currently available and current resources are best used to meet the requirements already in place or on the way.

Petitions for Rulemaking

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

VA.R. Doc. No. R11-47; Filed September 12, 2011, 2:33 p.m.

STATE WATER CONTROL BOARD

Agency Decision

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

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

Name of Petitioner: National Park Service.

Nature of Petitioner's Request: The petitioner has requested that the State Water Control Board amend the Water Quality Standards to designate Bull Run from the northern end of Manassas National Battlefield Park boundary, at the confluence of Little Bull Run, south to where it crosses Route 66 as a Tier III exceptional state water.

Agency Decision: Request granted.

Statement of Reason for Decision: The petition for rulemaking was granted by the State Water Control Board at its meeting on August 4, 2011, based on the staff presentation and conclusion that the petitioned segment of Bull Run met sufficient eligibility criteria, set forth in the State Water Quality Standards regulation, for consideration as a Tier III exceptional state water.

Agency Contact: David C. Whitehurst, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4121, or email david.whitehurst@deq.virginia.gov.

VA.R. Doc. No. R11-42; Filed September 12, 2011, 1:32 p.m.

safety course for unlicensed persons to be certified in radiation safety.

Agency Decision: Request granted.

Statement of Reason for Decision: The board is unable to reconsider the elimination of a board approved course and examination because it does not have statutory authority to approve such program. However, the board acted to interpret the "course or examination recognized by the Commission on Dental Accreditation of the American Dental Association" to include a "course with examination provided by a dental assisting, dental hygiene or dentistry program accredited by the Commission on Dental Accreditation of the American Dental Association." This interpretation will allow CODA-accredited programs to offer a dental radiation course in order to certify persons to place or expose dental x-ray film in dental offices. In addition, the board intends to amend its regulations to clarify the requirements accordingly.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R11-40; Filed September 12, 2011, 4:03 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Agency Decision

Title of Regulation: **18VAC60-20. Regulations Governing Dental Practice.**

Statutory Authority: § 54.1-2400 and Chapter 27 of Title 54.1 of the Code of Virginia.

Name of Petitioner: Ann Bruhn.

Nature of Petitioner's Request: To amend regulations to permit accredited dental hygiene schools to offer radiation

NOTICES OF INTENDED REGULATORY ACTION

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR PROFESSIONAL SOIL SCIENTISTS AND WETLAND PROFESSIONALS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Professional Soil Scientists and Wetland Professionals intends to consider amending **18VAC145-20, Professional Soil Scientists Regulations**. The purpose of the proposed action is to transition the soil scientist regulation program from certification to licensure pursuant to Chapters 777 and 859 of the 2011 Acts of Assembly. Additional changes to regulations will be made as necessary.

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

Statutory Authority: §§ 54.1-201 and 54.1-2211 of the Code of Virginia.

Public Comment Deadline: November 9, 2011.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists and Wetland Professionals, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email soilscientist@dpor.virginia.gov.

VA.R. Doc. No. R12-2917; Filed September 9, 2011, 2:41 p.m.

Regulations

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

Proposed Regulation

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

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

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

Public Hearing Information:

October 20, 2011 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comment Deadline: October 3, 2011.

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

Summary:

The proposal is to establish licenses for Virginia resident hunting, trapping, and freshwater fishing for two-year, three-year, and four-year terms, in addition to the existing annual licenses for one-year terms, with license fees as follows: (i) for licenses with two-year terms, fees of two times the fee for the annual license, minus one dollar; (ii) for licenses of three-year terms, fees of three times the fee for the annual license, minus two dollars; and (iii) for licenses of four-year terms, fees of four times the fee for the annual license, minus three dollars.

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

In accordance with the authority of the board under § 29.1-103 (16) of the Code of Virginia, the following fees are established for hunting, trapping, and fishing licenses and permits:

Virginia Resident Licenses to Hunt	
Type license	Fee
1-year Resident License to Hunt, for licensees 16 years of age or older	\$22.00
<u>2-year Resident License to Hunt, for licensees 16 years of age or older</u>	<u>\$43.00</u>
<u>3-year Resident License to Hunt, for licensees 16 years of age or older</u>	<u>\$64.00</u>
<u>4-year Resident License to Hunt, for licensees 16 years of age or older</u>	<u>\$85.00</u>
County or City Resident License to Hunt in County or City of Residence Only, for licensees 16 years of age or older	\$15.00
Resident Senior Citizen Annual License to Hunt, for licensees 65 years of age or older	\$8.00
Resident Junior License to Hunt, for licensees 12 through 15 years of age, optional for licensees under 12 years of age	\$7.50
Resident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	\$15.00
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters, and to hunt with a crossbow (also listed under Virginia Resident Licenses to Fish)	\$132.00
Resident Junior Lifetime License to Hunt, for licensees under 12 years of age at the time of purchase	\$255.00
Resident Lifetime License to Hunt, for licensees at the time of purchase:	
through 44 years of age	\$260.00
45 through 50 years of age	\$210.00
51 through 55 years of age	\$160.00
56 through 60 years of age	\$110.00
61 through 64 years of age	\$60.00
65 years of age and over	\$20.00

Regulations

Totally and Permanently Disabled Resident Special Lifetime License to Hunt	\$15.00	Virginia Nonresident Licenses for Additional Hunting Privileges	
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Fish)	\$15.00	Type license or permit	Fee
		Nonresident Bear, Deer, and Turkey Hunting License, for licensees:	
		16 years of age or older	\$85.00
		12 through 15 years of age	\$15.00
		under 12 years of age	\$12.00
Virginia Resident Licenses for Additional Hunting Privileges			
Type license or permit	Fee	Nonresident Archery License to Hunt with bow and arrow during archery hunting season	\$30.00
Resident Bear, Deer, and Turkey Hunting License, for licensees 16 years of age or older	\$22.00	Nonresident Crossbow License to Hunt with crossbow during archery hunting season	\$30.00
Resident Junior Bear, Deer, and Turkey Hunting License, for licensees under 16 years of age	\$7.50	Nonresident Muzzleloading License to Hunt during muzzleloading hunting season	\$30.00
Resident Archery License to Hunt with bow and arrow during archery hunting season	\$17.00	Nonresident Shooting Preserve License to Hunt within the boundaries of a licensed shooting preserve	\$22.00
Resident Crossbow License to Hunt with crossbow during archery hunting season	\$17.00	Nonresident Bonus Deer Permit	\$30.00
Resident Muzzleloading License to Hunt during muzzleloading hunting season	\$17.00	Miscellaneous Licenses or Permits to Hunt	
Resident Bonus Deer Permit	\$17.00	Type license or permit	Fee
Virginia Nonresident Licenses to Hunt			
Type license	Fee	Waterfowl Hunting Stationary Blind in Public Waters License	\$22.50
Nonresident License to Hunt, for licensees 16 years of age or older	\$110.00	Waterfowl Hunting Floating Blind in Public Waters License	\$40.00
Nonresident Three-Day Trip License to Hunt	\$59.00	Foxhound Training Preserve License	\$17.00
Nonresident Youth License to Hunt, for licensees:		Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Fish)	\$17.00
under 12 years of age	\$12.00	Virginia Resident and Nonresident Licenses to Trap	
12 through 15 years of age	\$15.00	Type license	Fee
Nonresident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	\$30.00	<u>1-year Resident License to Trap, for licensees 16 years of age or older</u>	\$45.00
Nonresident Lifetime License to Hunt	\$555.00	<u>2-year Resident License to Trap, for licensees 16 years of age or older</u>	<u>\$89.00</u>
		<u>3-year Resident License to Trap, for licensees 16 years of age or older</u>	<u>\$133.00</u>
		<u>4-year Resident License to Trap, for licensees 16 years of age or older</u>	<u>\$177.00</u>

Regulations

County or City Resident License to Trap in County or City of Residence Only	\$20.00	Resident Special Lifetime License to Freshwater Fish, for licensees at the time of purchase:	
Resident Junior License to Trap, for licensees under 16 years of age	\$10.00	through 44 years of age	\$260.00
Resident Senior Citizen License to Trap, for licensees 65 years of age or older	\$8.00	45 through 50 years of age	\$210.00
Resident Senior Citizen Lifetime License to Trap, for licensees 65 years of age or older	\$20.00	51 through 55 years of age	\$160.00
Totally and Permanently Disabled Resident Special Lifetime License to Trap	\$15.00	56 through 60 years of age	\$110.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Trap	\$15.00	61 through 64 years of age	\$60.00
Nonresident License to Trap	\$205.00	65 years of age and over	\$20.00
Virginia Resident Licenses to Fish		Resident Special Lifetime License to Fish in Designated Stocked Trout Waters, for licensees at the time of purchase:	
Type license	Fee	through 44 years of age	\$260.00
<u>1-year Resident License to Freshwater Fish</u>	\$22.00	45 through 50 years of age	\$210.00
<u>2-year Resident License to Freshwater Fish</u>	\$43.00	51 through 55 years of age	\$160.00
<u>3-year Resident License to Freshwater Fish</u>	\$64.00	56 through 60 years of age	\$110.00
<u>4-year Resident License to Freshwater Fish</u>	\$85.00	61 through 64 years of age	\$60.00
County or City Resident License to Freshwater Fish in County or City of Residence Only	\$15.00	65 years of age and over	\$20.00
Resident License to Freshwater Fish, for licensees 65 years of age or older	\$8.00	Totally and Permanently Disabled Resident Special Lifetime License to Freshwater Fish	\$15.00
Resident License to Fish in Designated Stocked Trout Waters	\$22.00	Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Hunt)	\$15.00
Resident License to Freshwater and Saltwater Fish	\$39.00	Virginia Nonresident Licenses to Fish	
Resident License to Freshwater Fish for Five Consecutive Days	\$13.00	Type license	Fee
Resident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$23.00	Nonresident License to Freshwater Fish	\$46.00
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters, and to hunt with a crossbow (also listed under Virginia Resident Licenses to Hunt)	\$132.00	Nonresident License to Freshwater Fish in Designated Stocked Trout Waters	\$46.00
		Nonresident License to Freshwater and Saltwater Fish	\$70.00
		Nonresident License to Freshwater Fish for Five Consecutive Days	\$20.00
		Nonresident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$30.00
		Nonresident Special Lifetime License to Freshwater Fish	\$555.00
		Nonresident Special Lifetime License to in Fish in Designated Stocked Trout Waters	\$555.00

Miscellaneous Licenses or Permits to Fish	
Type license or permit	Fee
Permit to Fish for One Day at Board-Designated Stocked Trout Fishing Areas with Daily Use Fees	\$8.00
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Hunt)	\$17.00
Special Guest Fishing License	\$60.00

VA.R. Doc. No. R12-3005; Filed September 21, 2011, 1:46 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 29.1-701 E of the Code of Virginia, which provides that the board shall promulgate regulations to supplement Chapter 7 (§ 29.1-700 et seq.) of Title 29.1 (Boating Laws) of the Code of Virginia as prescribed in Article 1 (§ 29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia. Regulations promulgated pursuant to Article 1 of Chapter 5 of Title 29.1 (Wildlife Management Regulations) are exempt from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia.

Title of Regulation: **4VAC15-410. Watercraft: Boating Safety Education (amending 4VAC15-410-50).**

Statutory Authority: §§ 29.1-701, 29.1-735, and 29.1-735.2 of the Code of Virginia.

Public Hearing Information:

October 20, 2011 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Board Room, Richmond, VA

Public Comment Deadline: October 3, 2011.

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

Summary:

The proposed regulation updates Virginia's boating safety education course provider requirements by (i) amending the date for the referenced National Association of State Boating Law Administrators (NASBLA) National Education Standards from January 1, 2008, to January 1, 2012; and (ii) eliminating language pertaining to education course requirements that will become redundant when addressed in the NASBLA National Education Standards commencing January 1, 2012.

4VAC15-410-50. Boating safety education course provider requirements.

A. To be an approved course provider, any individual, business, or organization that instructs or provides a boating safety education course shall execute and have on file a cooperative agreement with the department. It shall be the responsibility of the state boating law administrator to develop and execute such agreements. A list of approved course providers and boating safety education courses shall be kept by the department and made available to the public. Such list does not constitute any endorsement of any course or course provider by the department or the board.

B. As of January 1, 2009, boating safety education courses offered through the Internet and accepted by the department shall:

1. Be approved by NASBLA in accordance with the National Boating Education Standards, updated January 1, ~~2008~~ 2012, for course content/testing; and
2. Be provided only by an approved course provider who has executed a valid cooperative agreement with the department. Such agreements may be amended at any time by the department and may be cancelled with 30 days notice upon failure of the course provider to comply with the terms and conditions of the agreement or its amendments;
- ~~3. Be formatted and made available to the student only in instructional/training modules;~~
- ~~4. Consist of no less than six instructional/training modules with each module having no less than 10 test questions, randomly selected from a pool of questions that contains at least three times the number of questions presented in the module test in 2009 and four times the number of questions presented in the module test in 2010 and each following year;~~
- ~~5. Allow for the student to advance through the modules only in a sequential, chronological order and only upon successful completion of the test questions for the module. Successful completion shall be by a score of at least 90% correct on the test questions;~~
- ~~6. Be designed so that the student should spend at least six hours of active involvement in completing the course. Completing the course shall include familiarization with the course material, completion of any review questions, and completion of the test questions. The course design shall also include the provision of at least 50 separate web pages of course content and material for presentation to the student. Active involvement shall require the student to eliek on a "Next" or "Forward" button to progress through the course material;~~
- ~~7. Be designed so that the student is directed to repeat the entire module if the student has not scored at least 90%~~

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~~correct on the test questions for that module. The student shall also be provided with a reference to the applicable course text material for any missed questions on the module test; and~~

~~8. Be designed to promote the presentation, understanding and comprehension of boating safety information and safe practices and not the simple completion of an end-of-course test.~~

C. Any material and/or products to be used by an approved course provider that make reference to the department must be approved by the department, through the state boating law administrator, before publishing and/or distribution to the public.

D. Any fees charged by a course provider are set by the course provider, but must be clearly communicated to the student prior to taking the course.

DOCUMENTS INCORPORATED BY REFERENCE (4VAC15-410)

~~National Boating Education Standards, updated January 1, 2008, National Association of State Boating Law Administrators.~~

[National Boating Education Standards, updated January 1, 2012, National Association of State Boating Law Administrators.](#)

VA.R. Doc. No. R12-3006; Filed September 21, 2011, 2:28 a.m.

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Final Regulation

Title of Regulation: 4VAC20-140. **Pertaining to Identification of Crab Pots, Peeler Pots and Fish Pots (amending 4VAC20-140-25).**

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

Effective Date: October 1, 2011.

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

Summary:

This amendment allows licensed Maryland commercial crab harvesters who possess Virginia crab gear licenses to retain Maryland identification on crab pot and peeler pot

buoys and stakes while tending and fishing crab pots and peeler pots in Virginia waters.

4VAC20-140-25. Identification of crab pots and peeler pots.

A. Any person placing, setting, or fishing crab pots in Virginia waters, for which a commercial license is prescribed by law, shall display his Marine Resources Commission identification number, preceded by the letter "C," on each floating buoy or stake attached to each such crab pot, in a legible and visible manner.

B. Any person placing, setting, or fishing peeler pots in Virginia waters, for which a commercial license is prescribed by law, shall display his Marine Resources Commission identification number, preceded by the letter "P," on each floating buoy or stake attached to each such peeler pot, in a legible and visible manner.

C. Except as provided in subsection D of this section, it shall be unlawful for any person to place numbers or letters on any crab pot or peeler pot buoy or stake that is in addition to the identification requirement described in subsection A or B of this section.

D. Any person who is legally licensed to crab pot or peeler pot in North Carolina or ~~the Potomac River Maryland waters~~ may also display identification required by those jurisdictions on the buoys or stakes attached to those crab pots or peeler pots while that person is placing, setting, or fishing those crab pots or peeler pots in Virginia waters.

E. Any identification shall be legally assigned or registered to that person, as described in subsection D of this section.

VA.R. Doc. No. R12-2960; Filed September 29, 2011, 2:53 p.m.

Final Regulation

Title of Regulation: 4VAC20-720. **Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-20, 4VAC20-720-40, 4VAC20-720-60, 4VAC20-720-70, 4VAC20-720-75, 4VAC20-720-80; repealing 4VAC20-720-50).**

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

Effective Date: October 1, 2011.

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

Summary:

The amendments (i) define the boundaries of the Thomas Rock Hand Scrape Area; (ii) define the boundaries of the York River Hand Scrape Area; (iii) establish the open oyster harvest season for areas in the Chesapeake Bay and its tributaries, the Potomac River tributaries, and the

seaside of the Eastern Shore; and (iv) establish the time limit, gear restrictions, gear license requirements, and harvest limits for clean cull oysters.

4VAC20-720-20. Definitions.

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

"Coan River Area" means that area of the Coan River inside of Public Grounds 77 and 78.

"Deep Rock Patent Tong Area (Lower Chesapeake Bay)" means the area described as follows: starting at Cherry Point, Gwynns Island, thence northeast to G"1P" along the south side of the channel to Piankatank River; thence east-southeast to G"1R"; thence southwest to Sandy Point, Gwynns Island, North of Hole-in-the-Wall.

"Deep Water Shoal State Replenishment Seed Area (DWS)" in the James River (574.66 Acres) means the areas beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1 as located by Virginia State Plane Coordinates, South Zone, NAD 1927, north 302,280.00, east 2,542,360.00; thence north azimuth 30°49'59", 4,506.99 feet to Corner 2, north 306,150.00, east 2,544,670.00; thence north azimuth 135°08'57", 5,430.60 feet to Corner 3, north 302,300.00, east 2,548,500.00; thence north azimuth 212°13'54", 3,487.42 feet to Corner 4, north 299,350.00, east 2,546,640.00; thence north azimuth 269°10'16", 2,765.29 feet to Corner 5, north 299,310.00, east 2,543,875.00; thence north azimuth 332°58'26", 3,334.09 feet to Corner 1, being the point of beginning.

"Great Wicomico River Hand Scrape Area" means that area east of a line drawn from Sandy Point to Cockrell Point.

"Hand scrape" means any device or instrument with a catching bar having an inside measurement of no more than 22 inches, which is used or usable for the purpose of extracting or removing shellfish from a water bottom or the bed of a body of water.

"James River Hand Scrape Area" means those public oyster grounds of the James River west of the Monitor and Merrimac Bridge Tunnel and northeast of the Mills E. Godwin/Nansemond River Bridge (Route 17) to the James River Bridge (Route 17).

"Little Wicomico River" means that area of the Little Wicomico River inside of Public Ground 43.

"Lower Machodoc Area" means that area of the Lower Machodoc River to the Virginia-Maryland state line (PRV5A to PRV5C).

"Milford Haven" means that area of Milford Haven inside of Public Ground 7, within these coordinates: 37° 28.32', N., 76° 16.45', W.; 37° 28.35', N., 76° 16.42', W.; 37° 28.37', N., 76° 16.47', W.; 37° 28.35', N., 76° 16.50', W.

"Mobjack Bay Hand Scrape Area" shall consist of all of Public Ground No. 25, Gloucester County (Towe Stake) within these coordinates: 37° 20.59', N., 76° 23.24', W.; 37° 20.38', N., 76° 22.72', W.; 37° 19.86', N., 76° 23.59', W.; 37° 20.03', N., 76° 23.77', W.; and 37° 20.39', N., 76° 23.58', W. and that portion of Public Ground No. 2, Mathews County (Pultz Bar), within these coordinates: 37° 21.25', N., 76° 21.37', W.; 37° 21.27', N., 76° 20.96', W.; 37° 21.02', N., 76° 20.94', W.; and 37° 21.05', N., 76° 21.33', W.

"Nomini River" means that area of the Nomini River inside of Public Ground 26 (Deans) and Public Ground 28 (Cut).

"Oyster Patent Tong" means any patent tong not exceeding 100 pounds in gross weight, including any attachment other than rope and with the teeth not to exceed four inches in length.

"Pocomoke and Tangier Sounds Management Area (PTSMA)" means the area as defined in § 28.2-524 of the Code of Virginia.

"Public oyster ground" means all those grounds defined in § 28.2-551 of the Code of Virginia, all ground set aside as public oyster ground by court order, and all ground set aside as public oyster ground by order of the Marine Resources Commission.

"Rappahannock River Rotation Area 1" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning at the MLW west of Broad Creek (37° 33.952', N., 76° 19.309', W.); thence north to a VMRC buoy on the Baylor line (37° 34.539', N., 76° 19.022', W.) to VMRC buoy (37° 34.683', N., 76° 19.100' W.); thence, northeasterly to VMRC Buoy (37° 35.017', N., 76° 19.450', W.); thence, northeasterly to Sturgeon Bar Light (7R) (37° 35.150', N., 76° 19.733', W.); thence, continuing northwest to Mosquito Point Light (8R) (37° 36.100', N., 76° 21.300', W.); thence to the house on Mosquito Point (37° 36.523', N., 76° 21.595', W.) bounded on the east by a line from Windmill Point (37° 35.793', N., 76° 14.180', W.); thence, southeast to Windmill Point Light (37° 35.793', N., 76° 14.180', W.); thence southwesterly to Stingray Point Light (37° 33.673', N., 76° 16.362', W.); thence, westerly to Stingray Point (37° 33.692', N., 76° 17.986', W.)

"Rappahannock River Rotation Area 2" shall consist of all public grounds in the Rappahannock River with a boundary on the east side defined as beginning at the house at Mosquito Point (37° 36.523', N., 76° 21.595', W.); thence, southeast to Mosquito Point Light "8R" (37° 36.100', N., 76° 21.300', W.); thence, continuing southeasterly to Sturgeon Bar Beacon "7R" (37° 35.150', N., 76° 19.733', W.); thence, southwesterly to VMRC buoy (37° 34.933', N., 76° 21.050', W.); thence, southwesterly to VMRC buoy (37° 34.883', N., 76° 21.100', W.); thence, to a pier west of Hunting Creek at Grinels (37° 34.436', N., 76° 26.288', W.). Rappahannock River Rotation Area 2 is bordered on the west by a line

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beginning at Mill Creek channel marker "4" (37° 35.083', N., 76° 26.950', W.); thence, northeasterly to Mill Creek channel marker "2" (37° 35.483', N., 76° 24.567', W.); thence, northeasterly to the house at Mosquito Point (37° 36.523', N., 76° 21.595', W.).

"Rappahannock River Rotation Area 3" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning from the north channel fender at the Norris Bridge (37° 37.483', N., 76° 25.345', W.); thence, southeast to the house on Mosquito Point (37° 36.523', N., 76° 21.595', W.); thence southwest to Mill Creek channel marker "2" (37° 35.483', N., 76° 24.567', W.); thence southwesterly to Mill Creek channel marker "4" (37° 35.083', N., 76° 24.950', W.); thence northeasterly to Parrotts Creek channel marker "1" (37° 36.033', N., 76° 25.417', W.); thence northerly to VMRC buoy (37° 36.333', N., 76° 25.200', W.); thence returning northerly to the Norris Bridge north channel fender.

"Rappahannock River Rotation Area 4" shall consist of all public grounds in the Rappahannock River with the boundary defined as beginning at the White Stone end of the Norris Bridge (37° 38.129', N., 76° 24.722', W.); thence, along the Norris Bridge to the north channel fender (37° 37.483', N., 76° 25.345', W.); thence westerly to the VMRC buoy 5-4 (36° 38.005', N., 76° 30.028', W.); thence, north to Old House Point (37° 39.139', N., 76° 29.685', W.); thence, northerly to Ball Point (37° 41.660', N., 76° 28.632', W.); thence, continuing northerly to Bar Point (37° 41.666', N., 76° 28.866', W.); thence easterly to Black Stump Point (37° 41.737', N., 76° 28.111', W.); thence, southeasterly to the western headland of Taylor Creek (37° 40.983', N., 76° 27.602', W.); thence, southwesterly to VMRC Buoy at Ferry Bar north (37° 40.300', N., 76° 28.500', W.); thence, southeasterly to VMRC Buoy at Ferry Bar South (37° 40.167', N., 76° 28.583', W.); thence, southwesterly to Corrotoman Point Duck Blind (37° 39.876', N., 76° 28.420', W.); thence, southerly to VMRC Buoy 543 (37° 39.267', N., 76° 27.850', W.); thence, southerly to VMRC Buoy at Drumming West (37° 38.883', N., 76° 27.683', W.); thence, southerly to VMRC buoy at Drumming East (37° 38.833', N., 76° 27.567', W.); thence, northeasterly to Orchard Point (37° 38.924', N., 76° 27.126', W.).

"Rappahannock River Rotation Area 5" shall consist of public grounds in the Rappahannock River with a boundary defined as beginning east of a line from the east headland of Whiting Creek (37° 36.658', N., 76° 30.312', W.); thence, north to Towles Point buoy "6" (37° 38.033', N., 76° 30.283', W.); thence, easterly to VMRC buoy 5-4 (37° 38.005', N., 76° 30.028', W.) continuing easterly to the Norris Bridge north channel fender (37° 37.483', N., 76° 25.345', W.); thence, along the Norris Bridge southwest to Grey's Point (37° 36.833', N., 76° 25.999', W.).

"Rappahannock River Rotation Area 6" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning from Balls Point (37° 39.355', N., 76° 34.444', W.); thence, northeast to the flashing red buoy "8" off Rogue Pt. (37° 40.158', N., 76° 32.939', W.); thence, southeasterly to VMRC Towles Point Area buoy (37° 38.833', N., 76° 31.536', W.); thence, southwesterly to VMRC White House Sanctuary buoy (37° 38.150', N., 76° 30.533', W.); thence, southeasterly to red buoy "6" (37° 38.033', N., 76° 30.283', W.); thence, southerly to the eastern headland of the mouth of Whiting Creek (37° 36.658', N., 76° 30.312', W.).

"Rappahannock River Area 7" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning south of a line from Punchbowl Point (37° 44.675', N., 76° 37.325', W.) to Monaskon Point (37° 44.063', N., 76° 34.108', W.) to a line from Rogue's Point (37° 40.040', N., 76° 32.253', W.); thence, northwest to flashing red buoy "8" (37° 40.158', N., 76° 32.939', W.) continuing southwest to Balls Point (37° 39.355', N., 76° 34.444', W.).

"Rappahannock River Area 8" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning east and south of a line from Jones Point (37° 46.786', N., 76° 40.835', W.) to Sharps Point (37° 49.364', N., 76° 42.087', W.) to a line from Punchbowl Point (37° 44.675', N., 76° 37.325', W.) to Monaskon Point (37° 44.063', N., 76° 34.108', W.).

"Rappahannock River Area 9" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning west of the line drawn from Sharps Pt. (37° 49.364', N., 76° 42.087', W.) to Jones Pt (37° 46.786', N., 76° 40.835', W.) to the Route 360 (Downing Bridge).

"Standard oyster dredge" means any device or instrument having a maximum weight of 150 pounds with attachments, maximum width of 50 inches and maximum tooth length of four inches.

"Tangier-Pocomoke Sounds Rotation Area 1" shall include all public and unassigned grounds within the PTSMA, in Tangier Sound, that are west and south of a line beginning at the Maryland-Virginia Line (37° 54.61360', N., 75° 53.97396', W.) continuing south on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence continuing west to point "Area 2-NW" (37° 53.36335', N., 75° 56.55896', W.); thence south to a point "Area 2-SW" (37° 48.44291', N., 75° 56.48836', W.); thence continuing east to the north end of Watts Island (37° 48.77578', N., 75° 53.59941', W.). Area 1 shall also include all of the public and unassigned grounds in the PTSMA in Pocomoke Sound south and west of a line beginning at the house on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence east southeast to Red Channel Marker # 8 (37° 52.45833', N., 75° 49.40000', W.); thence south southeast to Green Channel Marker "C - 1" (37° 52.10000', N., 75° 47.80833', W.) thence southeast to

Flashing Red "2+1" (37° 50.95333', N., 75° 46.64167', W.); thence south to the northernmost tip of Russell Island (37° 48.38796', N., 75° 47.02241', W.).

"Tangier-Pocomoke Sounds Rotation Area 2" shall include all public and unassigned grounds in the PTSMA with a boundary defined as beginning at the house on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence south to the north end of Watts Island (37° 48.77578', N., 75° 53.59941', W.); thence west to a point "Area 2-SW" (37° 48.44291', N., 75° 56.48836', W.); thence north to point "Area 2-NW" (37° 53.36335', N., 75° 56.55896', W.); thence back east to the house on Great Fox Island. This area includes Public Ground No. 7, known as "Thoroughfare Rock" and Public Ground No. 8, known as "California Rock" in Tangier Sound. Area 2 shall also include all public and unassigned grounds in the PTSMA in Pocomoke Sound northeast of a line beginning at the house on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence east southeast to Red Channel Marker # 8 (37° 52.45833', N., 75° 49.40000', W.); thence south southeast to Green Channel Marker "C – 1" (37° 52.10000', N., 75° 47.80833', W.); thence southeast to Flashing Red "2+1" (37° 50.95333', N., 75° 46.64167', W.); thence south to the northernmost tip of Russell Island (37° 48.38796', N., 75° 47.02241', W.).

"Tangier Sound Hand Tong Area" means that area in the PTSMA south and west of a line from Fishbone Island thence southeast to bell buoy #5, thence south southwest to buoy #3 (such area to include all of Public Ground 3 and Flat Rock) and shall be a hand tong area only and Cod Harbor (approximately 1,124 acres) beginning at a point of East Point Marsh, said point having the Virginia state coordinates, south section, coordinates of north 555,414.89, east 2,730,388.85; thence south 79°59', east 2,260 feet to a line designating the western extent of the PTSMA as described in § 28.2-524 of the Code of Virginia; thence south 10°16', west 2,800 feet; thence south 28°46', west 8,500 feet to a point on Sand Spit, position north 545,131.78, east, 2,728,014.94; thence along the mean low water line of Cod Harbor in a west, north and northeast direction crossing Canton Creek and Mailboat Harbor from headland to headland to the point of beginning.

~~"Thomas Rock Hand Scrape Area" means an area in the James River with an eastern boundary being the James River, Route 17 bridge and a western boundary being a line drawn from the south side of the river at Rainbow Farm Point; thence to the channel buoy green #5; and thence to Blunt Point on the north side of the river.~~

"Thomas Rock Hand Scrape Area" means the public grounds and unassigned grounds in an area of the James River with an eastern boundary being the upstream side of the James River Bridge (Route 17), and a western boundary being a line drawn from the south side of the river at Rainbow Farm Point, a point on the shore, in line with markers "STH" and "SMT" located at 37° 00.1965862' N., 76° 34.0712010'

W.; thence north-northeasterly to a VMRC marker "STH" located at 37° 00.9815328' N., 76° 33.5955842' W.; thence to a Virginia Marine Resources Commission (VMRC) marker "SMT" located at 37° 01.3228160' N., 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, located at 37° 02.3449949' N., 76° 32.7689936' W.; thence northeasterly to a VMRC marker "NMT" located at 37° 02.7740540' N., 76° 32.0960864' W.; thence to a VMRC marker "NTH" located at 37° 03.2030055' N., 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, said point being in line with markers "NMT" and "NTH" and located at 37° 03.3805862' N., 76° 31.1444562' W.

"Unassigned ground" means all grounds other than public oyster ground as defined by this chapter and which have not been set aside or assigned by lease, permit, or easement by the Marine Resources Commission.

"Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area)" means the area in Public Ground Number 118, south from the Smith Point Light to the Great Wicomico Light.

"Yeocomico River Area" means that area of the Yeocomico River inside Public Grounds 8, 102, 104, and 107.

~~"York River Hand Scrape Area" means an area above the Route 17 or Coleman Bridge in Public Ground No. 30, along the north side of the river, to just above Aberdeen Creek.~~

"York River Hand Scrape Area" means the public grounds in an area of the York River upstream of the Coleman Bridge (Route 17), along the north side of the river, to just upstream of Aberdeen Creek, with said public grounds being: Public Grounds Numbers 30 and 31 of Gloucester County, the additional public ground near Pages Rock as described by § 28.2-649 of the Code of Virginia, and the additional area to Public Ground 30 as set aside by court order.

4VAC20-720-40. Open oyster harvest season and areas.

A. It shall be unlawful for any person to harvest oysters from public and unassigned grounds outside of the seasons and areas set forth in this section.

B. The lawful seasons and areas for the harvest of oysters from the public oyster grounds and unassigned grounds are as follows described in the following subdivisions of this subsection:

- ~~1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2010, through April 30, 2011.~~
- ~~2. Seaside of Eastern Shore: for clean cull oysters only, November 1, 2010, through February 28, 2011.~~
- ~~3. Rappahannock River Area 9; the Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area); Mobjack Bay Hand Scrape Area; and the Great Wicomico River Hand Scrape Area: October 1, 2010, through December 31, 2010.~~

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~~4. Rappahannock River Rotation Area 4: October 1, 2010, through November 30, 2010, and February 1, 2011, through February 28, 2011.~~

~~5. Tangier-Pocomoke Sounds Rotation Area 2: December 1, 2010, through February 28, 2011.~~

~~6. The James River Hand Scrape Area and the Thomas Rock Hand Scrape Area (James River): October 1, 2010, through December 31, 2010.~~

~~7. The York River Hand Scrape Area: October 1, 2010, through December 31, 2010.~~

~~8. The Rappahannock River Multigear Areas:~~

~~a. The Rappahannock River Areas 6, 7, and 8: (for hand scrape only) October 1, 2010, through December 31, 2010.~~

~~b. The Rappahannock River Areas 6 and 7: (for patent tong only) January 1, 2011, through February 28, 2011.~~

~~9. Milford Haven and Deep Rock Patent Tong Area (Lower Chesapeake Bay): October 1, 2010, through December 31, 2010.~~

~~10. Coan, Little Wicomico, Nomini, and Yeocomico Rivers: October 1, 2010, through December 31, 2010.~~

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2011, through April 30, 2012.

2. James River Hand Scrape Area and the Thomas Rock Hand Scrape Area (James River): November 1, 2011, through January 31, 2012.

3. York River Hand Scrape Area: January 1, 2012, through February 29, 2012.

4. Mobjack Bay Hand Scrape Area: March 1, 2012, through March 31, 2012.

5. Milford Haven: December 1, 2011, through February 29, 2012.

6. Deep Rock Patent Tong Area: December 1, 2011, through February 29, 2012.

7. Rappahannock River Rotation Area 1: October 1, 2011, through November 30, 2011.

8. Rappahannock River Rotation Area 2: November 1, 2011, through December 31, 2011.

9. Rappahannock River Area 7: December 1, 2011, through January 31, 2012.

10. Rappahannock River Area 8: December 1, 2011, through January 31, 2012.

11. Rappahannock River Area 9: November 1, 2011, through December 31, 2011.

12. Great Wicomico River Hand Scrape Area: December 1, 2011, through January 31, 2012.

13. Upper Chesapeake Bay, Blackberry Hangs Hand Scrape Area: December 1, 2011, through January 31, 2012.

14. Little Wicomico River: October 1, 2011, through December 31, 2011.

15. Coan River: October 1, 2011, through December 31, 2011.

16. Yeocomico River: October 1, 2011, through December 31, 2011.

17. Nomini River: October 1, 2011, through December 31, 2011.

18. Tangier-Pocomoke Sounds Rotation Area 1: December 1, 2011, through February 29, 2012.

19. Seaside of the Eastern Shore (for clean cull oysters only): November 1, 2011, through February 29, 2012.

4VAC20-720-50. Closed harvest season and areas. (Repealed.)

~~It shall be unlawful for any person to harvest oysters from the following areas during the specified periods:~~

~~1. All public oyster grounds and unassigned grounds in the Chesapeake Bay and its tributaries, including the tributaries of the Potomac River, except those areas listed in 4VAC20-720-40, are closed: October 1, 2010, through September 30, 2011.~~

~~2. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: May 1, 2011, through September 30, 2011.~~

~~3. All public oyster grounds and unassigned grounds on the Seaside of Eastern Shore: for clean cull oysters, October 1, 2010, through October 31, 2010, and March 1, 2011, through September 30, 2011, and for seed oysters, all year.~~

~~4. Rappahannock River Area 9; the Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area); Mobjack Bay Hand Scrape Areas; and the Great Wicomico River Hand Scrape Area: January 1, 2011, through September 30, 2011.~~

~~5. The Rappahannock River Rotation Area 4: December 1, 2010, through January 31, 2011, and March 1, 2011, through September 30, 2011.~~

~~6. Tangier-Pocomoke Sounds Rotation Area 2: October 1, 2010, through November 30, 2010, and March 1, 2011, through September 30, 2011.~~

~~7. The James River Hand Scrape Area and the Thomas Rock Hand Scrape Area (James River): January 1, 2011, through September 30, 2011.~~

~~8. The York River Hand Scrape Area: January 1, 2011, through September 30, 2011.~~

9. Rappahannock River Multigear Areas:

~~a. The Rappahannock River Areas 6, 7, and 8: (for hand scrape only) January 1, 2011, through September 30, 2011.~~

~~b. The Rappahannock River Areas 6 and 7: (for patent tong only) October 1, 2010, through December 31, 2010, and March 1, 2011, through September 30, 2011.~~

~~10. Milford Haven and Deep Rock Patent Tong Area: January 1, 2011, through September 30, 2011.~~

~~11. Coan, Little Wicomico, Nomini, and Yeocomico Rivers: January 1, 2011, through September 30, 2011.~~

4VAC20-720-60. Day and time limit.

A. It shall be unlawful to take, catch, or possess oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand or ordinary tong for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest. The presence of any gear normally associated with the harvesting of oysters on board the boat or other vehicle used during any harvesting under this exception shall be prima facie evidence of violation of this chapter.

B. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in ~~subdivisions 1 and 3 through 10 of 4VAC20-720-40 B 1 through 18~~, except as described in 4VAC20-1230. In addition, it shall be unlawful for any boat with an oyster dredge aboard to leave the dock until one hour before sunrise or return to the dock after sunset, and it shall be unlawful for any boat with a hand scrape aboard to leave the dock until one-half hour before sunrise or return to the dock after sunset.

4VAC20-720-70. Gear restrictions.

A. It shall be unlawful for any person to harvest oysters in the James River Seed Areas, including the Deep Water Shoal State Replenishment Seed Area; the Rappahannock River Area 9; Milford Haven and Little Wicomico, Coan, Nomini and Yeocomico Rivers, except by hand tong or ordinary tong. It shall be unlawful for any person to have a hand scrape on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong or ordinary tong.

B. It shall be unlawful to harvest oysters from the area as described in ~~subdivision 2 of 4VAC20-720-40 B 19~~, except by hand.

C. It shall be unlawful to harvest oysters in the Rappahannock River Rotation ~~Area 4~~ Areas 1 and 2; the

~~Rappahannock River Area 8~~ Areas 7 and 8, James River Hand Scrape Area, Thomas Rock Hand Scrape Area, Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area), and York River, Great Wicomico, and Mobjack Bay Hand Scrape Areas, except by hand scrape. ~~It shall be unlawful to harvest oysters in the Rappahannock River Areas 6 and 7, except by hand scrape from October 1, 2010, through December 31, 2010.~~

D. It shall be unlawful for any person to have more than one hand scrape on board any boat that is harvesting oysters or attempting to harvest oysters from public grounds. It shall be unlawful for any person to have a hand tong on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand scrape.

E. It shall be unlawful to harvest oysters from the area as described in ~~subdivision 5 of 4VAC20-720-40 B 18~~, except by a standard oyster dredge.

~~F. It shall be unlawful to harvest oysters from the Deep Rock Patent Tong Area, except by a standard oyster patent tong. It shall be unlawful to harvest oysters from the Rappahannock River Areas 6 and 7 from January 1, 2011, through February 28, 2011, except by a standard oyster patent tong.~~

4VAC20-720-75. Gear license.

A. It shall be unlawful for any person to harvest shellfish, from the hand scrape areas in the Rappahannock River, James River, Upper Chesapeake Bay, York River, Mobjack Bay and Great Wicomico River, unless that person has first obtained a current hand scrape license.

B. It shall be unlawful for any person to harvest shellfish, with a dredge from the public oyster grounds in the area as described in ~~subdivision 5 of 4VAC20-720-40 B 18~~, unless that person has first obtained a current dredge license.

C. It shall be unlawful for any person to harvest shellfish, with a patent tong from the public oyster grounds in the Deep Rock Patent Tong Area ~~or Rappahannock River Areas 6 and 7~~, unless that person has first obtained a current oyster patent tong license.

D. It shall be unlawful for any person to harvest shellfish, with an ordinary tong or hand tong from the public oyster grounds, as described in subsection A of 4VAC20-720-70, unless that person has first obtained a current ordinary tong or hand tong license.

4VAC20-720-80. Quotas and harvest limits.

A. The lawful daily harvest and possession limit of clean cull oysters harvested from the areas as described in ~~subdivisions 3 and 6 through 10 of 4VAC20-720-40 B 2 through 17~~ shall be 10 bushels per registered commercial fisherman licensee. It shall be unlawful for any registered commercial fisherman licensee to harvest or possess more

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than 10 bushels per day. The lawful daily vessel limit of clean cull oysters harvested from the areas described in 4VAC20-720-40 B 2 through 17 shall be determined by ~~as~~ the number of registered commercial ~~fishermen~~ fisherman licensees on board the vessel multiplied by 10 bushels with a maximum daily landing and possession limit of 30 bushels of clean cull oysters per vessel. It shall be unlawful to possess on board any vessel or to land more than the lawful daily vessel limit of clean cull oysters described in this subsection.

~~B. The lawful daily limit of clean cull oysters harvested from the area described in subdivision 4 of 4VAC20-720-40 shall be determined by the number of registered commercial fisherman licensees on board the vessel multiplied by six bushels. It shall be unlawful to possess on board any vessel or land more than the daily limit of clean cull oysters.~~

~~C. B. In the area as described in subdivision 5 of 4VAC20-720-40 B 18, where harvesting is allowed by dredge, there shall be a daily harvest and possession limit of 10 bushels of clean cull oysters per registered commercial fisherman licensee on board the vessel. It shall be unlawful for any registered commercial fisherman licensee to harvest or possess more than 10 bushels per day. The lawful daily vessel limit of clean cull oysters harvested by dredge shall be determined as the number of registered commercial fisherman licensees on board the vessel multiplied by 10 bushels with a maximum daily landing and possession limit of 30 bushels of clean cull oysters per vessel. It shall be unlawful for any registered commercial fisherman licensee to possess more than 10 bushels per day. It shall be unlawful to possess on board any vessel or to land more than the lawful daily vessel limit of clean cull oysters harvested by dredge, as described in this subsection. No blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.~~

~~D. C. Harvesters who export the oysters to an out-of-state market or do not sell the oysters to a licensed and Department of Health certified Virginia buyer but sell the oysters directly to the public for human consumption shall report oysters harvested on a daily basis and pay oyster taxes weekly.~~

VAR. Doc. No. R12-2963; Filed September 29, 2011, 2:49 p.m.

Emergency Regulation

Title of Regulation: 4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-10, 4VAC20-720-110; adding 4VAC20-720-85, 4VAC20-720-91).

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

Effective Dates: October 1, 2011, through October 31, 2011.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607,

telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Preamble:

This emergency chapter sets times of closure and other restrictions on the harvest of oysters from all oyster grounds in the Chesapeake Bay and its tributaries, including the tributaries of the Potomac River and seaside of the Eastern Shore.

4VAC20-720-10. Purpose.

The purpose of this emergency chapter is to protect and conserve Virginia's oyster resource, and promote the preservation of oyster broodstock, which has been depleted by disease, harvesting, and natural disasters.

4VAC20-720-85. James River seed quota and monitoring.

A. An oyster seed harvest quota of 120,000 bushels of seed is established for the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area for the 2011/2012 harvest season. Once it has been projected and announced that the quota of seed has been attained, it shall be unlawful for any person to harvest seed oysters from these areas.

B. Of the 120,000-bushel seed quota described in subsection A of this section, no more than 40,000 bushels of this quota may be harvested from October 1, 2011, through December 31, 2011. However, if it is projected and announced that 40,000 bushels of seed have been harvested before December 31, 2011, it shall be unlawful for any person to harvest seed oysters from that date forward, until January 1, 2012.

C. Any person harvesting or landing oyster seed from the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, shall report monthly on forms provided by the Virginia Marine Resources Commission all harvest of seed oysters. Reporting requirements shall consist of that person's Commercial Fisherman Registration License number, daily number of bushels of seed oysters harvested, harvest rock location, planting location (any lease numbers), and buyer name.

D. It shall be unlawful for any person harvesting seed oysters from the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, to fail to contact the Virginia Marine Resources Commission Interactive-Voice-Response (IVR) System within 24 hours of harvest or landing, and provide that person's name, Commercial Fisherman Registration License number, time, date, daily number of bushels of seed oysters harvested, harvest rock location, planting location (any lease numbers), and buyer name.

4VAC20-720-91. Harvest permit shall be required for the James River Seed Area, including the Deep Water Shoal State Replenishment Area.

A harvest permit shall be required for the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, for the harvesting of seed oysters. It shall be unlawful for any person to harvest or attempt to harvest seed oysters from the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, without first obtaining and having on board a harvest permit.

4VAC20-720-110. Penalty.

A. As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this emergency chapter shall be guilty of a Class 3 misdemeanor and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

B. In addition to the penalty prescribed by law, any person violating any provision of this emergency chapter shall destroy, in the presence of a marine police officer, all shellfish in his possession, or, at the direction of the marine police officer, shall place the shellfish overboard on the nearest oyster sanctuary or closed shellfish area, and shall cease harvesting on that day. All harvesting apparatus may be subject to seizure, and, pursuant to § 28.2-232 of the Code of Virginia, all licenses and permits may be subject to revocation following a hearing before the Virginia Marine Resources Commission.

V.A.R. Doc. No. R12-3008; Filed September 29, 2011, 2:56 p.m.

Final Regulation

Title of Regulation: 4VAC20-752. Pertaining to Blue Crab Sanctuaries (amending 4VAC20-752-20).

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

Effective Date: October 1, 2011.

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

Summary:

This amendment assigns latitude-longitude coordinates to the physical markers of the Virginia Blue Crab Sanctuaries.

4VAC20-752-20. Definitions.

"COLREGS Line" means the COLREGS Demarcation lines, as specified in Coastal Pilot, 35th and 36th editions by Lighthouse Press.

"Three Nautical Mile Limit Line" means the outer limit of the area extending three miles out to sea from the coast as depicted on NOAA nautical charts.

"Virginia Blue Crab Sanctuary" means two distinct sanctuary areas, Area 1 and Area 2, with Area 1 consisting of all tidal waters that are bounded by a line beginning at a point, near the western shore of ~~Fisherman's~~ Fisherman's Island, 37° 05' 57.57" N, 75° 58' 45.74" W, being on a line from the Cape Charles Lighthouse to the Thimble Shoal Light; thence southwesterly to Thimble Shoal Light, 37° 00' 52.24" N, 76° 14' 23.82" W; thence southwesterly to the offshore end of Ocean View Fishing Pier (formerly Harrison's Fishing Pier), 36° 57' 50.25" N, 76° 15' 26.73" W; thence ~~north~~ northerly to Flashing Green Buoy "9" on the York River Entrance Channel, 37° 11' 29.39" N, 76° 15' 42.57" W; thence northeasterly to Wolf Trap Light, 37° 23' 25.11" N, 76° 11' 22.04" W; thence northwesterly to a point, northeast of Windmill Point, 37° 38' 23.13" N, 76° 15' 59.54" W; thence northerly to a point, east of Great Wicomico Light at 37° 48' 15.72" N, 76° 14' 33.15" W; thence northeasterly to a point, 37° 49' 18.10" N, 76° 13' 06.00" W; thence northeasterly to Smith Point Lighthouse, 37° 52' 47.55" N, 76° 11' 01.50" W; thence northwesterly to a point on the Virginia-Maryland state line, 37° 54' 04.99" N, 76° 11' 44.96" W; thence northeasterly following the Virginia-Maryland state line to a point on that line, 37° 55' 43.79" N, 76° 07' 12.87" W; thence southeasterly to a point, southwest of Tangier Island, 37° 44' 59.85" N, 76° 01' 34.31" W; thence southeasterly to a point, southeast of Tangier Island, 37° 43' 41.05" N, 75° 57' 51.84" W; thence northeasterly to a point, south of Watts Island, 37° 45' 36.95" N, 75° 52' 53.87" W; thence southeasterly to a point, 37° 44' 56.15" N, 75° 51' 33.18" W; thence southwesterly to a point, west of Parkers Marsh, 37° 42' 41.49" N, 75° 55' 06.31" W; thence southwesterly to a point, west of Cape Charles Harbor, 37° 15' 37.23" N, 76° 04' 13.79" W; thence southeasterly to a point near the western shore of Fisherman's Island, on the line from Cape Charles Lighthouse to Thimble Shoal Light, said point being the point of beginning; and a continuation of Area 1, consisting of all tidal waters that are bounded by a line beginning at Cape Charles Lighthouse, 37° 07' 22.46" N, 75° 54' 23.39" W; thence southwesterly along the COLREGS Line to Cape Henry Lighthouse, 36° 55' 34.86" N, 76° 00' 25.93" W; thence ~~southeasterly~~ easterly to a point on the Three Nautical Mile Limit Line, 36° 54' 42.39" N, 75° 56' 44.23" W 36° 55' 32.62" N, 75° 55' 54.09" W; thence northeasterly along the Three Nautical Mile Limit Line to a point, 37° 03' 11.49" N, 75° 53' 27.02" W; thence northeasterly to a point, east of Cape Charles Lighthouse, 37° 06' 45" N, 75° 52' 05" W; thence westerly to the Cape Charles Lighthouse, said point being the point of beginning; and a second area, Area 2, consisting of all tidal waters beginning at a point along the Three Nautical Mile Limit Line, 37° 06' 45.00" N, 75° 52' 05.00" W 36° 55' 32.62" N, 75° 55' 54.09" W; thence southwesterly to a point, 37° 03' 11.49" N, 75° 53'

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~~27.02" W, said point being a point on the Three Nautical Mile Limit Line; thence southerly following the Three Nautical Mile Limit Line to a intersection point on the Virginia – North Carolina state boundary, 36° 33' 02.59" N, 75° 48' 16.21" W; thence westerly to a point, along the Virginia – North Carolina state boundary to its intersection with the mean low water line, 36° 33' 01.34" N, 75° 52' 03.06" W; thence northerly, following the mean low water line to the Rudee Inlet weir; thence easterly along the weir to the stone breakwater; thence following the stone breakwater to its northernmost point; thence northerly to the mean low water line at the easternmost most northeastern point of the northern stone jetty; thence northerly following westerly along the mean low water line of said stone jetty to the mean low water line along the shore; thence northerly following the mean low water line to its intersection with the COLREG Line point, 36° 55' 38.50" N, 76° 00' 20.32" W 36° 55' 34.75" N, 76° 00' 12.48" W; said point being the intersection of the mean low water line with the line from Cape Henry lighthouse easterly to a point on the Three Nautical Mile Limit Line, 36° 55' 32.62" N, 75° 55' 54.09" W; thence southeasterly to a point, 36° 54' 42.39" N, 75° 56' 44.23" W, thence northeasterly to a point, 37° 06' 45.00" N, 75° 52' 05.00" W, said point being the point of beginning of this second area Area 2.~~

VA.R. Doc. No. R12-2964; Filed September 29, 2011, 2:25 p.m.

Final Regulation

Title of Regulation: 4VAC20-1040. Pertaining to Crabbing Licenses (amending 4VAC20-1040-20).

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

Effective Date: October 1, 2011.

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

Summary:

This amendment establishes that crab pot or peeler pot fishermen on the waiting list shall remain on the list until such time that results from the Chesapeake Bay Winter Dredge Survey indicate that an abundance of 215 million age 1+ female blue crabs (2.4 inches and greater, carapace width) have been attained in three consecutive, seasonal surveys.

4VAC20-1040-20. License sales moratorium and license ineligibility conditions.

A. For any lawful crabbing season, commercial licenses for crab pot, peeler pot, crab scrape, crab trap, ordinary trot line, patent trot line, and dip net shall be sold only to those registered commercial fishermen who have been determined by the commission to be eligible to purchase any of these

licenses in 2010, except as described in subsection B of this section.

B. For any lawful crabbing season, those registered commercial fishermen who were eligible from 2004 through 2008 for any crab pot or peeler pot licenses, but reported no harvest from 2004 through 2007, were placed on a waiting list in 2009 and shall remain ineligible to purchase a crab pot or peeler pot license, in accordance with subsection C of this section.

C. At such time results from the Chesapeake Bay Winter Dredge Survey indicate that an abundance of ~~200~~ 215 million age 1+ female blue crabs (blue crabs 2.4 inches and greater, in carapace width) has been attained in three consecutive, seasonal (December – March) surveys, those registered commercial fishermen on the waiting list shall resume their eligibility to purchase their crab pot or peeler pot licenses according to a limited and delayed access system established by the Commission.

D. Any person receiving a crab license by lawful transfer also establishes his eligibility to purchase that specific license; however, any person either failing to register as a commercial fisherman in any year or lawfully transferring his crab license to another person shall forfeit his eligibility to purchase that specific crab license.

E. Commercial licenses for crab pots, peeler pots, crab scrapes, crab traps, ordinary trot lines, patent trot lines, and crab dip nets may be transferred to an immediate family member of the licensee at any time and, in the case of death or incapacitation of the licensee, may be transferred to a registered commercial fisherman at any time. Crabbing licenses also may be transferred to another registered commercial fisherman, except that not more than 100 licenses shall be transferred in the current year. All such transfers shall be documented on forms provided by the commission and shall be subject to the approval of the commissioner.

F. Any crab pot or peeler pot license that is purchased by the commission through the Federal Crab Disaster Relief Program shall be permanently retired and shall not be available for sale to any fisherman at any time. Any person whose license is purchased under the Crab Disaster Relief Program may re-enter the fishery only through the transfer of another crab pot or peeler pot license as authorized by regulations in effect at the time of the transfer.

VA.R. Doc. No. R12-2968; Filed September 29, 2011, 2:07 p.m.

Final Regulation

Title of Regulation: 4VAC20-1140. Prohibition of Crab Dredging in Virginia Waters (amending 4VAC20-1140-20).

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

Effective Date: October 1, 2011.

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

Summary:

This amendment closes the crab dredge fishery for the December 2011 through March 2012 season.

4VAC20-1140-20. Crab dredging prohibited.

A. In accordance with the provisions of § 28.2-707 of the Code of Virginia, the crab dredging season of December 1, ~~2010~~ 2011, through March 31, ~~2011~~ 2012, is closed, and it shall be unlawful to use a dredge for catching crabs from the waters of the Commonwealth during that season.

B. The following regulations that pertain to the crab dredge fishery or activities associated with crab dredging are repealed:

- 4VAC20-40, "Pertaining to Crab Catch Limits"
- 4VAC20-90, "Pertaining to Dredging for Crabs"
- 4VAC20-270-30 C, Daily Time Limits, "Pertaining to Crabbing"
- 4VAC20-750, "Pertaining to Crab Dredge Sales"
- 4VAC20-752-30 A, Harvest Restrictions. "Pertaining to Blue Crab Sanctuaries"
- 4VAC20-1090-30 1, Commercial Licenses: Blue Crab Harvesting and Shedding Licenses--For each boat used for taking or catching hard crabs with dredges. "Pertaining to Licensing Requirements and License Fees"

VA.R. Doc. No. R12-2967; Filed September 29, 2011, 2:30 p.m.



TITLE 9. ENVIRONMENT
STATE AIR POLLUTION CONTROL BOARD
Final Regulation

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

Title of Regulation: **9VAC5-85. Permits for Stationary Sources of Pollutants Subject to Regulation (Revision E11) (amending 9VAC5-85-30, 9VAC5-85-50).**

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

Effective Date: November 9, 2011.

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

Summary:

On July 20, 2011 (76 FR 43490), the U.S. Environmental Protection Agency (EPA) promulgated final amendments to its regulations for permitting of greenhouse gases (GHGs). The purpose of the regulatory changes is to defer, for a three-year period, the application of the Prevention of Significant Deterioration (PSD) and Title V permitting requirements to carbon dioxide (CO₂) emissions from bioenergy and other biogenic stationary sources in order for EPA to conduct a detailed examination of the science associated with biogenic CO₂. The amendments affect the PSD NSR regulations in 40 CFR 51.166 by revising the definition of "subject to regulation." Because Virginia has the authority to directly implement federal PSD regulations as long as its rules are at least as protective as the federal, the corresponding Virginia regulation must be revised accordingly when a final federal rule is promulgated. The amendments also affect the federal operating permit (Title V) regulations in 40 CFR Part 70 by revising the definition of "subject to regulation." Virginia's federal operating permit regulations are federally approved, and must be revised accordingly when a final federal rule is promulgated.

9VAC5-85-30. Definitions.

A. For the purpose of applying this part in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in 9VAC5-80-60 (Definitions) or 9VAC5-80-370 (Definitions), as applicable, except for the terms defined in subsection C of this section.

B. Unless otherwise required by context, all terms not defined herein shall have the ~~meaning~~ meanings given them in 9VAC5-10 (General Definitions) or 9VAC5-80-5 (Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Greenhouse gases (GHGs)" means the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

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"Major stationary source" means, in lieu of subdivision b in the definition of "major source" in 9VAC5-80-60, a major stationary source of air pollutants, as defined in § 302 of the federal Clean Air Act, that directly emits, or has the potential to emit, 100 tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of § 302(j) of the federal Clean Air Act, unless the source belongs to one of the 27 categories of stationary sources as listed in subdivisions b (1) through (27) in the definition of "major source" in 9VAC5-80-60.

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally applicable regulation codified by the administrator in Subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that pollutant released from the regulated activity. The following exceptions shall apply:

1. GHGs shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tons per year (tpy) CO₂ equivalent emissions (CO₂e).

2. The term "tpy CO₂ equivalent emissions (CO₂e)" shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 CFR Part 98, and summing the resultant value for each to compute a tpy CO₂e. For purposes of this subdivision, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, byproducts, residues, and waste from agriculture, forestry, and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).

9VAC5-85-50. Definitions.

A. For the purpose of applying this part in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in 9VAC5-80-1615 (Definitions), except for the terms defined in subsection C of this section.

B. Unless otherwise required by context, all terms not defined herein shall have the ~~meaning~~ meanings given them in 9VAC5-10 (General Definitions) or 9VAC5-80-5 (Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Greenhouse gases (GHGs)" means the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Regulated NSR pollutant" means:

1. Any pollutant for which an ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrator (e.g., volatile organic compounds and NO_x are precursors for ozone);

2. Any pollutant that is subject to any standard promulgated under § 111 of the federal Clean Air Act;

3. Any class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act; or

4. Any pollutant that otherwise is subject to regulation under the federal Clean Air Act as defined in the definition of "subject to regulation."

5. Notwithstanding subdivisions 1 through 4 of this definition, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in § 112 of the federal Clean Air Act, or added to the list pursuant to § 112(b)(2) of the federal Clean Air Act, and which have not been delisted pursuant to § 112(b)(3) of the federal Clean Air Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under § 108 of the federal Clean Air Act.

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally applicable regulation codified by the administrator in Subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. The following exceptions shall apply:

1. GHGs shall not be subject to regulation except as provided in subdivisions 4 and 5 of this definition.

2. For purposes of subdivisions 3 through 5 of this definition, the term "tpy CO₂ equivalent emissions (CO₂e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

a. Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 CFR Part 98. For purposes of this subdivision, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, byproducts, residues, and waste from agriculture, forestry, and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).

b. Sum the resultant value from subdivision a of this subdivision for each gas to compute a tpy CO₂e.

3. The term "emissions increase" as used in subdivisions 4 and 5 of this definition shall mean that both a significant emissions increase (as calculated using the procedures in 9VAC5-80-1605 G) and a significant net emissions increase (as defined in 9VAC5-80-1615 C) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO₂e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO₂e instead of applying the value in subdivision b of the definition of "significant" in 9VAC5-80-1615 C.

4. Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

a. The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO₂e or more;

b. The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO₂e or more.

5. Beginning July 1, 2011, in addition to the provisions in subdivision 4 of this definition, the pollutant GHGs shall also be subject to regulation:

a. At a new stationary source that will emit or have the potential to emit 100,000 tpy CO₂e; or

b. At an existing stationary source that emits or has the potential to emit 100,000 tpy CO₂e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO₂e or more.

VA.R. Doc. No. R12-2912; Filed September 12, 2011, 3:50 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming exemptions from §§ 2.2-4007 through 2.2-4007.06, 2.2-4013, 2.2-4014, and 2.2-4015 of the Administrative Process Act. Sections 2.2-4007.07, 2.2-4013 E, 2.2-4014 D, and 2.2-4015 C of the Administrative Process Act provide that these sections shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

Title of Regulation: 9VAC5-240. Variance for Open Burning (Revision I11) (repealing 9VAC5-240-10 through 9VAC5-240-50).

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

Public Hearing Information:

November 9, 2011 - 10 a.m. - Department of Environmental Quality, 629 East Main Street, 2nd Floor Conference Room, Richmond, VA

Public Comment Deadline: November 9, 2011.

Agency Contact: Gary E. Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gary.graham@deq.virginia.gov.

Summary:

This regulation created a variance to provide relief to Gloucester County residents from the regulatory seasonal restrictions on open burning. The variance expired on December 31, 2008; therefore, this chapter is being repealed.

VA.R. Doc. No. R12-2933; Filed September 20, 2011, 12:32 p.m.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Forms

Title of Regulation: 9VAC15-40. Small Renewable Energy Projects (Wind) Permit by Rule.

Contact Information: Debra A. Miller, Policy Planning Specialist, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4206, FAX (804) 698-4346, or email debra.miller@deq.virginia.gov.

NOTICE: The following forms used in administering the regulations were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

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FORMS (9VAC15-40)

[Environmental Permit Certification Form, Form REW-2 \(eff. 09/11\).](#)

[Local Governing Body Certification Form, Form REW-1 \(eff. 09/11\).](#)

VA.R. Doc. No. R12-2991; Filed September 21, 2011, 1:56 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Department of Environmental Quality is claiming an exemption from the Administrative Process Act in accordance with the second enactment of Chapter 691 of the 2010 Acts of Assembly, which exempts the actions of the department relating to the adoption of regulations necessary to implement the provisions of the act.

Title of Regulation: **9VAC15-90. Uniform Environmental Covenants Act Regulation (adding 9VAC15-90-10 through 9VAC15-90-60).**

Statutory Authority: § 10.1-1250 of the Code of Virginia.

Effective Date: November 9, 2011.

Agency Contact: Carol C. Wampler, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4579, or email carol.wampler@deq.virginia.gov.

Summary:

The Department of Environmental Quality (DEQ) is adopting a new regulation to implement the Virginia Uniform Environmental Covenants Act (UECA), enacted by the Virginia General Assembly in 2010 (§ 10.1-1238 et seq. of the Code of Virginia).

Virginia's UECA is based on the model uniform act developed by the National Conference of Commissioners on Uniform State Law. The General Assembly adopted the model act in 2010 with only a few alterations, including deletion of the requirement to maintain a registry of UECA covenants and addition of provisions for fees to be paid to DEQ to cover DEQ's costs in administering this regulation.

CHAPTER 90 UNIFORM ENVIRONMENTAL COVENANTS ACT REGULATION

9VAC15-90-10. Definitions.

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

"Activity and use limitations" means restrictions or obligations created under this chapter with respect to real property.

"Agency" means the Department of Environmental Quality or other state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created. The agency may be considered a grantee for purposes of indexing in the land records.

"Applicant" means the owner or owners of the property to which the covenant attaches or a person or persons who are lawfully authorized to execute and submit a proposed environmental covenant, amendment, termination, or other UECA document to the department or other agency pursuant to this chapter. The applicant may be considered a grantor for purposes of indexing in the land records.

"Common interest community" means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums for maintenance or improvement of other real property described in a recorded covenant that creates the common interest community.

"Department" means the Department of Environmental Quality.

"Environmental covenant" or "covenant" means a servitude arising under an environmental response project that imposes activity and use limitations.

"Environmental remediation" means the actions required by the agency as part of an environmental response project. Activity and use limitations alone may constitute "environmental remediation."

"Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:

1. Under a federal or state program governing environmental remediation of real property;
2. Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or
3. Under a state voluntary clean-up program including the Brownfield Restoration and Land Renewal Act, Chapter 12.1 (§ 10.1-1230 et seq.) of the Title 10.1 of the Code of Virginia.

"Holder" means the grantee of an environmental covenant. A person, including a person that owns an interest in the real property, the agency, or a municipality or other unit of local government, may be a holder. The holder shall be considered a grantee for purposes of indexing in the land records.

"Owner" means the fee simple owner of the property to which the covenant attaches. There may be more than one owner. The owner shall be considered a grantor for purposes of indexing in the land records.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency or instrumentality, or other legal or commercial entity.

"Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

"UECA" means the Uniform Environmental Covenants Act, Chapter 12.2 (§ 10.1-1238 et seq.) of Title 10.1 of the Code of Virginia.

"Virginia UECA Template" means the form and content of an environmental covenant executed in Virginia as prescribed by 9VAC15-90-30 C.

9VAC15-90-20. Authority and applicability.

This regulation is issued under the authority of Chapter 12.2 (§ 10.1-1238 et seq.) of Title 10.1 of the Code of Virginia, the Uniform Environmental Covenants Act (UECA). The regulation contains requirements for UECA environmental covenants.

When the owner, holder, and agency agree that a UECA environmental covenant shall be executed as part of an environmental response project, then the environmental covenant shall fulfill all of the requirements of this chapter.

9VAC15-90-30. Virginia UECA Template.

A. Where the department is the agency or the holder of a UECA environmental covenant, the following requirements shall be met:

1. The applicant shall submit the UECA environmental covenant to the department in accordance with this chapter. In order to meet the regulatory submission requirements, applicants shall utilize the Virginia UECA Template as provided in subsection C of this section.
2. Provisions in the Virginia UECA Template that are marked with an asterisk (*) are required by law for all environmental covenants executed pursuant to the UECA. Other provisions in this Virginia UECA Template shall be included unless the department grants permission for particular provisions to be omitted, added, or modified.

B. Where the department is neither the agency nor the holder of a UECA environmental covenant, applicants desiring to execute a UECA environmental covenant may utilize the Virginia UECA Template or another instrument

that meets the requirements of § 10.1-1240 of the Code of Virginia.

C. Virginia UECA Template.

{INSTRUCTIONS are italicized and provided in brackets }. The applicant may delete these instructions after filling out the template in order to create a more readable document. All provisions other than instructions remain a part of the UECA environmental covenant. As provided in 9VAC15-90-30 A 2, provisions marked with an asterisk (*) are required by law for all environmental covenants executed pursuant to the UECA, and other provisions within this Virginia UECA Template should be included unless the Department grants permission for particular provisions to be omitted or modified (or for additional provisions to be included). This regulation provides notice that the Department intends to require inclusion of all provisions in the Virginia UECA Template whenever the Department is a necessary party to a UECA covenant, unless other parties present persuasive alternatives to which the Department agrees. The Department strongly recommends use of all provisions of the Virginia UECA Template even when the Department is not a necessary party to the UECA covenant. All statutory references are to the Code of Virginia (1950), as amended.}

Tax Map or GPIN No.: _____

Prepared by: _____

Remediation Program Site ID #: _____

UECA ENVIRONMENTAL COVENANT

This environmental covenant is made and entered into as of the _____ day of _____, by and between _____, whose address is _____ (hereinafter referred to as the "Grantor" or "Owner"), and _____ (hereinafter referred to as the "Grantee" or "Holder") whose address is _____.

_____, whose address is _____ (hereinafter referred to as the "Agency") also joins in this environmental covenant.

*This environmental covenant is executed pursuant to the Virginia Uniform Environmental Covenants Act, § 10.1-1238 et seq. of the Code of Virginia (UECA). This environmental covenant subjects the Property identified in Paragraph 1 to the activity and use limitations in this document.

{INSTRUCTIONS: See § 10.1-1240 A 1 of the Code of Virginia. Note: If the parties agree that the Agency shall be an Additional Grantee, then this sentence should be added to the covenant after the sentence containing the Agency's name and address: "The Agency shall be considered as an Additional Grantee for recordation purposes."}

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*1. Property affected. The property affected (Property) by this environmental covenant is located at _____, _____, Virginia, and is further described as follows:

{INSTRUCTIONS: Provide a legally sufficient description of the real property subject to the covenant above as required by § 10.1-1240 A 2 of the Code of Virginia. Include the street address of the property (if available), the recorded location of a metes and bounds description or survey plat of the Property (normally the Deed into the current owners), or attach any previously unrecorded survey as an exhibit to this environmental covenant. Note that, if the street address is different from the locality in which the land records are kept (for example, the mailing address is in Ashland but the land records are Hanover), then include both pieces of information.}

2. Description of Contamination & Remedy.

*a. Identify the name and location of any administrative record for the environmental response project reflected in this UECA environmental covenant.

b. Describe the contamination and remedy relating to the Property, including descriptions of the Property before remedy implementation; contaminants of concern; pathways of exposure; limits on exposure; location and extent of contamination; and the remedy/corrective action undertaken.

{INSTRUCTIONS: Unless otherwise agreed by the Department, a copy of the remediation decision document shall be attached as an exhibit. Note: If the decision document is subsequently changed, then the applicant shall submit the updated decision document, probably in conjunction with an amendment or termination of the covenant.}

3. Activity & Use Limitations.

*a. The Property is subject to the following activity and use limitations, which shall run with the land and become binding on Grantor(s) and any successors, assigns, tenants, agents, employees, and other persons under its (their) control, until such time as this covenant may terminate as provided by law:

{INSTRUCTIONS: Describe each specific restriction on land use, such as whether the property can be used only for non-residential purposes or whether the groundwater may be used as potable water; describe each obligation, such as groundwater monitoring, maintenance of a fence or cap. If the activity and use limitations are stated within the remediation decision document that is incorporated in the applicant's response to 2b, then the applicant shall respond to 3a by referring to the

appropriate sections of that decision document and/or by attaching those provisions from within the decision document as an exhibit. If the decision document is lengthy, then the Agency may choose to stipulate which sections must be included in the environmental covenant, rather than requiring that the entire decision document be included. Although it is not generally recommended, the Agency may stipulate another method for compliance with this section if including all or parts of the decision document is not practicable. The Department requires that the UECA environmental covenant be consistent with the decision document. A description of the activity and use limitations is required by § 10.1-1240 A 3 of the Code of Virginia.}

b. Geographic coordinate lists defining the boundary of each activity and use restriction, depicted as a polygon.

{INSTRUCTIONS: The applicant shall attach the required coordinates as an exhibit to the covenant in response to 3b in the following format:

Exhibit

Activity and Use Limitation Area(s)

{INSTRUCTIONS: For each activity and use restriction, geographic coordinate lists that define the boundary of each activity and use restriction as a polygon shall be developed. The longitude and latitude of each polygon vertex shall meet the following requirements, unless otherwise agreed by the signatories:

Decimal degrees format

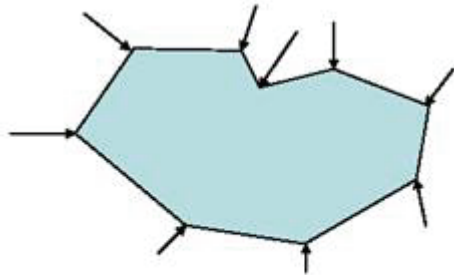
At least seven decimal places (to achieve a precision of approximately 0.04 ft based on a typical survey precision of 0.01 ft)

Negative sign for west longitude

WGS 1984 datum

Validate by saving the file as: filename.kml and opening in Google Earth

An example coordinate list and polygon are shown below:



74.xxxxxxxxxx822,40.yyyyyyyyyy762,0 (Point of Beginning)

-74.xxxxxxxxxx822,40.yyyyyyyyyy762,0 ← Point of Beginning

-74.xxxxxxxxxx309,40.yyyyyyyyyy341,0

-74.xxxxxxxxxx325,40.yyyyyyyyyy132,0

-74.xxxxxxxxxx727,40.yyyyyyyyyy201,0

-74.xxxxxxxxxx162,40.yyyyyyyyyy337,0

-74.xxxxxxxxxx101,40.yyyyyyyyyy146,0

-74.xxxxxxxxxx916,40.yyyyyyyyyy528,0

-74.xxxxxxxxxx378,40.yyyyyyyyyy114,0

-74.xxxxxxxxxx145,40.yyyyyyyyyy279,0

-74.xxxxxxxxxx822,40.yyyyyyyyyy762,0 ← Point of Beginning}

4. Notice of Limitations in Future Conveyances. Each instrument hereafter conveying any interest in the Property subject to this environmental covenant shall contain a notice of the activity and use limitations set forth in this environmental covenant and shall provide the recorded location of this environmental covenant.

5. Compliance and Use Reporting.

a. By the end of _____, {INSTRUCTIONS: Insert interval for reporting determined to be necessary by the Agency; e.g., "every January following the Agency's approval of this environmental covenant until the specified remediation standards are met and the Agency agrees in writing that reporting is no longer required," or "every fifth January following the Agency's approval of this environmental covenant"} and whenever else requested in writing by the Agency, the then current owner of the Property shall submit, to the Agency and any Holder listed in the Acknowledgments below, written documentation stating whether or not the activity and use limitations in this environmental covenant are being observed. This documentation shall be signed by a qualified and certified

professional engineer who has inspected and investigated compliance with this environmental covenant.

{INSTRUCTIONS: See § 10.1-1240 B 2 of the Code of Virginia.}

b. In addition, within one (1) month after any of the following events, the then current owner of the Property shall submit, to the Agency and any Holder listed in the Acknowledgments below, written documentation describing the following: noncompliance with the activity and use limitations in this environmental covenant; transfer of the Property; changes in use of the Property; or filing of applications for building permits for the Property and any proposals for any site work, if such building or proposed site work will affect the contamination on the Property subject to this environmental covenant.

{INSTRUCTIONS: See § 10.1-1240 B 1 of the Code of Virginia. Note that transfer of the property also requires payment of a fee pursuant to 9VAC15-90-40 C.}

6. Access by the Holder(s) and the Agency. In addition to any rights already possessed by the Holder(s) and the Agency, this environmental covenant grants to the Holder(s) and the Agency a right of reasonable access to the Property in connection with implementation, inspection, or enforcement of this environmental covenant.

{INSTRUCTIONS: See § 10.1-1240 B 3 of the Code of Virginia.}

7. Subordination.

If there is an agreement to subordinate one or more prior interests in the Property to this environmental covenant, then the subordination agreement(s) is/are set forth as follows:

{INSTRUCTIONS: The applicant shall additionally provide to the Agency and the Holder(s) a list of all encumbrances on the property based upon a title review conducted by a title insurance company or attorney at law. The Agency and Holder may consider which, if any, of these encumbrances need to be subordinated prior to the Agency's or the Holder's signing the proposed covenant. At the direction of the Agency or the Holder, the subordination agreement for such encumbrances shall be reproduced within the covenant in the applicant's response to paragraph 7 or attached as an exhibit.}

8. Recording & Proof & Notification.

*a. Within 90 days after the date of the Agency's approval of this UECA environmental covenant, the Grantor shall record, or cause to be recorded, this environmental covenant with the Clerk of the Circuit Court for each locality wherein the Property is located. The Grantor shall likewise record, or cause to be recorded, any amendment, assignment, or termination of this UECA environmental

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covenant with the applicable Clerk(s) of the Circuit Court within 90 days of their execution. Any UECA environmental covenant, amendment, assignment, or termination recorded outside of these periods shall be invalid and of no force and effect.

{INSTRUCTIONS: Recordation of UECA environmental covenants, amendments, and termination is required by § 10.1-1244 A of the Code of Virginia; however, the deadline for doing so is not specified in the statute. Pursuant to this regulation, the specified Virginia UECA documents shall be recorded within 90 days unless the Agency and other signatories agree otherwise.}

*b. The Grantor shall send a file-stamped copy of this environmental covenant, and of any amendment, assignment, or termination, to the Holder(s) and the Agency within 60 days of recording. Within that time period, the Grantor also shall send a file-stamped copy to the chief administrative officer of each locality in which the Property is located, any persons who are in possession of the Property who are not the Grantors, any signatories to this covenant not previously mentioned, and any other parties to whom notice is required pursuant to the Uniform Environmental Covenants Act.

{INSTRUCTIONS: Notice to the parties specified above is required by § 10.1-1243 of the Code of Virginia "in the manner required by the agency." Pursuant to this regulation, notice of the specified UECA documents shall be provided in the time and method described above unless otherwise directed by the Department or by another Agency in cases where the Department is not the Agency.}

*9. Termination or Amendment. This environmental covenant is perpetual and runs with the land unless terminated or amended (including assignment) in accordance with UECA.

10. Enforcement of environmental covenant. This environmental covenant shall be enforced in accordance with § 10.1-1247 of the Code of Virginia.

ACKNOWLEDGMENTS:

*GRANTOR(S) (All Fee Simple Owners)

_____ {Name of Owner}, Grantor
Date By (signature): _____
Name (printed): _____
Title: _____

COMMONWEALTH OF VIRGINIA {other state, if executed outside Virginia}

CITY/COUNTY OF _____

On this ____ day of _____, 20____, before me, the undersigned officer, personally appeared

_____ {Owner, Grantor} who acknowledged himself/herself to be the person whose name is subscribed to this environmental covenant, and acknowledged that s/he freely executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

My commission expires: _____

Registration #: _____

Notary Public

{REPEAT AS NECESSARY}

*HOLDER(S)

_____ {Name of Owner}, Grantee

Date By (signature): _____
Name (printed): _____
Title: _____

COMMONWEALTH OF VIRGINIA {other state, if executed outside Virginia}

CITY/COUNTY OF _____

On this ____ day of _____, 20____, before me, the undersigned officer, personally appeared _____ {Holder, Grantee} who acknowledged himself/herself to be the person whose name is subscribed to this environmental covenant, and acknowledged that s/he freely executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

My commission expires: _____

Registration #: _____

Notary Public

{REPEAT AS NECESSARY}

*AGENCY

APPROVED by the {Department of Environmental Quality and/or other Agency} as required by § 10.1-1238 et seq. of the Code of Virginia.

Date By (signature): _____
Name (printed): _____
Title: _____

{REPEAT AS NECESSARY}

SEEN AND RECEIVED by the Department of Environmental Quality {if the Department is not the Agency or the Holder}

{INSTRUCTIONS: In accordance with 9VAC15-90-40, notice and payment of a fee to DEQ is required for every

UECA environmental covenant in Virginia. However, when DEQ is not the Agency or Holder, no approval of the UECA document by DEQ is necessary or will be provided.

Date _____
 By (signature): _____
 Name (printed): _____
 Title: _____

{END of Virginia UECA Template}

D. The department requires submittal of the appropriate fee in accordance with the fee schedule provided in 9VAC15-90-40 before the department approves or signs a UECA environmental covenant. The department may require submittal of this fee before the department reviews a UECA document.

9VAC15-90-40. Fees.

A. Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from a fee simple owner or applicant in accordance with this chapter.

B. Fee payment and deposit. Fees related to UECA environmental covenants shall be paid by the fee simple owner or applicant as follows:

1. Due date. Where the department is the agency or the holder of the UECA environmental covenant, all fees are due upon submittal to the department of the proposed environmental covenant, covenant amendment, termination, or notification of property transfer. Where the department is neither the agency nor the holder of the UECA environmental covenant, a copy of the environmental covenant, covenant amendment, termination, or notification of property transfer and the accompanying fee are due prior to recordation.

2. Method of payment. Fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 1104, Richmond, VA 23240.

3. Incomplete payments. All incomplete payments shall be deemed nonpayments.

4. Late payment. No environmental covenant, environmental covenant amendment, or termination under UECA and this chapter may be recorded until the department receives proper payment.

C. Fee schedules. Each UECA environmental covenant, UECA environmental covenant amendment, termination of a UECA environmental covenant, or transfer of a property encumbered by a UECA environmental covenant is a separate action and shall be assessed a separate fee. The amount of the fee is based on the costs associated with the implementation

of UECA as required by this chapter. The fees required for UECA transactions where the department is either the agency or the holder are due whenever the department is the sole agency or the sole holder or when the department is one of multiple parties serving in either of these capacities. Where the department is both an agency and a holder, only the fees specified for the department as holder shall obtain. The fee schedules are shown in the following table:

<u>Type of Action</u>	<u>Fee</u>
<u>1. UECA environmental covenants where the department is the agency:</u>	
<u>a. Initial submittal</u>	<u>\$4,000</u>
<u>b. Amendment</u>	<u>\$4,000</u>
<u>c. Termination</u>	<u>\$4,000</u>
<u>d. Property transfer</u>	<u>\$100</u>
<u>2. UECA environmental covenants where the department is the holder:</u>	
<u>a. Initial submittal</u>	<u>\$24,000</u>
<u>b. Amendment</u>	<u>\$24,000</u>
<u>c. Termination</u>	<u>\$24,000</u>
<u>d. Property transfer</u>	<u>\$100</u>
<u>3. UECA environmental covenants where the department is neither the agency nor the holder</u>	
<u>a. Initial submittal</u>	<u>\$1,000</u>
<u>b. Amendment</u>	<u>\$1,000</u>
<u>c. Termination</u>	<u>\$1,000</u>
<u>d. Property transfer</u>	<u>\$100</u>

D. Use of fees. Fees collected pursuant to this section shall be used for the purposes specified in this chapter and UECA.

E. Fund. The fees, received by the department in accordance with this chapter, shall be deposited in the UECA Environmental Covenants Fund, as established by § 10.1-1248 B of the Code of Virginia.

F. Periodic review of fees. Beginning July 1, 2013, and periodically thereafter, the department shall review the schedule of fees established pursuant to this section to ensure that the total fees collected are sufficient to cover the department's costs associated with this chapter.

9VAC15-90-50. Amendment and termination.

A. A UECA environmental covenant is perpetual unless terminated or modified by court action in accordance with the provisions of § 10.1-1245 of the Code of Virginia.

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B. A UECA environmental covenant may be amended or terminated by consent in accordance with § 10.1-1246 of the Code of Virginia.

9VAC15-90-60. Enforcement.

A. Power to enforce. Environmental covenants executed pursuant to this chapter and UECA shall be enforced in accordance with § 10.1-1247 of the Code of Virginia.

B. Limitations. The UECA and this chapter do not limit the regulatory authority of the agency or the department under law with respect to an environmental response project.

C. Liability. A person is not responsible for or subject to liability for environmental remediation solely because he has the right to enforce a UECA environmental covenant.

VA.R. Doc. No. R12-2905; Filed September 15, 2011, 11:28 a.m.

GENERAL NOTICES/ERRATA

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS, AND LANDSCAPE ARCHITECTS

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects is conducting a periodic review of 18VAC10-11, Public Participation Guidelines, and 18VAC10-20, Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Regulations. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form.

Public comment is sought on the review of any issue relating to the regulations, including whether the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

The comment period begins October 10, 2011, and ends on October 31, 2011.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Kate Nosbisch, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email apelscidla@dpor.virginia.gov. Comments must include the commenter's name and address information (physical or email) in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

AUCTIONEERS BOARD

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Auctioneers Board is conducting a periodic review of 18VAC25-11, Public Participation Guidelines, and 18VAC25-21, Regulations of

the Virginia Auctioneers Board. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form.

Public comment is sought on the review of any issue relating to the regulations, including whether the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

The comment period begins October 10, 2011, and ends on October 31, 2011.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Kate Nosbisch, Executive Director, Auctioneers Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email auctioneers@dpor.virginia.gov. Comments must include the commenter's name and address information (physical or email) in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

BOARD FOR BARBERS AND COSMETOLOGY

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Barbers and Cosmetology is currently reviewing each of the regulations listed below to determine whether the regulations should be terminated, amended, or retained in their current form. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

Each regulation will be reviewed to determine whether the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

18VAC41-11, Public Participation Guidelines

18VAC41-20, Barbering and Cosmetology Regulations

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- 18VAC41-30, Hair Braiding Regulations
- 18VAC41-40, Wax Technician Regulations
- 18VAC41-50, Tattooing Regulations
- 18VAC41-60, Body-Piercing Regulations
- 18VAC41-70, Esthetics Regulations

The comment period begins October 10, 2011, and ends on October 31, 2011.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to William H. Ferguson, III, Executive Director, Board for Barbers and Cosmetology, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov. Comments must include the commenter's name and address information (physical or email) in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

BOARD FOR BRANCH PILOTS

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Branch Pilots is conducting a periodic review of 18VAC45-11, Public Participation Guidelines, and 18VAC45-20, Board for Branch Pilots Regulations. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form.

Public comment is sought on the review of any issue relating to the regulations, including whether the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

The comment period begins October 10, 2011, and ends on October 31, 2011.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Kate Nosbisch, Executive Director, Board for Branch Pilots, Department of Professional

and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email branchpilots@dpor.virginia.gov. Comments must include the commenter's name and address information (physical or email) in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Special Order for Brambleton Group, L.L.C.

An enforcement action has been proposed for the Brambleton Group, LLC for alleged violations in Loudoun County associated with the Brambleton - Phase II site. The consent order describes a settlement to resolve unpermitted impacts taken to surface waters associated with the construction activities conducted on site. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from October 11, 2011, through November 10, 2011.

Proposed Consent Order for The Madeira School, Inc.

An enforcement action has been proposed for The Madeira School, Inc. for alleged violations in McLean at The Madeira School Waste Water Treatment Plant. The amended consent order describes a settlement to resolve permit effluent violations at The Madeira School Waste Water Treatment Plant. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from October 11, 2011, through November 10, 2011.

TMDL Modification of James River and Tributaries – Hopewell to Westover in Chesterfield, Charles City, Prince George, and Hopewell, Virginia

The Department of Environmental Quality (DEQ) seeks public comment from interested persons on proposed minor modifications of the total maximum daily loads (TMDLs) developed for impaired segments: Powell Creek (G03R-05-BAC) and James River (tidal) (G03E-04-BAC).

A TMDL of *E. coli* was developed to address the bacterial impairments in the James River and Tributaries - Hopewell to Westover in Chesterfield, Charles City, Prince George, and Hopewell, Virginia. This TMDL was approved by the Environmental Protection Agency on July 10, 2008. A modification (to remove an unnecessary WLA and add to future growth in James River segment) was approved on July 7, 2009. The report and previous modification are available by searching the approved TMDL reports page at <https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.jsp>. DEQ seeks written comments from interested persons on 10 minor modifications.

Two modifications are proposed for the Powell Creek TMDL. The first is to add a domestic discharger (VAG404083), which is a single family home facility with a design flow of 0.001 million gallons per day (MGD). Facility VAG404083 discharges to an un-named tributary (UT) of Walls Run, which drains to Powells Creek and the tidal James River. Based on the design flow at the standard, this permit should have a waste load allocation (WLA) of 1.75E+09 colony forming units per year (cfu/yr) for *E. coli* in the Powell Creek TMDL. The second modification is to remove domestic discharger VAG404131 which is a single family home facility with a WLA of 1.75E+09 (cfu/yr) *E. coli* which is no longer in operation. The addition of one discharger and subtraction of another will equal a net change of 0% of the Powell Creek TMDL.

Eight modifications are proposed for the James River (tidal) TMDL. First, DEQ proposes to add a new WLA for existing facility Smurfit Stone Container Corporation (VA0004642), which is an industrial facility with a maximum discharge of 0.288 MGD (outfall 2). The WLA to be assigned to this facility based on the design flow at the standard is equal to 5.01E+11 (cfu/yr) *E. coli*. DEQ will allocate this WLA by subtracting from the "Future Growth" load of James River (tidal). For modifications 2-6, DEQ proposes to add five new WLAs for domestic dischargers VAG404083 (UT Walls Run), VAG404132 (Parish Hill Creek), VAG404199 (James River), VAG404270 (UT James River), and VAG404271 (UT James River), which are single family home facilities, each with a design flow each of 0.001 million gallons per day (MGD). The WLA to be assigned to each facility based on design flow at the standard is equal to 1.75E+09 (cfu/yr) *E. coli*. For modifications 7 and 8, DEQ proposes to remove the WLA assigned to two single family home permits, VAG404131 and VAG404215, which are no longer in operation. Their respective WLAs of 1.75E+09 (cfu/yr) *E. coli* (each) will be added to "Future Growth" load. The combined revised "Future Growth" load in the James River (tidal) TMDL as a result of these modifications will be equal to 7.66E+14 (cfu/yr) *E. coli*. The proposed modifications for the James River (tidal) TMDL are equal to 0.005% of the TMDL.

The proposed WLA changes above will neither cause nor contribute to the nonattainment of the James River basin. The public comment period for these modifications will end on November 10, 2011. Please send comments to Margaret Smigo, Department of Environmental Quality, Piedmont Regional Office, 4969-A Cox Road, Glen Allen, VA 23060, or by email at margaret.smigo@deq.virginia.gov or fax (Attn. Margaret Smigo) at (804) 527-5106. Following the comment period, a modification letter and any comments received will be sent to EPA for approval final approval. Please contact Margaret Smigo at (804) 527-5124 with any questions.

DEPARTMENT OF FORESTRY

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Forestry is conducting a periodic review of 4VAC10-30, Virginia State Forests Regulations. The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form.

Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 24, 2011, and ends on November 24, 2011.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Ron Jenkins, Assistant State Forester, Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (434) 220-9022, FAX (434) 977-7749, or email ron.jenkins@dof.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Forestry is conducting a periodic review of 4VAC10-40, Virginia Reforestation of Timberlands Regulations. The review of this

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regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form.

Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 10, 2011, and ends on November 10, 2011.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Ron Jenkins, Assistant State Forester, Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (434) 220-9022, FAX (434) 977-7749, or email ron.jenkins@dof.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

BOARD FOR HEARING AID SPECIALISTS

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Hearing Aid Specialists is conducting a periodic review of 18VAC80-11, Public Participation Guidelines, and 18VAC80-20, Board for Hearing Aid Specialists Regulations. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form.

Public comment is sought on the review of any issue relating to the regulations, including whether the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

The comment period begins October 10, 2011, and ends on October 31, 2011.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>.

Comments may also be sent to William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email hearingaidspec@dpor.virginia.gov. Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on September 13, 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 Eighty-Three (11)

Virginia's Instant Game Lottery 1290; "Casino Royale" Final Rules for Game Operation (effective on September 9, 2011)

Director's Order Number Eighty-Four (11)

Virginia's Instant Game Lottery 1296; "Plants vs. Zombies"TM Final Rules for Game Operation (effective on September 9, 2011)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Reimbursement for Case Management Services for Early Intervention (Part C) Children -- Notice of Intent to Amend the Virginia State Plan for Medical Assistance (pursuant to § 1902(a)(13) of the Act (USC 1396a(a)(13))

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to create a new model for Medicaid coverage of case management services for children less than three years of age who receive services under Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia in accordance with Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.). These children have (i) a 25% developmental delay in one or more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental

condition that has a high probability of resulting in a developmental delay. This change is being made in response to a mandate from the 2011 Virginia General Assembly in Chapter 890, Item 297 UUUU of the 2011 Acts of Assembly.

DMAS intends to amend the Virginia State Plan for Medical Assistance to define a new approach to payment for case management services under Medicaid that supports the Part C early intervention model. The new Early Intervention Case Management service will meet federal Part C requirements for care coordination as well as federal Medicaid requirements for case management reimbursement. In addition to coordinating specialized services needed to ameliorate the child's developmental delay, the new case management model will facilitate coordination with the child's primary care provider and support quality preventive services such as well child care, immunizations, and lead testing, covered under the Early and Periodic Screening, Diagnosis and Treatment provision for all children enrolled in Medicaid.

Some infants who receive services through the Part C early intervention program may also receive case management services for high risk pregnant women and children. These services are designed to improve birth outcomes and reduce infant mortality by increasing access to care and promoting continuity of care for women with a high risk pregnancy through the prenatal period and infancy. Providers are limited to registered nurses and trained social workers with experience working with pregnant women. Early Intervention Case Management providers will be required coordinate services with these case managers to avoid duplication of services.

The proposed Early Intervention Case Management service will reimburse for coordination services that are federally required by the Part C early intervention program to assist children and their families. All local lead agencies under contract with DBHCS or their designees will be eligible to receive Medicaid reimbursement for case management services. All private and governmental fee-for-service providers will be paid according to the same methodology. These providers will be reimbursed pursuant to the agency's fee, estimated at \$120 per month, which is based on the actual requirements of the service.

DMAS anticipates implementing this amendment in a budget neutral manner. The projected savings associated with the elimination of payment for case management under the mental health and intellectual disabilities models for children served by the Part C early intervention program will offset the new costs incurred under the new model for the entire Part C population covered by Medicaid.

The department is submitting emergency regulations, pursuant to § 2.2-4011 of the Code of Virginia, to the Governor for approval. Pending the Governor's approval of the emergency regulations, DMAS will provide copies of said

emergency regulations to all requesters, along with proposed provider-specific reimbursement rates. Please forward your written request to the Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219. Written comments about this reimbursement methodology change may also be directed to the DMAS Regulatory Coordinator. DMAS does not anticipate holding a public hearing on this regulatory action. Further information is also available at <http://townhall.virginia.gov/L/viewaction.cfm?actionid=3535&display=stages>.

Contact Information: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, TDD (800) 343-0634, or email brian.mccormick@dmas.virginia.gov.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Notices of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Professional and Occupational Regulation is currently reviewing each of the regulations listed below to determine whether the regulations should be terminated, amended, or retained in their current form. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. Each regulation will be reviewed to determine whether the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

18VAC120-11, Public Participation Guidelines

18VAC120-30, Regulations Governing Polygraph Examiners

18VAC120-40, Virginia Professional Boxing and Wrestling Events Regulations

The comment period begins October 10, 2011, and ends on October 31, 2011.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Kate Nosbisch, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email bpor@dpor.virginia.gov. Comments must include the commenter's name and address information (physical or

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email) in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS AND WETLAND PROFESSIONALS

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Professional Soil Scientists and Wetland Professionals is currently reviewing each of the regulations listed below to determine whether the regulations should be terminated, amended, or retained in their current form. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. Each regulation will be reviewed to determine whether the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

18VAC145-11, Public Participation Guidelines

18VAC145-20, Professional Soil Scientists Regulations

18VAC145-30, Regulations Governing Certified Professional Wetland Delineators

The comment period begins October 10, 2011, and ends on October 31, 2011.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Kate Nosbisch, Executive Director, Board for Professional Soil Scientists and Wetland Professionals, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email bpssandwp@dpor.virginia.gov. Comments must include the commenter's name and address information (physical or email) in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

STATE BOARD OF SOCIAL SERVICES

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services is conducting a periodic review of 22VAC40-60, Standards and Regulations for Licensed Adult Day Care Centers.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 10, 2011, and ends on October 31, 2011.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Annette Kelley, Program Consultant, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7632, FAX (804) 726-7132, or email annette.kelley@dss.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services is conducting a periodic review of 22VAC40-685, Virginia Energy Assistance Program-Home Energy Assistance Program.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health,

safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 10, 2011, and ends on October 31, 2011.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Deborah Harris, Program Consultant, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7122, FAX (804) 726-7358, or email deborah.harris@dss.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services is conducting a periodic review of 22VAC40-470, Exemptions Applicable to Public Assistance Programs.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 10, 2011, and ends on October 31, 2011.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Thomas J. Steinhauser, Director, Benefit Programs, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7362, FAX (804) 726-7357, or email tom.steinhauser@dss.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the

public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

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.

ERRATA

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Titles of Regulations: **8VAC40-70. Tuition Assistance Grant Program Regulations (repealing 8VAC40-70-10 through 8VAC40-70-60).**

8VAC40-71. Virginia Tuition Assistance Grant Program Regulations (adding 8VAC40-71-10 through 8VAC40-71-60).

Publication: 28:2 VA.R. 50-56 September 26, 2011.

General Notices/Errata

VA.R. Doc. No. R10-2056; Filed September 21, 2011, 4:30 p.m.

Correction to Final Regulation:

Page 51, 8VAC40-71-10, first column, in subdivision 5 b of the definition of "Eligible institution," line 1, after "Identified by" change "SCHEV" to "the council"

Page 51, 8VAC40-71-10, first column, in subdivision 2 of the definition of "Eligible program," line 6, delete the comma after "program"

Page 51, 8VAC40-71-10, second column, in the definition of "Formed, chartered, established, or incorporated within the Commonwealth," line 4, change "SCHEV's" to "the council's"

Page 52, 8VAC40-71-20, first column, first paragraph, line 5, change "grants" to "awards"

Page 52, 8VAC40-71-20, second column, subdivision 1, line 2, change "grants" to "awards"

Page 52, 8VAC40-71-20, second column, subdivision 2, lines 1 and 2, change "fiscal operations report and application to participate in federal student financial aid programs" to "Fiscal Operations Report and Application to Participate in Federal Student Financial Aid Programs"

Page 52, 8VAC40-71-20, second column, last paragraph, line 4, change "grants" to "awards"

VA.R. Doc. No. R12-2378; Filed September 23, 2011, 11:30 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12VAC30-120. Waivered Services (adding 12VAC30-120-1000, 12VAC30-120-1005, 12VAC30-120-1010, 12VAC30-120-1020, 12VAC30-120-1040, 12VAC30-120-1060, 12VAC30-120-1070, 12VAC30-120-1080, 12VAC30-120-1088, 12VAC30-120-1090; repealing 12VAC30-120-211 through 12VAC30-120-249).**

Publication: 28:2 VA.R. 62-133 September 26, 2011.

Correction to Summary:

Page 67, in (ix), after "Chapter" change "297" to "874"

Page 67, in (ix), after "six" change "month" to "months"