VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly by Matthew Bender & Company, Inc., 1275 Broadway, Albany, NY 12204-2694 for $209.00 per year. Periodical postage is paid in Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

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. **28:2 VA.R. 47-141 September 26, 2011,** refers to Volume 28, Issue 2, pages 47 through 141 of the *Virginia Register* issued on September 26, 2011.

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

PUBLICATION SCHEDULE AND DEADLINES

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

July 2012 through July 2013

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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
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29:3	September 19, 2012	October 8, 2012
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29:6	October 31, 2012	November 19, 2012
29:7	November 13, 2012 **(Tuesday)**	December 3, 2012
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29:9	December 11, 2012 **(Tuesday)**	December 31, 2012
29:10	December 26, 2012	January 14, 2013
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29:14	February 20, 2013	March 11, 2013
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29:20	May 15, 2013	June 3, 2013
29:21	May 29, 2013	June 17, 2013
29:22	June 12, 2013	July 1, 2013
29:23	June 26, 2013	July 15, 2013
29:24	July 10, 2013	July 29, 2013

*Filing deadlines are Wednesdays unless otherwise specified.

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 of the Code of Virginia.

Name of Petitioner: Denice Burnette.

Nature of Petitioner's Request: Amend 18VAC60-20-190 to permit dental assistants II to operate a high speed rotary instrument in the mouth.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on June 8, 2012, the board considered the petition and comments for or against and decided to deny the request for rulemaking. In the board's opinion, allowing dental assistants II to use high speed rotary instruments has the potential for serious harm and is not in the interest of public health and safety. Additionally, there may be a statutory prohibition since § 54.1-2729.01 requires that only tasks that are reversible may be delegated to dental assistants II.

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

VA.R. Doc. No. R12-20; Filed June 8, 2012, 2:01 p.m.

BOARD OF PHARMACY

Agency Decision

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Name of Petitioner: Kristen Barratt, R.Ph.

Nature of Petitioner's Request: To adopt regulations similar to those in North Carolina and West Virginia that establish a limitation on the number of hours a pharmacist can work continuously and a requirement for breaks during a shift.

Agency Decision: Request granted.

Statement of Reason for Decision: At its meeting on June 12, 2012, the board considered all comments and a recommendation from the Regulation Committee. In response, it decided to issue a Notice of Intended Regulatory Action (NOIRA) to consider changes similar to those suggested in the petition. Following publication of the NOIRA, the Regulation Committee of the board will review regulations from other states and any comments received from the NOIRA. Draft regulations will be proposed to the full board.

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

VA.R. Doc. No. R12-19; Filed June 13, 2012, 12:12 p.m.

BOARD OF PHYSICAL THERAPY

Initial Agency Notice

Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy.**

Statutory Authority: §§ 54.1-2400 and 54.1-3473 through 54.1-3483 of the Code of Virginia.

Name of Petitioner: Pamela A. Plasberg

Nature of Petitioner's Request: Change the requirement for reevaluation of the patient from: Not less than one of 12 visits made to the patient during a 30-day period or not less than once every 30 days (current regulation) to: Not less than every 12 visits made to the patient during a three-month period or not less than every three months.

Agency Plan for Disposition of Request: The board will request public comment on the petitioner's request until July 31, 2012, and will consider the petition at its meeting scheduled for August 17, 2012.

Public Comments: July 31, 2012.

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

VA.R. Doc. No. R12-25; Filed June 5, 2012, 11:40 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending **9VAC5-130, Regulation for Open Burning (Rev. E-12).** The purpose of the proposed action is to (i) protect public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth; (ii) reduce VOC emissions in Virginia's ozone nonattainment areas to facilitate the attainment and maintenance of the air quality standards; (iii) require that open burning be conducted in a manner as to prevent the release of air pollutants; and (iv) revise the regulation as needed to efficiently and effectively meet its goals while avoiding unreasonable hardships on the regulated community, the department, and the general public.

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

Statutory Authority: § 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 111, 123, 129, 171, 172, and 182); 40 CFR Parts 51 and 60.

Public Comment Deadline: August 1, 2012.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email memajor@deq.virginia.gov.

VA.R. Doc. No. R12-3200; Filed June 12, 2012, 11:07 a.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Proposed Regulation

Title of Regulation: **2VAC5-320. Regulations for the Enforcement of the Endangered Plant and Insect Species Act (amending 2VAC5-320-10).**

Statutory Authority: §§ 3.2-1002 and 3.2-1005 of the Code of Virginia.

Public Hearing Information:

August 7, 2012 - 2 p.m. - Alson H. Smith, Jr. Agricultural Research & Extension Center, 595 Laurel Grove Road, Winchester, VA

Public Comment Deadline: August 31, 2012.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

Basis: Section 3.2-1002 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to adopt regulations listing threatened or endangered plant and insect species, their taking, quotas, seasons, buying, selling, possessing, monitoring of movement, investigating, protecting, or any other related action. As a result of research conducted by the Commissioner of Agriculture and Consumer Services, recommendations received regarding candidate species from the Director of the Department of Conservation and Recreation, and from other sound, scientific data, the board may approve proposed plant or insect species to be added to or deleted from the list of threatened and endangered species, or to be transferred from one list to the other.

Section 3.2-1005 of the Code of Virginia authorizes the board to adopt regulations to permit and control the commercial harvest of certain threatened species that would prevent the species from becoming endangered or extinct.

Purpose: This regulation seeks to protect those plants and insects found in Virginia that are of aesthetic, ecological, educational, scientific, economic, or other value and whose global populations are imperiled. The regulation also provides for the development and implementation of biologically sound and economically feasible protection, recovery, and conservation measures that seek to ensure the survival of listed species while at the same time allowing citizens and entities to conduct their business or pursue construction projects in the most economical and least disruptive manner.

Benefits of this regulation include (i) the establishment of science-based, reasonable restrictions on the take and trafficking of listed species, (ii) promotion of greater voluntary conservation efforts through recognition of a species imperiled status, (iii) providing impetus for the establishment of programs for the management and conservation of listed species, and (iv) providing for the lawful harvest and export of listed species through approved management plans. Restrictions on the take and trafficking of listed species protect the landowner on whose property a listed species occurs from the unauthorized collection or taking of a species from his property, thereby protecting, in part, the landowner's safety and welfare.

Substance: The Virginia Department of Agriculture and Consumer Services recommends the regulation be amended by (i) removing one plant species from the regulation and (ii) adding three plant species and one insect species to the threatened or endangered lists.

Issues: The primary advantage of the proposed regulatory action is the protection of threatened or endangered plant and insect species that are of aesthetic, ecological, educational, scientific, economic, or other value and whose global populations are rare and imperiled. Once plants or insects are listed as threatened or endangered, the regulation enables the Virginia Department of Agriculture and Consumer Services to collaborate with landowners, at the landowner's discretion, to develop management plans that would support construction projects and other economic development activity on the landowner's property while minimizing the impact on these valuable, imperiled natural resources. Moreover, when good cause is shown and when necessary to alleviate damage to property, impact on progressive development, or to protect human health, the Virginia Endangered Plant and Insect Species Act includes a provision allowing for the removal or destruction of a state listed species.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Virginia Department of Agriculture and Consumer Services (VDACS) proposes to amend its Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act to: 1) remove one plant species from listing in these regulations, 2) add one plant species (Millboro Leatherflower) to the threatened list and 3) add two plant species (Valley Dolls Daisy and Virginia Quillwort) and one insect species (Thomas Cave Beetle) to the endangered list.

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs for this regulatory action.

Estimated Economic Impact. Pursuant to § 3.2-1002 of the Code of Virginia, the Virginia Department of Agriculture and Consumer Services (VDACS) maintains lists of endangered and threatened plant and insect species in Virginia, and under certain circumstances requires developers of public and private lands to take specified actions to avoid the destruction of the listed endangered and threatened plant and insect species. Any major construction projects conducted on public lands or on private lands for the primary benefit of third party developers (cell phone companies building towers on private land, for example) are subject to review by VDACS to determine whether the proposed construction would take place on land that is within an area that is known to have species on the endangered or threatened lists in the vicinity. VDACS also conducts reviews on private lands where such reviews are required or recommended as part of a larger review of private land use conducted by the Department of Environmental Quality (DEQ) at the behest of the State Corporation Commission (SCC) or conducted by the federal Fish and Wildlife Service (FWS) primarily at the behest of the Army Corp of Engineers.

According to the agency, less than one percent of the over 1,000 proposed construction projects presented to VDACS annually are deemed to be on land that is within an area that is known to have species on the endangered or threatened lists in the vicinity. For these projects, the developer must hire a qualified individual[1] to conduct a survey for the endangered and threatened species on the site of the proposed construction. These surveys typically cost several hundred dollars.[2] Less than one percent of these surveys detect protected plants or insects that require the developer to incorporate mitigating practices into their project.[3]

According to VDACS, the following are examples of circumstances where mitigating practices are necessary and implemented. A locality or the Virginia Department of Transportation (VDOT) is in the early planning stages concerning the construction of a new road. Several routes are considered. It is determined by the process described above that one of the routes would harm an endangered or threatened species. The locality or VDOT chooses a different route for the road. Or if no viable route avoids the endangered or threatened species, then an accommodation such as an overpass may be built to minimize the harm. Another example would be that of a private developer where it is determined by the process described above that development that primarily benefits a third party developer would harm an endangered or threatened species. In such a circumstance VDACS would likely strike an agreement with the developer so that part of the land would be preserved, while the rest could be developed.[4] For reviews that are conducted on private lands as part of a larger DEQ or FWS review, private land owners would likely be required by the SCC to implement VDACS recommendations. For instance, a DEQ representative reports that when land use reviews are conducted on private land at the behest of the SCC, it would likely be mandated that the private land owner follow VDACS recommendations for protecting endangered plants and insects in order to get SCC approval for the larger project involved.

VDACS proposal to remove one plant species from, and add 4 new species to, the lists of endangered and threatened species may or may not increase the frequency that developers must hire surveyors to determine the presence of endangered or threatened species, and the frequency endangered or threatened species are found on the site proposed for development. There is a large degree of uncertainty on this because, according to the agency, the known populations of the plants and insect that are being added to the lists are located in only five rural counties in the Commonwealth and are either located in national forests or on land that is not easily developed or both. Nevertheless, for any additional developers who must hire surveyors due to the species added to the lists, the proposed list additions will cost several hundred dollars and potentially significantly more if the survey shows endangered or threatened species on the site to be developed. For example, the private developer would lose the potential profits garnered from developing the land that he must leave undeveloped due to his agreement with VDACS.

In addition to the direct costs that some developers may incur, this regulatory action has the potential to adversely impact other individuals. First, adding species to the endangered and threatened lists makes it a class one misdemeanor for most individuals[5] to possess those species. Although VDACS reports that they know of no cases where an individual has been charged with this crime, individuals can be subject to a fine of up to $2,000 and/or a jail sentence of up to 12 months. VDACS reports that individuals who have a good reason to want to possess species covered by these regulations, educators or botanists for instance, can get a permit to do so. Second, VDACS reports that listing species on a state level can serve as one factor that may lead to them being listed on the federal endangered or threatened species lists. A federal listing of a plant species does not automatically trigger the level of intervention in the use of private lands, and the perverse results[6], that a listing of an animal species does. Some individuals may, however, incur costs if this regulatory action leads to a federal listing. Specifically, any development projects on federal land, or on private lands that are funded partly or completely with federal monies, are subject to the provisions of the federal endangered species act which can make development much more costly.

The benefits of adding species to the lists involve the value placed on the preservation of endangered or threatened species, and the species contributions to their ecosystems. As designed, the program does seem to reduce the likelihood that endangered or threatened species will be driven to extinction

or at least may slow that trend. Whether the costs incurred by public and private developers, and potentially passed on to taxpayers and consumers through potentially higher taxes, reduced services, or higher housing or commercial rental costs, exceed the benefits associated with reducing the negative pressures on endangered or threatened species populations depends upon how much value is placed on the preservation of endangered or threatened species. Since little or no data exists concerning the magnitude of the expected costs or benefits, it is not possible to draw any reliable conclusion about the net economic impact of this change.

Businesses and Entities Affected. Since these regulations are only directly enforceable when public lands are developed or when private lands are developed by someone other than the land owner, the developers of these projects, as well as entities that contract for such development, will be directly affected by the proposed changes. VDACS reports that they review approximately 1,000 requests for information on anticipated impacts on proposed projects per year. To the extent that any such review adds costs to public projects, taxpayers in the Commonwealth will also be affected. Since listing species at a state level is one factor that is considered when the FWS makes decisions about which species are candidates for federal listing, development of federal lands or development projects that are partly or completely paid for with federal monies may be affected at some point in the future.

Localities Particularly Affected. The proposed changes to the endangered and threatened species lists will particularly affect five counties in the Commonwealth: Amelia, Halifax, Prince Edward, Augusta, and Scott counties now have, or have had, known populations of the candidate plant or insect species within their borders.

Projected Impact on Employment. Individuals qualified to survey for endangered and threatened plant and insect species may receive a small additional amount of work due to the proposed changes. Even with the net additions to the lists, occurrences where mitigating actions are required appear to still be very infrequent. Thus, beyond the surveyors, employment should not be significantly affected by the proposed changes.

Effects on the Use and Value of Private Property. Individuals qualified to survey for endangered and threatened plant and insect species will likely earn some additional revenue. Developers that will need to employ these surveyors will see their costs rise commensurately. In the rare occasions where developers must take mitigating actions, the commercial net value of their property will be negatively affected.

Small Businesses: Costs and Other Effects. Although VDACS does not collect information on affected entities small business status, it seems likely that at least some of the affected developers would qualify. Affected developers will likely incur additional costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is likely no alternate method for meeting VDACS legislative mandate that would further minimize costs.

Real Estate Development Costs. Developers that will need to employ surveyors to assess the effects of their planned development will see their costs increase. In the rare occasions where developers must take mitigating actions, the commercial net value of their property will be negatively affected.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPBs best estimate of these economic impacts.

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[1]The United States Fish and Wildlife Service (USFWS) and the Virginia Department of Conservation and Recreation, Division of Natural Heritage maintain a list of qualified individuals.

[2]Source: VDACS

[3]Ibid

[4]Ibid

[5]Private land owners are allowed to possess endangered species that originate on their land.

[6]Recent empirical studies, "Preemptive Habitat Destruction Under the Endangered Species Act" by Dean Lueck and Jeffrey Michael and "Is the Endangered Species Act Endangering Species" by John List, Michael Margolis and Daniel Osgood, indicate that publication of the intent to list a species in a given area accelerates habitat destruction in that area.

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

Summary:

The proposed regulatory action amends the regulation to (i) remove the species that are no longer considered globally rare and (ii) add those threatened or endangered plant and insect species that are considered to be globally rare.

2VAC5-320-10. Listing of endangered and threatened plant and insect species.

A. The Board of Agriculture and Consumer Services hereby adopts the following regulation in order to protect designated plant and insect species that exist in this Commonwealth. All designated species are subject to all sections of the Virginia Endangered Plant and Insect Species Act (§ 3.2-1000 et seq. of the Code of Virginia).

B. The following plant and insect species are hereby declared an endangered species:

1. Boltonia montana, valley doll's-daisy.

~~1.~~ 2. Cardamine micranthera, small-anthered bittercress.

~~2.~~ 3. Carex juniperorum, juniper sedge.

~~3.~~ 4. Corallorhiza bentley, Bentley's coralroot.

~~4.~~ 5. Fimbristylis perpusilla, Harper's fimbristylis.

~~5.~~ 6. Helenium virginicum, Virginia sneezeweed.

~~6.~~ 7. Helonias bullata, swamp-pink.

~~7.~~ 8. Ilex collina, long-stalked holly.

~~8.~~ 9. Iliamna corei, Peter's ~~mountain~~ Mountain mallow.

10. Isoetes virginica, Virginia quillwort.

~~9.~~ 11. Isotria medeoloides, small whorled pogonia.

~~10.~~ 12. Neonympha mitchellii, Mitchell's satyr butterfly.

~~11. Nestronia umbellula, nestronia.~~

13. Pseudanophthalmus holsingeri, Holsinger's cave beetle.

14. Pseudanophthalmus thomasi, Thomas' cave beetle.

~~12.~~ 15. Ptilimnium nodosum, harperella.

~~13.~~ 16. Puto kosztarabi, Buffalo Mountain mealybug.

~~14. Pseudanophthalmus holsingeri, Holsinger's cave beetle.~~

~~15.~~ 17. Scirpus ancistrochaetus, Northeastern bulrush.

~~16.~~ 18. Sigara depressa, Virginia Piedmont water boatman.

~~17.~~ 19. Spiraea virginiana, Virginia spiraea.

~~18.~~ 20. Trifolium calcaricum, running glade clover.

C. The following plant and insect species are hereby declared a threatened species:

1. Aeschynomene virginica, sensitive-joint vetch.

2. Amaranthus pumilus, seabeach amaranth.

3. Arabis serotina, shale barren ~~rock-cress~~ rockcress.

4. Cicindela dorsalis dorsalis, Northeastern beach tiger beetle.

5. Clematis viticaulis, Millboro leatherflower.

~~5.~~ 6. Echinacea laevigata, smooth coneflower.

~~6.~~ 7. Juncus caesariensis, New Jersey rush.

~~7.~~ 8. Lycopodiella margueritiae, Northern prostrate clubmoss.

~~8.~~ 9. Nuphar sagittifolia, narrow-leaved spatterdock.

~~9.~~ 10. Platanthera leucophaea, Eastern prairie fringed orchid.

~~10.~~ 11. Pyrgus wyandot, Appalachian grizzled skipper.

~~11.~~ 12. Rhus michauxii, Michaux's sumac.

~~12.~~ 13. Scirpus flaccidifolius, reclining bulrush.

VA.R. Doc. No. R09-1869; Filed June 13, 2012, 11:15 a.m.

Final Regulation

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

Title of Regulation: **2VAC5-460. Rules and Regulations for the Enforcement of the Virginia Petroleum Products Franchise Act (repealing 2VAC5-460-10, 2VAC5-460-20, 2VAC5-460-30).**

Statutory Authority: §§ 59.1-21.11 and 59.1-21.16:2 of the Code of Virginia.

Effective Date: August 1, 2012.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

Summary:

Chapter 351 of the 2012 Acts of Assembly, which amended the Virginia Petroleum Products Franchise Act, eliminated the requirement for this regulation. Therefore, this regulation is being repealed.

VA.R. Doc. No. R12-3225; Filed June 8, 2012, 10:00 a.m.

TITLE 8. EDUCATION

VIRGINIA MUSEUM OF FINE ARTS

Final Regulation

REGISTRAR'S NOTICE: The Virginia Museum of Fine Arts is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC103-10. Museum and Grounds Use and Access (amending 8VAC103-10-10, 8VAC103-10-20, 8VAC103-10-30).**

Statutory Authority: § 23-253.4 of the Code of Virginia.

Effective Date: June 15, 2012.

Agency Contact: Jessica Ferey, Administrative Assistant to Director, Virginia Museum of Fine Arts, 200 North Boulevard, Richmond, VA 23220, telephone (804) 340-1500, FAX (804) 340-1502, or email jessica.ferey@vmfa.museum.

Summary:

The amendments update the regulations and establish specific rules regarding dogs, bicycles, and skateboards on museum grounds.

8VAC103-10-10. Definitions.

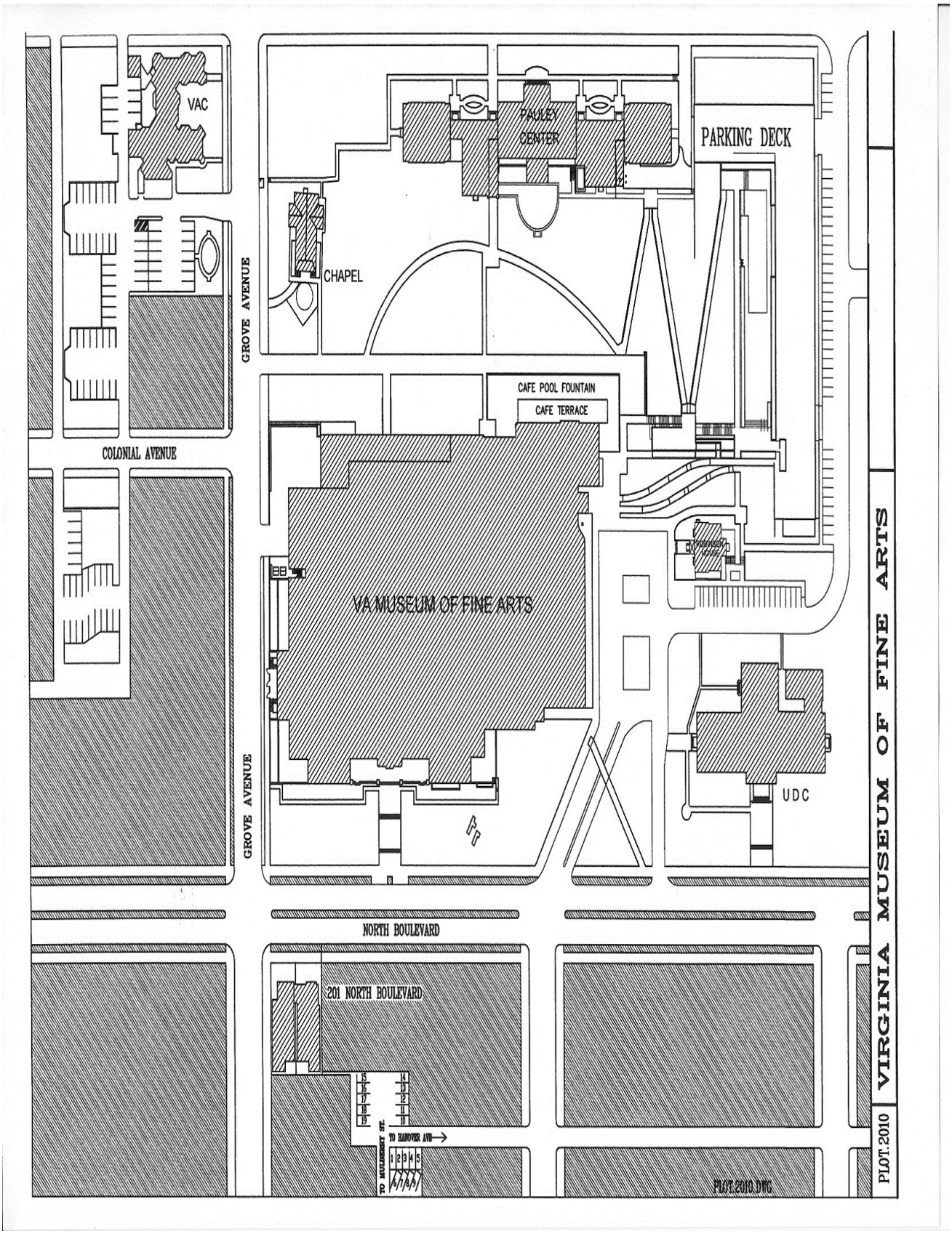
The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Director" means the Director of the Virginia Museum of Fine Arts or the director's designee.

"Museum" means the Virginia Museum of Fine Arts.

"Museum building" means~~, but is not limited to,~~ the primary building facing the Boulevard and Grove Avenue in Richmond, Virginia, and any additions housing the Virginia Museum of Fine Arts, its collections, office spaces and assembly spaces, including but not limited to the Pauley Center, which faces Sheppard Street, Richmond, Virginia, and the office building that faces the Boulevard at the eastern corner of Grove Avenue, Richmond, Virginia.

"Museum grounds" means property including but not limited to streets, driveways, sidewalks, gardens, parking ~~lots~~ areas, and other open spaces ~~deemed to be~~ owned, rented, controlled, or otherwise ~~controlled~~ used by the Virginia Museum of Fine Arts, as shown in the diagram below:


VAC
PAULEY CENTER
PARKING DECK
CHAPEL
GROVE AVENUE
CAFE POOL FOUNTAIN
CAFE TERRACE
COLONIAL AVENUE
VA MUSEUM OF FINE ARTS
UDC
GROVE AVENUE
NORTH BOULEVARD
201 NORTH BOULEVARD
TO HANOVER AVE
TO BOULEVARD ST.
1 2 3 4 5
A/AA
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VIRGINIA MUSEUM OF FINE ARTS

"Other properties" means, but is not limited to, any structures, storage facilities, garages, and studio and classroom facilities not included in the "museum building" definition ~~deemed to be~~ that are owned, rented, controlled, or otherwise ~~controlled~~ used by the Virginia Museum of Fine Arts.

8VAC103-10-20. Authority and application.

A. This chapter is established in accordance with § 23-253.4 of the Code of Virginia.

B. This chapter shall apply to the general public; to all public and private organizations, parties, or movements; and to all employees and volunteers of the museum~~,~~ and the museum foundation~~, the council shop, and Theatre Virginia~~.

8VAC103-10-30. Procedures.

A. Public service hours.

1. Museum building. Unless otherwise posted, the public exhibition areas of the museum building shall be open to the public ~~from 11 a.m. each morning until 5 p.m. in the evening, Tuesday through Sunday, except for Thursday when closing will be at 8 p.m~~ during the hours posted at each public entrance and on the website: http://www.vmfa.museum. These opening/closing times do not apply to members of the public attending functions or programs in the museum ~~which~~ that are sponsored by the museum or are held at the museum pursuant to contract with the museum ~~such as Theatre Virginia performances, "Fast Forward," and "Jumpin."~~. Opening/closing times will be posted ~~throughout~~ at each public entrance to the building. Unauthorized persons found on the premises after the posted closing times will be subject to arrest and prosecution.

2. Museum grounds. ~~The~~ Unless otherwise posted, the grounds of the museum shall be open to the public ~~from sunrise to sunset each day, except that the museum parking lots shall be open to members of the public attending approved functions or programs at the museum in the evening after sunset. Unauthorized persons found on the grounds during times other than the public service hours specified in this chapter will be subject to arrest and prosecution~~ every day, year round.

a. Dogs may be brought onto the museum grounds provided that they are leashed and under the control of the owner at all times and that the owner assumes responsibility for cleaning up afterwards. Nothing herein shall prohibit the use on museum grounds, in museum buildings, or in other properties of service animals actively serving the handicapped.

b. Bicycles are permitted on all roadways, sidewalks, or pathways that do not have steps with the exception of times when sidewalks and pathways have pedestrians. During such times bicyclists shall dismount completely and walk. Pedestrians always have the right of way. Bicycles are not permitted on grass areas.

c. Skateboards, in-line skates, and roller skates are not permitted.

3. Other properties. The public service hours of other properties of the museum shall be posted on those properties. Unauthorized persons found on these other properties during times other than the posted public service hours ~~will~~ may be subject to arrest and prosecution.

B. Prohibited activities. No soliciting, pamphleteering, assemblages or the displaying of flags, banners, or devices designed or adapted to bring into public notice any party, organization, or movement shall be permitted within the museum, its grounds or other properties except as provided herein.

C. Exceptions. With the approval of the director, the prohibitions set forth in subsection B of this section may be suspended by the ~~Deputy Director for Administration~~ director to permit meetings, gatherings, or assemblages and the displaying of flags, banners, or devices that are not part of a museum-sponsored activity or event, if, in the ~~deputy~~ director's reasonable discretion, (i) the general enjoyment and use of the museum building, its grounds and other properties are not impaired, (ii) the public visiting the museum or attending an approved function is not disrupted, ~~and~~ (iii) the security or condition of the collection or the welfare, health, and safety of ~~tourists,~~ visitors and persons performing various duties on the premises are not endangered, and (iv) it does not impose additional expenditure of staff or facility resources.

D. Permit required. Assemblages, meetings or functions ~~which~~ that are not sponsored by the museum or ~~which~~ that are not held at the museum pursuant to a contract with the museum require a permit. Requests for permits for assemblages, meetings, or functions by any party, organization, movement or other private group must be in writing, must be submitted to the ~~Deputy Director for Administration~~ director at least ~~10~~ 15 working days prior to the requested date, and must contain the following information:

1. Name of organization, date of origin, status (corporation, unincorporated association, partnership, nonprofit corporation, etc.) and name and address of registered agent, if a corporation.

2. Name, title within the organization, permanent address, occupation, and telephone number of the individual member who shall be responsible for the conduct of the meeting or function.

3. Statement as to the approximate number of members or other persons who will attend.

4. Date and specific period of time requested (from.....to.....).

5. Purpose of meeting or function, to include names and titles of speakers, if any.

E. Parking lots and walkways. Except for approved functions, the vehicular drives and parking lots within the

museum grounds must remain ~~open~~ unencumbered and the pedestrian walkways must afford reasonable movement of pedestrians at all times during public service hours.

F. Denial of permit. Requests for meetings or functions of organizations shall be denied if, after proper inquiry, the ~~deputy~~ director determines that the proposed event will ~~constitute a clear and present danger to~~ impair the ~~orderly functioning of the museum and~~ general enjoyment or use of the museum building, its grounds ~~or~~ and other properties ~~by the public because of the advocacy of (i) the violent overthrow of the government of the United States, the Commonwealth of Virginia, or any political subdivision thereof; (ii) the willful damage or destruction, or seizure and subversion, of the museum building, its grounds or other property; (iii) the forcible disruption or impairment of or interference with the regularly scheduled functions of the museum; (iv) the physical harm, coercion, intimidation or other invasion of lawful rights of officials of the museum or members of the public; or (v) other disorders of a violent nature~~; will disrupt the public visiting the museum or attending an approved function; will endanger the security or condition of the collection or the welfare, health, and safety of visitors and persons performing various duties on the premises; or will impose additional expenditure of staff or facility resources.

G. Violation of Virginia law. The ~~deputy~~ director may refuse authorization for the use of the museum building, its grounds or other property, if there is reason to believe that the organization requesting a permit is organized, functioning, or conducting business in violation of Virginia law.

H. Written approval. Authorization for the use of the museum building, its grounds or other property will be set forth in a letter addressed to the individual named in subdivision D 2 of this section. ~~Such authorization will automatically include all sections set forth above, together with any other specific stipulations or procedures that may be necessary at the time.~~

I. Revocation of permit. Violations of this policy may result in immediate revocation of the permit by the ~~deputy~~ director ~~or his duly appointed representative,~~ and in the event such revocation occurs, all participants shall be required to leave the museum building, its grounds or other property forthwith.

VA.R. Doc. No. R12-3251; Filed June 14, 2012, 3:07 p.m.

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TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming an exemption from the Administrative Process Act pursuant to Item 365 B 2 of the 2012 Appropriation Act.

Title of Regulation: **9VAC5-80. Permits for Stationary Sources (amending 9VAC5-80-310 through 9VAC5-80-350, 9VAC5-80-2250 through 9VAC5-80-2290; adding 9VAC5-80-2310 through 9VAC5-80-2350; repealing 9VAC5-80-2300).**

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

Effective Date: July 1, 2012.

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 regulatory action amends the fee requirements for funding the Title V permit program. Specifically:

1. Article 2 (9VAC5-80-310 et seq.) of 9VAC5-80 (Permits for Stationary Sources) requires that permit program fees be paid by sources subject to Title V of the federal Clean Air Act on the basis of air pollutant emissions. The name of the annual permit program fee in Article 2 is changed to clarify that these fees are emissions fees and not application fees or maintenance fees. The base amount for calculating annual permit program emission fees is increased from $25 per ton of emissions to $31.22 per ton, resulting in an initial emission fee rate increase of less than 30% over current rates. Various other changes made to Article 2 (i) remove outdated provisions; (ii) correct the minimum threshold for payment; (iii) correct references and format; (iv) allow other modes of payment; and (v) clarify certain actions under the regulation.

2. Article 10 (9VAC5-80-2250 et seq.) of 9VAC5-80 (Permits for Stationary Sources) requires that application fees be assessed for certain types of air permit applications. Permit application fees are expanded to include fees for all types of permits that make a stationary source subject to permit requirements under Title V and all types of permits that would remove a stationary source that is otherwise subject to Title V permit requirements from applicability under Title V. A method of making annual adjustments to the application fees for changes in the Consumer Price Index (CPI) is added and the annual permit program emission fee credit for the cost of the permit application fees is removed. The types of permits to which permit application fees apply and the process for paying the fees has been clarified.

3. Annual permit maintenance fees are established in a new Article 11 (9VAC5-80-2310 et seq.) of 9VAC5-80 (Permits for Stationary Sources) for (i) all stationary sources operating under either permit requirements or a permit application shield issued pursuant to Title V or (ii)

all sources operating under federally enforceable permits issued to keep a stationary source from applicability under permit requirements of Title V. The method of determining and adjusting the permit maintenance fee amounts annually for changes in the CPI is specified. The process for assessing, billing, and paying the fees is also specified.

Article 2

Permit Program Emissions Fees for Stationary Sources

9VAC5-80-310. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to the following stationary sources:

1. Any major source.

2. Any source, including an area source, subject to a standard, limitation, or other requirement under § 111 of the federal Clean Air Act.

3. Any source, including an area source, subject to a standard, limitation, or other requirement under § 112 of the federal Clean Air Act.

4. Any affected source.

5. Any other source subject to the permit requirements of Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this ~~chapter~~ part.

6. Any source that would be subject to the permit requirements of Article 1 (9VAC5-80-50 et seq.) of this ~~chapter~~ part in the absence of a permit issued under ~~9VAC5-80-40~~ Article 5 (9VAC5-80-800 et seq.) of this part.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article shall not apply to the following:

1. All sources and source categories that would be subject to this article solely because they are subject to the provisions of 40 CFR Part 60, Subpart AAA (standards of performance for new residential wood heaters), as prescribed in Article 5 (9VAC5-50-400 et seq.) of ~~9VAC5 Chapter 50~~ 9VAC5-50 (New and Modified Stationary Sources).

2. All sources and source categories that would be subject to this article solely because they are subject to the provisions of 40 CFR 61.145 (national emission standard for hazardous air pollutants for asbestos, standard for demolition and renovation), Subpart M, as prescribed in Article 1 (9VAC5-60-60 et seq.) of ~~9VAC5 Chapter 60~~ 9VAC5-60 (Hazardous Air Pollutant Sources).

3. Any source issued a permit under the new source review program that began initial operation during the calendar year preceding the year in which the annual permit program emissions fee is assessed.

4. That portion of emissions in excess of 4,000 tons per year of any regulated air pollutant emitted by any source otherwise subject to an annual permit program emissions fee.

~~5. During the years 1995 through 1999 inclusive, any affected source under § 404 of the federal Clean Air Act (phase I sulfur dioxide requirements).~~

~~6.~~ 5. Any emissions unit within a stationary source subject to this article that is identified as being an insignificant activity in Article 4 (9VAC5-80-710 et seq.) of this ~~chapter~~ part.

~~7.~~ 6. All sources and source categories that would be subject to this article solely because they are subject to regulations or requirements under § 112(r) of the federal Clean Air Act.

~~8.~~ 7. Any source deferred by the provisions of subsection D of this section provided the source is not part of a major source.

D. Sources shall be deferred from initial applicability as follows.

1. Area sources subject to this article under subdivision A 2 or A 3 of this section shall be deferred from the obligation to pay fees under this article except as follows.

a. In cases for which EPA has promulgated a standard under § 111 or ~~§~~ 112 of the federal Clean Air Act and has declared that the facility or source category covered by the standard is subject to the Title V program, the facility or source category shall be subject to this article.

b. In cases for which EPA has promulgated a standard under § 111 or ~~§~~ 112 of the federal Clean Air Act after July 21, 1992, and has failed to declare whether the facility or source category covered by the standard is subject to the Title V program, the facility or source category shall be subject to this article.

2. The following sources shall not be deferred from the obligation to pay fees under this article:

a. Major sources.

b. Solid waste incineration units subject to the provisions of ~~9VAC5 Chapter 40 (9VAC5-40-10 et seq.)~~ 9VAC5-40 (Existing Stationary Sources) and ~~9VAC5 Chapter 50 (9VAC5-50-10 et seq.)~~ 9VAC5-50 (New and Modified Stationary Sources) as adopted pursuant to § 129(e) of the federal Clean Air Act.

3. Any source deferred under subdivision 1 of this subsection may apply for a permit under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of ~~9VAC5 Chapter 80~~ this part. If the source applies for a permit, the source shall be subject to this article and shall pay fees accordingly.

~~E. Particulate matter emissions shall be used to determine the applicability of this article to major sources or to determine actual emissions only if particulate matter (PM_{10}) emissions cannot be quantified in a manner acceptable to the board.~~

9VAC5-80-320. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and ~~subsequent amendments or any orders issued by the board~~ related uses, the words or ~~phrases~~ terms shall have the meanings given them in subsection C of this section.

B. ~~All~~ As used in this article, all words and ~~phrases~~ terms not defined in subsection C of this section shall have the meanings given them in ~~9VAC5 Chapter 10 (9VAC5-10-10 et seq.)~~ 9VAC5-80-5 or 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

"Actual emissions" means the actual rate of emissions in tons per year of any regulated air pollutant emitted from a source subject to this article over the preceding calendar year. Actual emissions may be calculated according to any method acceptable to the department provided such calculation takes into account the source's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Any regulated pollutant which could be classed in more than one category shall be classed in only one category.

"Affected source" means a source that includes one or more affected units.

"Affected unit" means a unit that is subject to any federal acid rain emissions reduction requirement or acid rain emissions limitation under 40 CFR Parts 72, 73, 75, 77 or 78.

"Area source" means any stationary source that is not a major source. For purposes of this section, the phrase "area source" shall not include motor vehicles or nonroad vehicles.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Major source" means:

a. For hazardous air pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

b. For air pollutants other than hazardous air pollutants, any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

(1) Coal cleaning plants (with thermal dryers);

(2) Kraft pulp mills;

(3) Portland cement plants;

(4) Primary zinc smelters;

(5) Iron and steel mills;

(6) Primary aluminum ore reduction plants;

(7) Primary copper smelters;

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(9) Hydrofluoric, sulfuric, or nitric acid plants;

(10) Petroleum refineries;

(11) Lime plants;

(12) Phosphate rock processing plants;

(13) Coke oven batteries;

(14) Sulfur recovery plants;

(15) Carbon black plants (furnace process);

(16) Primary lead smelters;

(17) Fuel conversion plant;

(18) Sintering plants;

(19) Secondary metal production plants;

(20) Chemical process plants;

(21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(23) Taconite ore processing plants;

(24) Glass fiber processing plants;

(25) Charcoal production plants;

(26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(27) Any other stationary source category regulated under § 111 or ~~§~~ 112 of the federal Clean Air Act for which the administrator has made an affirmative decision under § 302(j) of the federal Clean Air Act.

c. For ozone nonattainment areas, any stationary source with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this definition to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding that

requirements under § 182(f) of the federal Clean Air Act (NO_x requirements for ozone nonattainment areas) do not apply.

d. For attainment areas in ozone transport regions, any stationary source with the potential to emit 50 tons per year or more of volatile organic compounds.

"Permit program costs" means all reasonable (direct and indirect) costs required to develop, administer, and enforce the permit program; and to develop and administer the Small Business Technical and Environmental Compliance Assistance Program established pursuant to the provisions of § 10.1-1323 of the Code of Virginia.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.

"Regulated air pollutant" means any of the following:

a. Nitrogen oxides or any volatile organic compound~~;~~.

b. Any pollutant for which an ambient air quality standard has been promulgated except carbon monoxide~~;~~.

c. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act~~;~~.

d. Any pollutant subject to a standard promulgated under § 112 (hazardous air pollutants) or other requirements established under § 112 of the federal Clean Air Act, particularly §§ 112(b), 112(d), 112(g)(2), 112(j), and 112(r); except that any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under § 112(r) of the federal Clean Air Act shall be exempt from this article.

"Research and development facility" means all the following as applied to any stationary source:

a. The primary purpose of the source is the conduct of either (i) research and development into new products or processes or into new uses for existing products or processes or (ii) basic research to provide for education or the general advancement of technology or knowledge;

b. The source is operated under the close supervision of technically trained personnel; and

c. The source is not engaged in the manufacture of products in any manner inconsistent with clause a (i) or (ii) of this definition.

An analytical laboratory that primarily supports a research and development facility is considered to be part of that facility.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same persons (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., if they have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21). Any research and development facility shall be considered a separate stationary source from the manufacturing or other facility with which it is co-located.

9VAC5-80-330. General.

A. The owner of any source subject to this article shall pay an annual permit program emissions fee.

B. Permit program emissions fees collected pursuant to this article for sources subject to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this ~~chapter~~ part shall not be used for any purpose other than as provided in Title V of the federal Clean Air Act and associated regulations and policies.

C. The owner shall be exempt from paying the annual permit program emissions fee for any year during which the total actual emissions are less than 10 tons ~~or less~~.

9VAC5-80-340. Annual permit program emissions fee calculation.

A. The annual permit program emissions fee shall not exceed the base year amount ~~as specified in § 10.1-1322 B of the Virginia Air Pollution Control Law and shall be~~ of $31.22 per ton of emissions, as provided in subsection B of Item 365 of the 2012 Appropriation Act adjusted annually by the Consumer Price Index as provided in ~~§ 10.1-1322 B of the Virginia Air Pollution Control Law~~ Title V of the federal Clean Air Act and associated regulations and policies.

1. The annual permit program emissions fee shall be increased (consistent with the need to cover reasonable costs) each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for ~~all-urban~~ all-urban consumers published by the U.S. Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

2. The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

B. The annual permit program emissions fee described in subsection A of this section and the amount billed to the owner as provided in subsection A of 9VAC5-80-350 for a given year shall be calculated in accordance with the following formulae:

$$B = (A)(F)$$

$$F = X(1 + \Delta CPI)$$

$$\Delta CPI = \frac{CPI - 122.15}{122.15}$$

where:

B = the amount billed to the owner during the year after the year in which the actual emissions occurred, expressed in dollars

A = actual emissions covered by permit fees, expressed in tons

F = the maximum adjusted fee per ton for the calendar year in which the actual emissions occurred, expressed in dollars per ton

X = ~~25~~ 31.22, expressed in dollars per ton

ΔCPI = the difference between the CPI and 122.15 (the average of the Consumer Price Index for all-urban consumers for the 12-month period ending on August 31, 1989)~~.~~

CPI = the average of the Consumer Price Index for all-urban consumers for the 12-month period ending on August 31 of the year in which the emissions actually occurred, expressed as a percentage

C. The actual emissions covered by the permit program emissions fees for the preceding year shall be calculated by the owner and submitted to the department by April 15 of each year. The calculations and final amount of emissions are subject to verification and final determination by the department.

D. If the assessment of the annual permit program emissions fee calculated in accordance with subsections A, B, and C of this section results in a total amount of fee revenue in excess of the amount necessary to fund the permit program costs, a lesser annual permit program emissions fee ~~shall~~ may instead be calculated and assessed according to the formula specified in subsection E of this section. Any adjustments made to the annual permit program emissions fee shall be within the constraints of 40 CFR 70.9 ~~and § 10.1-1322 of the Virginia Air Pollution Control Law~~.

E. The lesser annual permit program emissions fee shall be calculated according to the following formula: the lesser annual permit program emissions fee is equal to the estimated permit program costs divided by the estimated actual emissions ~~= lesser annual permit program fee~~. The estimated permit program costs and estimated actual emissions shall be determined from the data specified in subdivisions 1 and 2 of this subsection, incorporating any anticipated adjustments to the data.

1. The current permit program costs shall be determined from the most recent available annual expenditure record of the amount spent by the department on permit program costs.

2. The current actual emissions shall be determined from the most recent available annual emissions inventory of the actual emissions for each regulated pollutant subject to fees from all sources subject to the annual permit program emissions fee.

9VAC5-80-350. Annual permit program emissions fee payment.

A. Upon determining that the owner owes an annual permit program emissions fee, the department shall mail a bill for the fee to that owner no later than August 1~~, or in the case of the initial bill no later than 60 days after federal program approval,~~ unless the governor determines that fees are needed earlier for Virginia to maintain primacy over the program, as provided in § 10.1322 B of the ~~State~~ Virginia Air Pollution Control Law.

B. Within 30 days following the date of the postmark on the bill, the owner shall respond in one of the following ways:

1. The owner ~~shall~~ may pay the fee in full.

2. The owner may ~~elect to~~ pay the fee in equal quarterly payments and shall pay one quarter of the fee. The first payment shall be accompanied by a written statement that the second quarter of the fee shall be paid no later than December 1 of the year of the issuance of the bill, the third quarter of the fee shall be paid no later than March 1 of the year following the issuance of the bill, and the fourth quarter of the fee shall be paid no later than June 1 of the year following the issuance of the bill. If an owner fails to pay a quarterly payment by the deadline, the department may, in addition to other remedies available under the law, issue to the owner a notice of failure to pay. The notice ~~shall~~ will require payment of the entire remainder of the annual fee payment within 30 days of the date of the notice, or inform the owner that ~~he shall be~~ the owner is ineligible to opt for the quarterly payment schedule established in this subdivision until eligibility is reinstated by written notice from the department, or both.

3. The owner may ~~file a~~ request that the fee amount be revised if ~~he~~ the owner can document that the emissions estimate on which the fee was based is in error. This request shall include appropriate source identification data, the revised emissions estimate, the revised fee amount, adequate supporting documentation, and other information as the ~~board~~ department may require. The owner shall file the request with the appropriate regional office in a form acceptable to the ~~board~~ department. If the department approves the request, the revised fee amount shall be paid in one of two ways:

a. In full within 30 days of the date of approval; or

b. In quarterly payments, with the first payment being paid within 30 days of the date of approval and the other

payments being paid according to the schedule set out in subdivision 2 of this subsection.

C. The annual permit program emissions fee shall be paid by check, draft, or money order made payable to the Treasurer of Virginia and mailed to the address specified by the department.

Article 10
Permit Application Fees for Stationary Sources

9VAC5-80-2250. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to permit applications as follows:

1. ~~For permit~~ Permit applications subject to review under the provisions of Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

2. Permit applications subject to review under the provisions of Article 5 (9VAC5-80-800 et seq.) of this part.

3. Permit applications subject to review under the provisions of Article 6 (9VAC5-80-1100 et seq.) of this part~~, the provisions of this article shall apply to any of the following:~~.

~~a. Permit applications for the construction of a major stationary source at an undeveloped site.~~

~~b. Permit applications for the construction of a major source, as defined in 40 CFR 63.2 at an undeveloped site.~~

~~c. Applications for coverage of a major stationary source (or portion thereof) or a major source (or portion thereof) under a general permit issued for a stationary source category, if the source is to be located at an undeveloped site.~~

~~d. Permit applications for the reactivation of any major source or major stationary source that was shut down in accordance with 9VAC5-20-220.~~

~~2. For permit~~ 4. Permit applications subject to review under the provisions of Article 7 (9VAC5-80-1400 et seq.) of this part~~, the provisions of this article apply to permit applications for the construction of a major source at an undeveloped site~~.

~~3. For permit~~ 5. Permit applications subject to review under the provisions of Article 8 ~~(9VAC5-80-1700~~ (9VAC5-80-1605 et seq.) or Article 9 (9VAC5-80-2000 et seq.) of this part~~, the provisions of this article apply to any of the following:~~.

~~a. Permit applications for the construction of a major stationary source at an undeveloped site.~~

~~b. Permit applications for the reactivation of any major stationary source that was shut down in accordance with 9VAC5-80-1930 or 9VAC5-20-220.~~

6. Permit applications subject to review under the provisions of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article shall not apply to the following:

~~1. Applications for permits for reconstruction of all or part of any stationary source, providing that the application is not otherwise subject to permit application fees pursuant to the provisions of subsection A of this section.~~

~~2.~~ 1. Applications that are ~~deemed complete~~ received by the appropriate regional office prior to ~~July 1, 2004~~ July 1, 2012, except that applications that are received prior to July 1, 2012, and are amended on or after July 1, 2012, may be subject to the permit application fee due as if the application was received on or after July 1, 2012, less any permit application fee amount paid for that application prior to July 1, 2012. The provisions of 9VAC5-80-2290 apply to amended permit applications.

2. Applications for an administrative permit amendment or an administrative permit modification to an existing permit.

3. Applications for permits or changes to permits for a true minor source.

D. The department shall make any final determinations required by this article, including, but not limited to:

1. The applicability of this article;

2. Any applicability determinations required pursuant to Articles 1 (9VAC5-80-50 et seq.), 3 (9VAC5-80-360 et seq.), 5 (9VAC5-80-800 et seq.), 6 (9VAC5-80-1100 et seq.), 7 (9VAC5-80-1400 et seq.), 8 ~~(9VAC5-80-1700~~ (9VAC5-80-1605 et seq.) and 9 (9VAC5-80-2000 et seq.) of this part and pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) that affect the applicability of this article; ~~and~~

3. The amount of permit application fees owed~~.~~; and

4. The applicability of words or terms to a particular stationary source or permit application.

9VAC5-80-2260. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and ~~subsequent amendments or any orders issued by the board~~ related uses, the words or ~~phrases~~ terms shall have the ~~meaning~~ meanings given them in subsection D of this section.

B. ~~All~~ As used in this article, all words and ~~phrases~~ terms not defined in subsection D of this section shall have the ~~meaning~~ meanings given them in ~~Article 6 (9VAC5-80-1110 C) Article 7 (9VAC5-80-1410 C) Article 8 (9VAC5-80-1710 C) or Article 9 (9VAC5-80-2010 C) of this part~~ 9VAC5-80-60 C, 9VAC5-80-370, 9VAC5-80-810 C, 9VAC5-80-1110 C,

9VAC5-80-1410 C, 9VAC5-80-1615 C, 9VAC5-80-2010 C, 9VAC5-85-30 C, 9VAC5-85-50 C, or 9VAC5-85-70 C, as may apply, unless otherwise required by context.

C. All words and ~~phrases~~ terms not defined in subsection D of this section and not defined ~~in applicable subsections of Article 6 (9VAC5-80-1110 C), Article 7 (9VAC5-80-1410 C), Article 8 (9VAC5-80-1710 C) or Article 9 (9VAC5-80-2010 C) of this part~~ as provided in subsection B of this section shall have the ~~meaning~~ meanings given them in ~~9VAC5 Chapter 10~~ 9VAC5-80-5 or 9VAC5-10 (General Definitions), unless otherwise required by context.

D. Terms defined.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for the purposes of permit processing does not preclude the board from requesting or accepting any additional information.

~~"Reactivation" means beginning operation of an emissions unit that has been shut down.~~

~~"Undeveloped site" means any site or facility at which no emissions units are located.~~

"Major new source review permit" or "major NSR permit" means a permit that is issued under the major new source review (major NSR) program or a permit that is issued pursuant to the minor new source review (minor NSR) program in which one or more of the provisions have been combined from a permit issued under the major NSR program. A major NSR permit may contain provisions that are subject to the requirements of the minor NSR program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 112, 165, and 173 of the federal Clean Air Act and associated regulations; and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.), and Article 9 (9VAC5-80-2000 et seq.) of this part and Part III (9VAC5-85-40 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

"Minor new source review permit" or "minor NSR permit" means a permit that is issued pursuant to the minor new source review (minor NSR) program in which none of the provisions have been combined from a major NSR permit.

"Permit amendment" means (i) a change to a permit that was issued pursuant to Article 5 (9VAC5-80-800 et seq.), Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.), or Article 9 (9VAC5-80-2000 et seq.) of this part; (ii) an administrative change to a permit issued pursuant to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part; or (iii) a change to a permit issued pursuant to Part III (9VAC5-85-40 et seq.) or Part IV (9VAC5-85-60 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

"Permit modification" means a change, other than an administrative permit amendment, to a permit that was issued pursuant to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or pursuant to Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

"State major permit" means a minor NSR permit that is issued for a stationary source having the potential to emit 100 tons per year or more of any air pollutant, considering the state enforceable and federally enforceable permit limits in that permit.

"State operating permit" means a permit issued pursuant to Article 5 (9VAC5-80-800 et seq.) of this part or Part IV (9VAC5-85-60 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

"Synthetic minor permit" means a permit that is issued under the provisions of Article 5 (9VAC5-80-800 et seq.) or Article 6 (9VAC5-80-1100 et seq.) of this part or Part IV (9VAC5-85-60 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) for a stationary source that would otherwise be subject to permit requirements under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) except for state enforceable and federally enforceable permit limits in that permit.

"Title V permit" means a federal operating permit issued pursuant to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

"Title V general permit" means a general permit issued pursuant to the provisions of 9VAC5-80-120.

"True minor source" means a stationary source that would not be subject to permit requirements under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) even without considering any state enforceable or federally enforceable permit limitations.

9VAC5-80-2270. General.

A. Any person submitting a permit application subject to this article shall pay a permit application fee in the amount determined in accordance with 9VAC5-80-2280.

B. Permit application fees collected pursuant to this article for sources subject to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or subject to Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) shall not be used for any purpose other than as provided in Title V

of the federal Clean Air Act and associated regulations and policies.

9VAC5-80-2280. Permit application fee calculation.

~~A. The amount of the permit application fee shall be the sum of the following, as applicable:~~

~~1. Permit applications subject to review pursuant to the provisions of Article 9 (9VAC5-80-2000 et seq.) of this part shall be subject to a permit application fee of $20,000.~~

~~2. Permit applications subject to review pursuant to the provisions of Article 8 (9VAC5-80-1700 et seq.) of this part shall be subject to a permit application fee of $30,000.~~

~~3. Permit applications subject to review pursuant to the provisions of Article 7 (9VAC5-80-1400 et seq.) of this part shall be subject to a permit application fee of $15,000.~~

~~4. Permit applications subject to the provisions of Article 6 (9VAC5-80-1100 et seq.) of this part (other than applications for coverage under general permits issued under 9VAC5-80-1250) shall be subject to a permit application fee of $5,300.~~

~~5. Applications for coverage under a general permit pursuant to the provisions of Article 6 (9VAC5-80-1250) of this part shall be subject to a permit application fee of $300.~~

~~B. The total amount of the fee for a single permit application shall not exceed $30,000.~~

Each permit application subject to this article shall be subject to a permit application fee. The amount of the application fee shall be calculated as follows:

1. The amount of the permit application fee shall be the largest applicable base permit application fee amount from Table 8-10A, adjusted annually by the change in the Consumer Price Index (CPI) as specified in subdivision 2 of this subsection.

TABLE 8-10A

BASE PERMIT APPLICATION FEES FOR STATIONARY SOURCES

Application for:	Base Permit Application Fee Amount
Sources subject to Title V permitting requirements:	
Major NSR permit	$30,000
Major NSR permit amendment (except administrative)	$7,000
State major permit	$15,000
Minor NSR permit (that is not also a state major permit)	$1,500
Minor NSR permit amendment (except administrative)	$750
Title V permit	$20,000
Title V permit renewal	$10,000
Title V permit modification (except administrative)	$3,500
State operating permit	$7,000
State operating permit amendment (except administrative)	$3,500
Title V General Permit	$500
Sources subject to the requirements of a synthetic minor permit:	
Minor NSR permit	$500
Minor NSR permit amendment (except administrative)	$250
State operating permit	$1,500
State operating permit amendment (except administrative)	$800

2. The annual adjustment of the permit application fees shall be based upon the annually adjusted permit application fee amounts for the preceding calendar year and the change in the CPI value published by the U.S. Department of Labor for all-urban consumers over the 12-month period ending on August 30 of the calendar year preceding the calendar year in which the application is first received by the appropriate regional office of the department.

a. The CPI for all-urban consumers published by the U.S. Department of Labor may be obtained online from the Bureau of Labor Statistics' website at http://www.bls.gov/cpi/home.htm.

b. There is no CPI adjustment for applications received prior to January 1, 2013.

3. The amount of the annually CPI-adjusted permit application fee shall be rounded down to the nearest whole dollar.

9VAC5-80-2290. Permit application fee payment.

A. The permit application fee required by this article is due on the date that the permit application is received by the appropriate regional office of the department. The permit application fee is nonrefundable. Incomplete payment shall be deemed as nonpayment.

B. The permit application shall not be considered complete until a permit application fee for the proper amount is received. Review of the application will not proceed past an initial applicability determination until a permit application fee for the proper amount is received.

C. The permit application fee shall be paid by check, draft, or postal money order made payable to the "Treasurer of Virginia" and ~~shall be sent~~ mailed to the ~~Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, Virginia 23240~~ address specified by the department. ~~When the department is able to accept electronic payments, payments may be submitted electronically.~~

D. The permit application should be mailed to the appropriate regional office of the department.

9VAC5-80-2300. ~~Annual permit program fee credit. (Repealed.)~~

~~The amount of the permit application fee paid by the owner shall be credited towards the amount of annual permit program fees owed pursuant to Article 2 (9VAC5-80-310 et seq.) of this part as follows:~~

~~1. The amount of the credit applied shall not exceed the amount of annual permit program fees owed during the first two years of the source's operation.~~

~~2. The credit shall be applied as follows:~~

~~a. A portion of the permit application fee shall be credited toward the annual permit program fee owed for the first year of operation, up to the full amount of the permit application fee or up to the full amount of the annual permit program fee owed, whichever is less.~~

~~b. Any remainder of credit for the permit application fee shall be applied to the annual permit program fee owed for the second year of operation, up to the amount of those annual permit program fees. Any amount of the permit application fee remaining after applying credit for the first two years of operation shall not be carried forward as credit for annual permit program fees for a third year of operation or any later year.~~

~~c. In the event that the proper credit for the permit application fee is not reflected in the annual permit program fee billed to the owner, the owner shall request that the bill for the annual permit program fee amount be revised in accordance with 9VAC5-80-350 B 3. Failure to request such a revision shall not be grounds for applying remaining credit to annual permit program fees owed for the third year of operation or any later year.~~

Article 11

Annual Permit Maintenance Fees for Stationary Sources

9VAC5-80-2310. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to any stationary source that has begun normal operation and:

1. The stationary source is subject to the provisions of a permit issued pursuant to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or pursuant to Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation);

2. The stationary source is subject to the permit requirements of Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation), and is operating under an application shield under the provisions of 9VAC5-80-80 F or 9VAC5-80-430 F; or

3. The stationary source would be subject to the permit requirements of Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II (9VAC5-85-40 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) in the absence of a permit issued under Article 5 (9VAC5-80-800 et seq.) or Article 6 (9VAC5-80-1100 et seq.) of this part or Part IV (9VAC5-85-60 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article shall not apply to the following:

1. Any stationary source that began normal operation during the calendar year for which the annual permit maintenance fee is assessed.

2. Any synthetic minor source that is not a synthetic minor 80% source and is not otherwise subject to the permit requirements of Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

D. The department shall make any final determinations required by this article, including but not limited to:

1. The applicability of this article;

2. The amount of permit maintenance fees owed; and

3. The applicability of terms to a particular stationary source or permit.

9VAC5-80-2320. Definitions.

A. For the purpose of applying this article 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 subsection D of this section.

B. As used in this article, all words and terms not defined in subsection D of this section shall have the meanings given them in 9VAC5-80-60 C, 9VAC5-80-370, 9VAC5-80-810 C, 9VAC5-80-1110 C, 9VAC5-80-1410 C, 9VAC5-80-1615 C, 9VAC5-80-2010 C, 9VAC5-85-30 C, 9VAC5-85-50 C, or 9VAC5-85-70 C as may apply, unless otherwise required by context.

C. All words and terms not defined in subsection D of this section and not defined as provided in subsection B of this section shall have the meanings given them in 9VAC5-80-5 or 9VAC5-10 (General Definitions), unless otherwise required by context.

D. Terms defined.

"Area source" means any stationary source that is not a major source. For purposes of this article, the phrase "area source" shall not include motor vehicles or nonroad vehicles.

"Normal operation" means, for the purposes of this article, any operation of a stationary source or part of a stationary source after the testing and shakedown operations following the construction of the stationary source or following the first phase of the phased construction of a stationary source.

"Synthetic minor source" means a stationary source whose potential to emit is constrained by state enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act and associated regulations.

"Synthetic minor 80% source" or "SM-80 source" means a synthetic minor source that emits or has the potential to emit a regulated pollutant at or above 80% of the major source threshold for that pollutant.

"Title V complex major source" means, for the purposes of this article, a major source that is subject to a total of seven or more subparts in 40 CFR Parts 60, 61, and 63 that contain standards applicable to that stationary source.

"Title V major source" means, for the purposes of this article, a major source that is subject to a total of less than seven subparts in 40 CFR Parts 60, 61, and 63 that contain standards applicable to that stationary source.

"Title V source by rule" means for the purposes of this article, an area source that is subject to permitting requirements under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part because it is subject to a standard, limitation, emission guideline, or other requirement under § 111 or 112 of the federal Clean Air Act.

9VAC5-80-2330. General.

A. The owner of any stationary source subject to this article shall pay an annual permit maintenance fee.

B. Annual permit maintenance fees collected pursuant to this article for sources subject to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or subject to Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) shall not be used for any purpose other than as provided in Title V of the federal Clean Air Act and associated regulations and policies.

9VAC5-80-2340. Annual permit maintenance fee calculation.

A. Each stationary source subject to this article shall be assessed an annual permit maintenance fee.

B. The amount of the permit maintenance fee shall be calculated as follows:

1. The amount of the annual permit maintenance fee shall be the largest applicable base permit maintenance fee amount from Table 8-11A, adjusted annually by the change in the Consumer Price Index (CPI) as specified in subdivision 2 of this subsection.

TABLE 8-11A

BASE PERMIT MAINTENANCE FEES FOR STATIONARY SOURCES

Stationary Source Type	Base Permit Maintenance Fee Amount
Title V Complex Major Source	$10,000
Title V Major Source	$3,500
Title V Source By Rule	$1,500
Synthetic Minor 80% Source	$1,000

2. The annual adjustment of the permit maintenance fees shall be based upon the annual permit maintenance fee amount for the preceding calendar year and the change in the CPI value published by the U.S. Department of Labor for all-urban consumers over the 12-month period ending on August 30 of the calendar year preceding the calendar year in which the permit maintenance fee is assessed.

a. The CPI for all-urban consumers published by the U.S. Department of Labor may be obtained online from the Bureau of Labor Statistics' website at http://data.bls.gov/cgi-bin/surveymost?cu.

b. No CPI adjustment shall be made for annual permit maintenance fees assessed in calendar year 2012.

3. The amount of the annual permit maintenance fee shall be rounded down to the nearest whole dollar.

9VAC5-80-2350. Annual permit maintenance fee payment.

A. Upon determining that the owner of a stationary source owes an annual permit maintenance fee, the department will mail a bill for the fee to that owner no later than August 1.

B. Within 30 days following the date of the postmark on the bill, the owner shall respond in one of the following ways:

1. The owner may pay the fee in full.

2. The owner may request that the fee amount be revised if the owner can document that the status of the permits on which the fee was based is in error. This request shall include appropriate source identification data, copies of all valid air permits, the revised fee amount, adequate supporting documentation, and other information as the department may require. The owner shall file the request with the appropriate regional office in a form acceptable to the department. If the department approves the request, the revised fee amount shall be paid in full within 30 days of the date of approval.

C. The annual permit maintenance fee shall be paid by check, draft, or money order made payable to the Treasurer of Virginia and mailed to the address specified by the department.

VA.R. Doc. No. R12-3210; Filed June 12, 2012, 9:58 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Fast-Track Regulation

Title of Regulation: **12VAC5-630. Private Well Regulations (amending 12VAC5-630-460; adding 12VAC5-630-271, 12VAC5-630-272).**

Statutory Authority: § 32.1-176.4 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 1, 2012.

Effective Date: August 16, 2012.

Agency Contact: Allen Knapp, Director, Division of Onsite Sewage, Water Services, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7458, or email allen.knapp@vdh.virginia.gov.

Basis: Section 32.1-176.4 of the Code of Virginia requires the board to adopt regulations pertaining to the location and construction of private wells in the Commonwealth. Chapters 105 and 710 of the 2009 Acts of Assembly require the board to adopt the proposed amendments.

Purpose: The first of these two amendments is intended to improve the welfare of the citizens of the Commonwealth by reducing costs associated with construction of geothermal well systems. The amendment establishes an express geothermal permit which allows construction of wells used solely for closed loop geothermal heating systems via a streamlined process. Public health and safety are preserved by allowing VDH an opportunity to inspect well construction. Fees for these wells are also reduced. Prior to the 2009 legislation VDH charged an application fee for each group of 10 wells. The amendment provides that VDH will charge one fee for each geothermal heating system, regardless of the total number of wells constructed.

The second amendment protects public health and welfare by establishing minimum well yield and storage requirements for residential drinking water wells. These minimum requirements will assure an adequate supply of drinking water and water for essential activities such as toilet flushing, bathing, and cooking. There have been several cases where a home buyer has learned of a low-yield well only after purchasing and moving into a new home. Prior to the 2009 legislation the board's regulations contained only recommended minimum yield and storage requirements. Setting minimum well yield and storage requirements further protects the welfare of citizens of the Commonwealth by reducing potential financial burdens associated with homes that have an inadequate supply of water.

Rationale for Using Fast-Track Process: The enabling legislation (Chapters 105 and 170 of the 2009 Acts of Assembly) and the language of the amendments tracks the language in the Code of Virginia as closely as possible. VDH worked closely with the Virginia Water Well Association (VWWA) in drafting these amendments and believes that the amendments adopted September 25, 2009, accomplish the minimum requirements of the 2009 legislation.

In October 2010, while this regulatory action was under Executive Review, the VWWA expressed concerns about the regulatory language regarding minimum well yield and storage. VDH worked with the VWWA to adjust the proposed regulation and believes that the adjusted language accomplishes the minimum requirements of the 2009 legislation.

Substance: In drafting the geothermal heating system amendments, VDH followed the specific requirements spelled out in the 2009 legislation, which include:

1. The well must be constructed by a contractor properly licensed pursuant to Chapter 11 of Title 54.1 of the Code of Virginia;

2. The licensed contractor must provide a registration statement to VDH prior to construction certifying compliance with the well regulations;

3. The registration statement must include accurate property location information, a description of the geothermal heating system construction, contact information for the contractor, and a detailed site plan (drawn to scale) that shows any sources of contamination;

4. VDH will only charge a single application fee for a geothermal heating system; and

5. Once a complete application is submitted, construction may begin immediately.

In drafting the yield and storage requirements, VDH followed the specific requirements of the 2009 legislation, which requires VDH to consider the suggested minimum requirements currently contained in the well regulations. The amendment converts the recommended minimum requirements to mandatory requirements.

Issues: The express geothermal permitting process will reduce processing times and allow contractors to begin construction immediately upon submitting a proper registration statement, thereby reducing costly construction delays. Application fees for most geothermal systems will be reduced. No disadvantages have been identified at this time.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 710 of the 2009 Virginia Acts of Assembly, the State Board of Health (Board) proposes to establish requirements for express geothermal well permits. Also, pursuant to Chapter 105 of the 2009 Virginia Acts of Assembly, the Board proposes to establish minimum well storage capacity and yield requirements for residential drinking water wells. Further, the Board proposes to repeal other aspirational language.

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

Estimated Economic Impact. Prior to the 2009 legislation the Virginia Department of Health (VDH) charged a $205 permit application fee for each group of ten geothermal wells. Under the proposed language VDH will charge one $205 fee for each geothermal heating system, regardless of the total number of wells constructed. For permit applications where there are ten or fewer wells in the geothermal heating system, the fee is $205 under both the current and proposed regulations. For permit applications where there are more than ten wells in the geothermal heating system, the applicant will pay a lower fee under the proposed regulations. For example, a permit applicant would pay $410 for a geothermal heating system with 20 wells under the current regulations, but would only pay $205 under the proposed regulations. Also, the express geothermal well permitting system shortens the permitting process by approximately five to ten days,[1] allowing sooner completion of projects. The proposed express geothermal well system produces a net benefit for the Commonwealth.

Chapter 105 of the 2009 Acts of Assembly mandates that the Board's regulations include minimum storage capacity and yield requirements for residential drinking wells. The statute also mandates that water well systems providers certify the storage capacity and the yield of the well on a form provided by VDH at the time the well is completed. Similar language is currently contained in the regulation; however, based on the statutory change the regulatory text would change from should to shall. The yield numbers themselves would remain the same. Changing should to shall causes the minimum storage capacity and yield requirements to be requirements rather than recommendations.

According to VDH, there have been several cases where a home buyer has learned of a low-yield well only after purchasing and moving into a new home. The amendments regarding well yield are intended to assure home buyers that an adequate supply of water exists. Thus the proposal can be beneficial to homebuyers. In some cases the minimum yield and storage requirements will result in multiple wells, storage tanks, or pumps and timers being required to meet the minimums which will raise costs. In very limited cases where adequate well yield is not found, building lots may be rendered unusable. Thus, the proposed requirement can help prevent homebuyers from being unwittingly stuck with properties that have insufficient well yield.

Businesses and Entities Affected. There are approximately 540 licensed water system providers in the Commonwealth. There are an estimated 330 water well companies. Almost all of these are considered small businesses.[2]

Localities Particularly Affected. There are no identified localities with disproportionate material impact by the adoption of the proposed amendments to the regulations.

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

Effects on the Use and Value of Private Property. The proposed express geothermal well permitting system will save dollars and time for water well professionals and contractors. The proposed minimum well storage capacity and yield requirements will help protect private property owners.

Small Businesses: Costs and Other Effects. The proposed express geothermal well permitting system will save dollars and time for small water well professionals and contractors.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Real Estate Development Costs. The proposed express geothermal well permitting system will moderately reduce real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPBs best estimate of these economic impacts.

[1]Data Source: Virginia Department of Health

[2]Ibid

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

Summary:

The proposed amendments establish (i) requirements for express geothermal permits and (ii) minimum well yield requirements for residential drinking water wells.

12VAC5-630-271. Express geothermal well permits.

A. The issuance of an express geothermal permit is contingent upon proper registration and payment of application fees and applies to the construction of wells used solely for a closed-loop geothermal heating system.

B. A single application and a single fee are required for any geothermal well system. The fee is the same as for a single private well. A registration statement for closed loop construction permitting shall be made on a form provided and approved by the division. The registration shall include the following information:

1. The property owner's name, address, and telephone number;

2. The address of and directions to the property;

3. The proposed use of the well;

4. The name, address, telephone number, and contractor license number of the well driller;

5. A statement signed by the property owner granting the department access to the site for the purpose of inspecting the property and the well during and after the well installation until the well is approved by the department or any required corrections are made;

6. A site plan, drawn to scale, showing the proposed well site or sites, property boundaries, recorded easements, and accurate locations of actual or proposed sources of contamination (including but not limited to those listed in Table 3.1 of 12VAC5-630-380) within 100 feet of the proposed well site or sites; and

7. A statement signed by the licensed well driller that the location and construction of the well or wells will comply with the requirements of this chapter.

C. A single application fee is required for any geothermal well system, regardless of the number of wells included in the system. The fee is the same as for a single private well.

12VAC5-630-272. Issuance of express geothermal well construction permit, inspection, and final approval.

A. Issuance of the express geothermal well permit. Upon receipt of a complete registration statement and the appropriate fee, the department will acknowledge receipt of the registration statement and issue the permit with a copy given to the contractor. The construction of the geothermal heating system may begin immediately upon submission of a complete registration statement and counter-signature denoting receipt by the department.

B. Inspection. The department, at its sole discretion, may inspect the closed-loop geothermal well any time after acceptance of the registration statement until after the installation is approved. If, upon inspection of the well, it is found that the well location does not comply with the minimum separation distances or any other provision of this chapter, no inspection statement shall be issued until the deficiencies have been corrected.

C. Final approval. Upon receipt of the Uniform Water Well Completion Report, as required in 12VAC5-630-440, and completion of any inspections deemed necessary to ensure compliance with this chapter, or unless the department has evidence to indicate that the well is not in compliance with the requirements of this chapter, the local health department will provide the owner with a statement that the wells are approved for use.

12VAC5-630-460. ~~Recommended well~~ Water system yields for residential use wells.

A. All ~~private~~ drinking water systems that utilize one or more Class III wells ~~should~~ shall be capable of supplying water in adequate quantity for the intended usage. ~~Failure to provide adequate capacity may cause intermittent flows and negative pressures which may cause contamination of the system through cross connections or other system deficiencies.~~ All ~~Class III wells should~~ such systems, with a capacity less than three gallons per minute, shall have a capacity to produce and store 150 gallons per bedroom per day and be capable of delivering a sustained flow of five gallons per minute per connection ~~for 10 minutes~~. ~~The system should be capable of providing at least 500 gallons per hour for at least one hour if lawns or other residential areas are to be irrigated. In general, residential use wells with yields less than 3 gallons per minute require additional storage to provide uninterrupted service during peak water use times.~~ Systems with a capacity of three gallons per minute or more do not require additional storage.

B. The certified water well systems provider shall certify the storage capacity and the yield of the well on the Uniform Water Well Completion Report.

NOTICE: The following forms used in administering the regulation 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 from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (12VAC5-630)

~~Application for Sewage Disposal and/or Water Supply Permit.~~

~~Water Supply and/or Sewage Disposal System Construction Permit.~~

Application for: Sewage System - Water Supply, AOSE Form D (rev. 7/07).

Application for Express Class IV Well Construction Permit.

Record of Inspection - Private Water Supply System.

~~Uniform Well Completion Report.~~

Uniform Water Well Completion Report.

Registration Statement for Express Geothermal Well Permit (eff. 06/12).

VA.R. Doc. No. R12-1953; Filed June 5, 2012, 1:38 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **14VAC5-41. Rules Governing Advertisement of Life Insurance and Annuities (amending 14VAC5-41-40).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: July 1, 2012.

Agency Contact: James Young, Manager, Special Projects, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9612, FAX (804) 371-9944, or email james.young@scc.virginia.gov.

Summary:

The amendments clarify the disclosure language required for advertisements of certain life insurance policies and annuities. There were no further changes to the rules as proposed.

AT RICHMOND, JUNE 11, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2012-00044

Ex Parte: In the matter of
Amending the Rules Governing
Advertisement of Life Insurance
and Annuities

ORDER ADOPTING RULES

By Order to Take Notice entered March 30, 2012, all interested persons were ordered to take notice that subsequent to May 4, 2012, the State Corporation Commission ("Commission") would consider the entry of an order to adopt amendments to the Commission's Rules Governing Advertisement of Life Insurance and Annuities, 14VAC5-41-10 et seq., specifically set forth at 14VAC5-41-40, General disclosure requirements. These amendments were proposed by the Bureau of Insurance ("Bureau"). The Order to Take Notice required that on or before May 4, 2012, any person objecting to the amendments to 14VAC5-41-40 shall have filed a request for hearing with the Clerk of the Commission ("Clerk").

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to the amendments to 14VAC5-41-40 on or before May 4, 2012.

No request for a hearing was filed with the Clerk. Comments in support of the proposed amendments to 14VAC5-41-40 were timely filed by Settlers Life Insurance Company, National Guardian Life Insurance Company, Atlantic Coast Life Insurance Company, and Great Western Life Insurance Company. Comments in opposition to the proposed amendments to 14VAC5-41-40 were timely filed by the American Council of Life Insurers. The Bureau filed a Statement of Position concerning the filed comments with the Clerk on May 31, 2012.[1]

The Bureau recommends that the Commission adopt the amendments to 14VAC5-41-40 as proposed. The amendments to subsection H of 14VAC5-41-40 are necessary to clarify that the disclosure requirements contained in this subsection only apply to an advertisement of a life policy or annuity that includes a listing, summary, description or comparison of actual or estimated costs of funeral goods or services. Advertisements for policies used to fund a preneed funeral contract are exempt from this requirement.

NOW THE COMMISSION, having considered this matter and the Bureau's recommendation to amend 14VAC5-41-40, is of the opinion that the amendments to 14VAC5-41-40 should be adopted as proposed, effective July 1, 2012.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to Chapter 41 of Title 14 of the Virginia Administrative Code entitled Rules Governing Advertisement of Life Insurance and Annuities specifically set forth at 14 VAC 5-41-40, which are attached hereto and made a part hereof, are hereby ADOPTED effective July 1, 2012.

(2) AN ATTESTED COPY hereof, together with a copy of the adopted amendments to 14VAC5-41-40, shall be sent by the Clerk of the Commission to Althelia P. Battle, Deputy Commissioner, Bureau of Insurance, State Corporation Commission, who forthwith shall give further notice of the

adopted amendments to 14VAC5-41-40 by mailing a copy of this Order, including a clean copy of the amendments to 14VAC5-41-40, to all companies licensed by the Commission to write life insurance or annuities in the Commonwealth of Virginia, as well as all interested parties.

(3) The Commission's Division of Information Resources shall cause a copy of this Order, together with the adopted amendments to 14VAC5-41-40, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the attached adopted amendments to 14VAC5-41-40 on the Commission's website: http://www.scc.virginia.gov/case.

(5) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

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[1]The Statement of Position represents that the American Council of Life Insurers acknowledged and understood the Bureau staff's position and explanation regarding the proposed amendments and was satisfied with the Bureau staff's response to its concerns. Statement of Position at 2.

14VAC5-41-40. General disclosure requirements.

A. The information required to be disclosed by this chapter shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of an advertisement so as to confuse or mislead.

B. If an advertisement uses the terms "nonmedical," "no medical examination required," or similar terms where issue is not guaranteed, these terms shall be accompanied by a further disclosure of equal prominence and juxtaposition to the effect that issuance of the policy may depend upon the answers to the health questions contained in the application.

C. An advertisement shall not contain figures, dollar amounts, or statistical information unless it accurately reflects recent and relevant facts. The source of any figures, dollar amounts, or statistics used in advertisements shall be identified therein.

D. An advertisement for a life insurance policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, that fact shall be commonly disclosed. An advertisement of or for a life insurance policy under which the death benefit varies with the length of time the policy has been in force shall accurately describe and clearly call attention to the amount of minimum death benefit under the policy.

E. Any advertisement that mentions or refers to universal life insurance premiums shall indicate that it is possible that coverage will expire when either no premiums are paid following the initial premium, or subsequent premiums are insufficient to continue coverage, if true.

F. An insurer or agent shall advise a prospective applicant who is considering replacing a policy that under the existing policy the period of time during which the existing insurer could contest the policy or deny coverage for death caused by suicide may have expired or may expire earlier than it will under the proposed policy.

G. An advertisement for life insurance or an annuity that is to be used to fund a preneed funeral contract shall disclose that fact.

H. An advertisement ~~for~~ of a life insurance policy or ~~an~~ annuity ~~in which the face amount or any part of the face amount is based on the~~ that will not fund a preneed funeral contract and that includes a listing, summary, description, or comparison of actual or estimated ~~cost~~ costs of funeral goods or services shall contain the following disclosure:

~~"This is (life insurance or an annuity).~~ "This (life insurance or annuity) does not specifically cover funeral goods or services, and may not cover the entire cost of your funeral at the time of your death. The beneficiary of this (life insurance or annuity) may use the proceeds ~~of this (life insurance or annuity)~~ for any purpose, unless otherwise directed. ~~The face amount of this (life insurance or annuity) is not guaranteed to increase at the same rate as the costs of a funeral increase.~~"

VA.R. Doc. No. R12-3144; Filed June 12, 2012, 11:29 a.m.

EXECUTIVE ORDER NUMBER 46 (2012)

Authority of Secretary of Transportation Regarding Virginia PPTA

By virtue of the authority vested in me as Governor under Article V, Sections 1, 7, 8, and 10 of the Constitution of Virginia and Sections 2.2-103 and 2.2-104 of the Code of Virginia, and subject always to my continuing ultimate authority and responsibility to act in such matters and to reserve to myself any and all such powers, I hereby affirm and delegate to my Secretary of Transportation my powers and duties with regard to the Private - Public Transportation Act of 1995, Section 56-566 of the Code of Virginia, as amended specifically delegating the following duties that are otherwise retained by me or delegated to me by the Virginia Port Authority and that are enumerated below:

1. To receive and review on my behalf and the Commonwealth both solicited and unsolicited proposals involving Virginia Port Authority qualifying transportation facilities.

2. To act as the responsible public entity on behalf of the Commonwealth for both solicited and unsolicited proposals involving Virginia Port Authority qualifying transportation facilities.

3. To act, on my behalf and the Office of the Governor and the Commonwealth as a responsible public entity under the Private - Public Transportation Act of 1995 and to take all actions necessary with regard to both solicited and unsolicited proposals involving Virginia Port Authority qualifying transportation facilities.

All other actions that are necessary and appropriate to effect the purpose of Section 56-566 of the Code of Virginia as well the right to later rescind or modify the terms of this delegation are specifically reserved by me.

Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of May, 2012.

/s/ Robert F. McDonnell
Governor

STATE CORPORATION COMMISSION

Bureau of Insurance

AT RICHMOND, MAY 30, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2012-00014

Ex Parte: In the matter of adoption of
adjusted prima facie rates for credit life
and credit accident and sickness insurance
pursuant to §§ 38.2-3725, 38.2-3726, 38.2-3727,
and 38.2-3730 of the Code of Virginia

ORDER SCHEDULING HEARING

Pursuant to § 38.2-3730 B of the Code of Virginia, the State Corporation Commission ("Commission") is required to conduct a hearing for the purpose of determining the actual loss ratio for credit life and credit accident and sickness insurance and to adjust the prima facie rates in accordance with §§ 38.2-3726 and 38.2-3727 of the Code of Virginia by applying the ratio of the actual loss ratio to the loss ratio standard set forth in § 38.2-3725 of the Code of Virginia to the prima facie rates. These rates are to be effective for the triennium commencing January 1, 2013.

The adjusted prima facie rates have been calculated and proposed on behalf of and by the Bureau of Insurance ("Bureau") in accordance with the provisions of Chapter 37.1 of Title 38.2 of the Code of Virginia (§§ 38.2-3717 et seq.) and are attached hereto.

Accordingly, IT IS ORDERED THAT:

(1) The adjusted prima facie rates that have been calculated and proposed on behalf of and by the Bureau in accordance with the provisions of Chapter 37.1 of Title 38.2 of the Code of Virginia (§§ 38.2-3717 et seq.), which are attached hereto, be made a part hereof.

(2) Pursuant to § 38.2-3730 B of the Code of Virginia, the Commission shall conduct a hearing on July 12, 2012, at 10 a.m. in its courtroom, Tyler Building, Second Floor, 1300 East Main Street, Richmond, Virginia 23219.

(3) On or before June 22, 2012, the Bureau shall prefile any written reports or other data in support of the proposed adjusted prima facie rates with the Clerk of the Commission and shall refer to Case No. INS-2012-00014.

(4) On or before June 29, 2012, any person who expects to participate in the hearing as a respondent as provided by 5 VAC 5-20-80 B, Participation as a respondent, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 et seq., shall file a notice of participation in accordance with the provisions of 5 VAC 5-20-80 B. If not filed electronically, an original and fifteen (15) copies of such notice of participation shall be filed with the Clerk of the Commission. All filings shall refer to Case No. INS-2012-00014.

(5) On or before July 5, 2012, any person previously filing a notice of participation who wishes to participate in the hearing as a respondent shall file the testimony and exhibits of each witness expected to present direct testimony to establish the respondent's case. If not filed electronically, an original and fifteen (15) copies of such testimony and exhibits shall be filed with the Clerk of the Commission. All filings shall refer to Case No. INS-2012-00014, and copies thereof shall simultaneously be delivered to any respondent requesting the same.

(6) All interested persons who desire to file written comments in support of or in opposition to the proposed adjusted prima facie rates shall file such comments on or before July 5, 2012, in writing with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall refer to Case No. INS-2012-00014. On or before July 5, 2012, any interested person desiring to submit comments electronically in this case may do so by following the instructions found on the Commission's website: http://www.scc.virginia.gov/caseinfo.htm.

(7) Any public witness who desires to make a statement at the hearing in his own behalf, either for or against the proposed adjusted prima facie rates for credit life and credit accident and sickness insurance, but not otherwise participate in the hearing, need only appear in the Commission's courtroom at 9:45 a.m. on July 12, 2012, and complete a notice of appearance form that shall be provided by the Commission. In order to accommodate as many public witnesses as possible, the Commission asks that comments be limited to five minutes by each witness.

(8) AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to Althelia P. Battle, Deputy Commissioner, Bureau of Insurance, State Corporation Commission, who shall cause a copy hereof to be sent to every insurance company licensed by the Bureau of Insurance to transact the business of credit life and credit accident and sickness insurance in the Commonwealth of Virginia and to all other interested persons, and who shall file in the record of this proceeding an affidavit evidencing compliance with this Order.

(9) The Commission's Division of Information Resources shall make available this Order and the attached proposed adjusted rates on the Commission's website: http://www.scc.virginia.gov/caseinfo.htm.

ATTACHMENT

Case No. INS-2012-00014

PROPOSED ADJUSTED PRIMA FACIE
CREDIT LIFE
AND
CREDIT ACCIDENT AND SICKNESS
INSURANCE RATES
TO BE EFFECTIVE JANUARY 1, 2013
THROUGH DECEMBER 31, 2015

2013 – 2015 TRIENNIAL CREDIT LIFE INSURANCE RATES

$0.5965 per month per $1,000.00 of outstanding insured indebtedness if premiums are payable on a monthly outstanding balance basis.

$0.3800 per $100.00 of initial indebtedness repayable in twelve equal monthly installments.

* * * * * *

AT RICHMOND, MAY 31, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2012-00095

Ex Parte: In the matter of
Establishing Fees for the Licensing
and Renewal Licensing for Public Adjusters

ORDER FOR NOTICE AND COMMENT

Pursuant to Chapter 735 of the 2012 Virginia Acts of Assembly, codified at §§ 38.2-812 through 38.2-815, 38.2-1824, and 38.2-1845.1 through 38.2-1845.23 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is required to license public adjusters effective January 1, 2013. Pursuant to §§ 38.2-1845.2, 38.2-1845.4, 38.2-1845.8, and 38.2-1845.9 of the Code, fees for the licensing, examination, and continuing education processing of public adjusters shall be prescribed by the Commission.

Section 12.1-28 of the Code provides that the Commission, before promulgating any general order, shall give reasonable notice of its contents and afford all persons having objections thereto an opportunity to be heard.

The Commission's Bureau of Insurance ("Bureau") has submitted to the Commission proposed fees for the licensing of public adjusters ("Proposed Fees"). The Bureau has proposed a license and biennial renewal fee of Two Hundred Fifty Dollars ($250).

NOW THE COMMISSION, having considered the recommendation of the Bureau, is of the opinion that public notice and an opportunity for comment on the Proposed Fees submitted by the Bureau should be given.

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Division of Information Resources shall make a downloadable version of this Order available for public access on the Commission's website at http://www.scc.virginia.gov/case. The Clerk of the Commission shall make a copy of this Order available, free of charge, in response to any written request for one.

(2) AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Brian P. Gaudiose, who forthwith shall give further notice of the Proposed Fees by mailing a copy of this Order to the National Association of Public Insurance Adjusters, the American Association of Public Insurance Adjusters, and certain interested parties designated by the Bureau. The Clerk of the Commission also shall deliver a copy of this Order to the Commission's Office of General Counsel and Division of Information Resources.

(3) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose, the adoption of the Proposed Fees shall file such comments or hearing request on or before July 31, 2012, in writing, with Joel H. Peck, Clerk, State Corporation Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2012-00095. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/case.

(4) If no written request for a hearing on the proposed fees is filed on or before July 31, 2012, the Commission, upon consideration of any comments submitted in support of or in opposition to the Proposed Fees, may adopt the Proposed Fees.

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

CRIMINAL JUSTICE SERVICES 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 Criminal Justice Services Board is conducting a periodic review of 6VAC20-180, Crime Prevention Specialists.

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 July 2, 2012, and ends on July 23, 2012.

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 Stephanie L. Morton, Law Enforcement Program Coordinator, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410, or email stephanie.morton@dcjs.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.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load Studies in Waters in Accomack County

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on water quality studies for Gargathy Creek, Finney Creek, Northam Creek, UT to Pitts Creek, Folly Creek, Ross Branch, and Wachapreague Channel (all located in Accomack County) on Wednesday, July 18, 2012.

The meeting will start at 6:30 p.m. at the Accomack-Northampton Planning District Commission (A-NPDC) located at 23372 Front Street, Accomac, VA 23301. The purpose of the meeting is to provide information on the final total maximum daily load (TMDL) reports and discuss the study with community members and local government.

Gargathy Creek (benthic, E.coli, DO), Finney Creek (enterococci), Northam Creek (DO), UT Pitts Creek (E.coli, pH), Folly Creek (DO, benthic), Ross Branch (benthic), and Wachapreague Channel (enterococci) were identified in Virginia's 2010 Water Quality Assessment & Integrated Report as impaired due to violations of the state's water quality standard for recreation bacteria, dissolved oxygen, and benthic integrity and do not support the designated uses.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia, require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report and subsequent Water Quality Assessment Reports.

As a result of the studies, DEQ has developed a total maximum daily load for each of the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount. The Virginia Departments of Environmental Quality, Conservation and Recreation, and Health are working to identify the sources of pollution in the watersheds of these streams.

The public comment period on materials presented at this meeting will extend from July 19, 2012, to August 17, 2012. For additional information or to submit comments, contact Jennifer Howell, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jennifer.howell@deq.virginia.gov.

Modification of Pamunkey River Basin Total Maximum Daily Load in Hanover and New Kent Counties

The Department of Environmental Quality (DEQ) seeks public comment from interested persons on six proposed minor modifications of the total maximum daily loads (TMDLs) developed for impaired segments Totopotomoy Creek (F13R-02) and the Pamunkey River (F13E-02). The TMDL was approved by the Environmental Protection Agency on August 2, 2006, and is available at http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/yorkrvr/pamunk.pdf.

Changes 1-4 are with regard to the Totopotomoy Creek (F13R-02). The Totopotomoy Sewage Treatment Plant (STP) (permit #VA0089915) is a VPDES major municipal facility with a design flow of 0.010 MGD (million gallons per day). The facility should have been given a WLA of 1.74E+10 E. coli colony forming units per year (E. coli (cfu/yr)) in the TMDL report. DEQ proposes to revise the TMDL by assigning a WLA of 1.74E+10 E. coli (cfu/yr) to accommodate this facility at a maximum design flow of 0.010 MGD and a concentration at the water quality standard (WQS) of 126 colony forming units (cfu) per 100 milliliters (ml) monthly geometric mean. DEQ proposes to allocate this WLA by taking from Future Growth (FG) and the LA. DEQ proposes to revise the Totopotomoy STP (permit #VA0089915) daily individual WLA and daily total WLA. DEQ proposes to revise the TMDL by assigning a daily individual WLA based on the maximum design flow described in modification #1. DEQ proposes to allocate this WLA by subtracting from FG and the LA.

Changes 5-6 are with regard to the Pamunkey River (F13E-02). The Hamilton-Holmes Waste Water Treatment Plant (WWTP) (permit #VA0023914) is a VPDES minor municipal plant with a design flow of 0.020 MGD. The facility should have been given a WLA of 3.48E+10 E. coli (cfu/yr) in the

TMDL report. DEQ proposes to revise the TMDL by assigning a WLA of 3.48E+10 E. coli (cfu/yr) to accommodate this facility at a maximum design flow of 0.020 MGD and an E. coli concentration at the WQS of 126 cfu/100 ml. The original future growth allocated was equal to 7.40E+12 E. coli (cfu/yr). DEQ proposes to allocate the WLA by retaining FG and instead subtracting from LA, which results in no change to the LA value in the TMDL report of 7.40E+12 E. coli (cfu/yr). DEQ proposes to revise the Hamilton-Holmes WWTP (permit #VA0023914) daily individual WLA and daily total WLA. The original daily individual WLA was zero. DEQ proposes to revise the TMDL by assigning a daily individual WLA based on the maximum design flow described in modification #5. DEQ proposes to allocate the WLA by retaining FG and instead subtracting from LA, which results in no change to the LA value in the TMDL report.

The two proposed modifications result in changes equal to less than 1.0% of their respective TMDLs and will neither cause nor contribute to the nonattainment of the Pamunkey River basin.

The public comment period for these modifications will end on August 3, 2012. Please send comments to Margaret Smigo, Department of Environmental Quality, Piedmont Regional Office, 4969-A Cox Road, Glen Allen, VA 23060, email margaret.smigo@deq.virginia.gov, or FAX (804) 527-5106. Following the comment period, a modification letter and comments received will be sent to EPA for approval final approval.

DEPARTMENT OF ENVIRONMENTAL QUALITY AND DEPARTMENT OF CONSEVATION AND RECREATION

Total Maximum Daily Loads for Tributaries of the Tye River

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) for tributaries of the Tye River, including Hat Creek, Piney River, and Rucker Run, in Nelson and Amherst Counties. The tributaries of the Tye River were listed on the 2004, 2006, and 2008 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for bacteria. The impaired portions of Hat Creek (H09R) extend 9.58 miles, from the headwaters downstream to its confluence with the Tye River. Piney River's (H10R) impairment stretches a total of 13.3 miles from a point 13.3 miles upstream to its confluence with the Tye River. The impaired segment of Rucker Run (H13R) extends from the headwaters downstream to its confluence with the Tye River, for a total of 18.26 miles. The impaired section of the Tye River begins with its confluence with Piney River downstream to its confluence with the James River.

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

The first public meeting on the development of these TMDLs will be held on Monday, July 9, 2012, at 7 p.m. at Massies Mill Ruritan Hall, 5439 Patrick Henry Highway, Roseland, Virginia 22967.

The public comment period for the first public meeting will end on August 9, 2012. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Tara Sieber, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email tara.sieber@deq.virginia.gov.

This meeting is part of a larger "Eco-region" effort to develop a TMDL for the tributaries of the James River in Nelson, Amherst, and Appomattox Counties. Due to the large area covered by this project, three meetings will be held at each stage - three public meetings, three Technical Advisory Committee meetings, etc. Questions regarding the Nelson County tributaries can be directed to Tara Sieber, the DEQ TMDL Coordinator for the Valley Region (tara.sieber@deq.virginia.gov), and questions regarding the Amherst and Appomattox County tributaries can be directed to Paula Nash, the DEQ TMDL Coordinator for the Blue Ridge Region out of the Lynchburg office (paula.nash@deq.virginia.gov).

VIRGINIA DEPARTMENT OF HEALTH

Drinking Water State Revolving Fund Program Intended Use Plan for FY 2012

The Virginia Department of Health (VDH) received numerous funding requests and set-aside suggestions following the January 2011 announcement regarding funds available from the Drinking Water State Revolving Fund Program. Through the Safe Drinking Water Act, Congress authorizes capitalization grants to the states but authorization has not been finalized.

The VDH's Office of Drinking Water (ODW) has prepared a draft Intended Use Plan (IUP) using information submitted via the funding requests and set-aside suggestions. This draft IUP is for review and comment by the public. The document entitled "Virginia Drinking Water State Revolving Fund Program Design Manual" (dated January 3, 2011) is a part of the IUP. This document was mailed in the January announcement and is available at: www.vdh.state.va.us/ODW/FinancialandConstruction.htm.

The VDH will hold a public meeting. The meeting will be on Thursday, August 23, 2012, from 1 p.m. to 3 p.m. at the Office of Drinking Water East Central Field Office, 300 Turner Road, Richmond, VA 23225. In addition, comments from the public are to be postmarked by Monday, September 3, 2012.

Those parties planning to attend may contact Theresa Hewlett at (804) 864-7501 by the close of business on August 20, 2012. Please direct your requests for information and forward written comments to J. Dale Kitchen, P.E., Virginia Department of Health, Office of Drinking Water, James Madison Building, Room 632, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7500, FAX (804) 864-7521.

STATE LOTTERY DEPARTMENT

Director's Order

The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on June 11, 2012.

Director's Order Number Sixty-Six (12)
Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on April 13, 2012.

Game 1054	Take the Money and Run
Game 1183	Deluxe Winner Take All (TOP)
Game 1214	Cold Hard Cash (TOP)
Game 1245	Truckin' for Cash
Game 1252	Jewel 7's (TOP)
Game 1255	Money Flow (TOP)
Game 1256	Diamond Doubler (TOP)
Game 1267	Crazy 7's
Game 1278	Hail to the Redskins
Game 1285	Straight 9's Tripler
Game 1288	10 time the Money (TOP)
Game 1299	5 times the Money (TOP)

The last day for lottery retailers to return for credit unsold tickets from any of these games will be May 25, 2012. The last day to redeem winning tickets for any of these games will be October 17, 2012, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of July 18, 2012, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia; and at any Virginia Lottery regional office. A copy may be requested by mail by writing to Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order is effective nunc pro tunc to April 13, 2012 and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Paula I. Otto
Executive Director
June 6, 2011

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The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on June 11, 2012. The order 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 Sixty-Seven (12)

"Sip, Scratch, and Win Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Rules (effective June 6, 2012)

/s/ Paula I. Otto
Executive Director
June 6, 2011

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Supplemental Payments for EVMS Physician -- 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 provide for changes to the Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80). 12VAC30-80-30 is being amended to establish supplemental payments for physician practices affiliated with Eastern Virginia Medical School. DMAS intends to make supplemental payments equal to the average commercial rate minus regular physician payments. DMAS anticipates that this will increase payments to physicians affiliated with Eastern Virginia Medical School by $2.8 million total funds.

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall (http://www.townhall.virginia.gov). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Lessard and such comments are available for review at the same address.

Contact Information: 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.

VIRGINIA WASTE MANAGEMENT BOARD

Designation of a Regional Solid Waste Management Planning Unit

In accordance with the provision of § 10.1-1411 of the Code of Virginia and 9VAC20-130-180 and 9VAC20-130-190 of the Solid Waste Management Planning and Recycling Regulations, Amendment 2, the Director of the Department of Environmental Quality (director) intends to designate a solid waste management region for the local governments of the Southeastern Public Service Authority (SPSA) as the Hampton Roads Planning District Commission - Solid Waste Management Planning Region. The Hampton Roads Planning District Commission - Solid Waste Management Planning Region is comprised of the cities of Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk, and Virginia Beach; the counties of Isle of Wight and Southampton; and the towns of Boykins, Branchville, Capron, Courtland, Ivor, Newsoms, Smithfield, and Windsor. The Hampton Roads Planning District Commission – Solid Waste Management Planning Region will be designated for the development and/or implementation of a regional solid waste management plan and the maintaining of the recycling rate of solid waste generated within the designated area. SPSA will remain as the regional solid waste management agency.

A petition has been received by the Department of Environmental Quality for the designation on behalf of the local governments.

Following the closing date for comments, the director will determine if there is any need for a public hearing to be held in the proposed region prior to the designation. At least 14 days prior to any such public hearing, a notice of the proposed public hearing will appear in a newspaper or newspapers of general circulation within the proposed solid waste planning unit.

Any questions concerning this notice should be directed to the staff contact listed below.

The comment period begins on July 2, 2012, and ends at 5 p.m. on July 16, 2012. Anyone wishing to comment on the designation of this region should respond, in writing, during the comment period to the staff contact listed below.

Contact Information: Steve Coe, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4029, FAX (804)98-4224, or email steve.coe@deq.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Special Order for the City of Emporia

An enforcement action has been proposed for the City of Emporia for alleged violations that occurred at the City of Emporia Wastewater Treatment Plant, Emporia, Virginia. The State Water Control Board proposes to issue a consent special order to the City of Emporia to address noncompliance with State Water Control Board law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Cynthia Akers will accept comments by email at cynthia.akers@deq.virginia.gov, FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from July 2, 2012, to August 1, 2012.

Proposed Consent Order for Enviro Organic Technologies, Inc.

An enforcement action has been proposed for Enviro Organic Technologies, Inc. for a violation in Warren County. A proposed consent order describes a settlement to resolve an unauthorized discharge violation from a spill of water treatment plant sludge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Steven W. Hetrick will accept comments by email at steven.hetrick@deq.virginia.gov, FAX (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from July 2, 2012, to August 1, 2012.

Proposed Consent Order for Virginia Hospital Center Arlington Health System

An enforcement action has been proposed for Virginia Hospital Center Arlington Health System for violations of the State Water Control Law and Underground Storage Tank Regulations at the Virginia Hospital Center. Virginia Hospital Center is located at 1701 N. George Mason Drive in Arlington, VA. The consent order describes a settlement to

resolve violations regarding the management of underground storage tanks. A description of the proposed action is available at the Department of Environmental Quality office named below or online at http://www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov, FAX (703) 583-3821, or postal mail Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from July 3, 2012, through August 2, 2012.

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 use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works 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.