



# VIRGINIA

## REGISTER OF REGULATIONS

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Virginia Code Commission

<http://register.dls.virginia.gov>

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**THE VIRGINIA REGISTER OF REGULATIONS** is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation,

unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

## **FAST-TRACK RULEMAKING PROCESS**

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

## **EMERGENCY REGULATIONS**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## **STATEMENT**

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **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.

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **Gregory D. Habeeb**; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Robert L. Taverner**; **Christopher R. Nolen**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant; **Karen Perrine**, Staff Attorney.

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## November 2012 through November 2013

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
29:5	October 17, 2012	November 5, 2012
29:6	October 31, 2012	November 19, 2012
29:7	November 13, 2012 ( <b>Tuesday</b> )	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012 ( <b>Tuesday</b> )	December 31, 2012
29:10	December 26, 2012	January 14, 2013
29:11	January 9, 2013	January 28, 2013
29:12	January 23, 2013	February 11, 2013
29:13	February 6, 2013	February 25, 2013
29:14	February 20, 2013	March 11, 2013
29:150	March 6, 2013	March 25, 2013
29:16	March 20, 2013	April 8, 2013
29:17	April 3, 2013	April 22, 2013
29:18	April 17, 2013	May 6, 2013
29:19	May 1, 2013	May 20, 2013
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
29:25	July 24, 2013	August 12, 2013
29:26	August 7, 2013	August 26, 2013
30:1	August 21, 2013	September 9, 2013
30:2	September 4, 2013	September 23, 2013
30:3	September 18, 2013	October 7, 2013
30:4	October 2, 2013	October 21, 2013
30:5	October 16, 2013	November 4, 2013
30:6	October 30, 2013	November 18, 2013

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF MEDICINE

#### Agency Decision

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

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

Name of Petitioner: Rupal D. Shah.

Nature of Petitioner's Request: To amend 18VAC85-20-140 which requires all parts of the USMLE examination to be completed within 10 years, by allowing an exception in certain circumstances.

Agency's Decision: Request withdrawn.

Statement of Reason for Decision: On October 5, 2012, Dr. Shah requested that her petition be withdrawn.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

VAR. Doc. No. R12-32; Filed October 9, 2012, 8:45 a.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 13. HOUSING

### DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending **13VAC5-95, Virginia Manufactured Home Safety Regulations**. The purpose of the proposed action is to update the Manufactured Home Safety Regulations to incorporate by reference the recent changes and additions to the Federal Construction Standards of the U.S. Department of Housing and Urban Development (HUD). The Federal Construction Standards are enforcement provisions for the design, construction, distribution, and installation of manufactured homes. These enforcement standards are enforced in the Commonwealth of Virginia through a Cooperative Agreement between HUD and the Department of Housing and Community Development (DHCD). As of October 2008, HUD instituted manufactured home installation standards as part of its enforcement procedures to be the standard for the installation of manufactured homes in all states. The change to be proposed in the Manufactured Home Safety Regulations allows the Commonwealth of Virginia to adopt Installation Standards of HUD Part 3285 as the most current installation standard available. Also, the Federal Installation Standards will replace current outdated ANSI standards no longer in print and not readily available, as requested by clients and constituents of the State Building Code Administrative Office.

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

Statutory Authority: § 36-85.7 of the Code of Virginia.

Public Comment Deadline: December 5, 2012.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email [steve.calhoun@dhcd.virginia.gov](mailto:steve.calhoun@dhcd.virginia.gov).

VA.R. Doc. No. R13-3405; Filed October 16, 2012, 12:16 p.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR CONTRACTORS

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending **18VAC50-22, Board for Contractors Regulations**. The purpose of the proposed action is to amend the prohibited act provisions within the board's regulations. The proposed amendments would include a requirement that language be added to all residential contractors to notify consumers of the existence of the Virginia Transaction Recovery Fund and to add information on how to contact the board for claim information.

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

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Comment Deadline: December 5, 2012.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

VA.R. Doc. No. R13-3390; Filed October 4, 2012, 10:48 a.m.



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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 1. ADMINISTRATION

### STATE BOARD OF ELECTIONS

#### Notice of Effective Date

Title of Regulation: **1VAC20-60. Election Administration (amending 1VAC20-60-40).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: October 22, 2012.

On May 3, 2012, the State Board of Elections amended this regulation regarding when a ballot is cast. The final regulation was published June 4, 2012, in Volume 28, Issue 20 of the Virginia Register ([28:20 VA.R. 1571 June 4, 2012](#)) with an effective date upon filing a notice of the United States Attorney General's preclearance with the Registrar of Regulations. The State Board of Elections hereby notices the United States Attorney General's approval of this regulation via a letter dated October 12, 2012, from T. Christian Herren, Jr., Chief, Voting Section, to Joshua N. Lief, Esq., Senior Assistant Attorney General, Office of Attorney General of Virginia. The effective date of this regulation is October 22, 2012. Copies are available online at <http://townhall.virginia.gov/L/ViewBoard.cfm?BoardID=151>; by calling toll-free 1-800-552-9745 or local (804) 864-8910; by sending a written request to FOIA Coordinator, 1100 Bank Street, Richmond, VA 23219; or by email request to [foia@sbe.virginia.gov](mailto:foia@sbe.virginia.gov).

Agency Contact: Martha Brissette, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, or email [martha.brissette@sbe.virginia.gov](mailto:martha.brissette@sbe.virginia.gov).

VA.R. Doc. No. R12-3153; Filed October 22, 2012, 1:42 p.m.

#### Fast-Track Regulation

Title of Regulation: **1VAC20-90. Campaign Finance and Political Advertisements (adding 1VAC20-90-10, 1VAC20-90-20).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 5, 2012.

Effective Date: December 20, 2012.

Agency Contact: David Blackwood, Policy Analyst, State Board of Elections, 1100 Bank Street, 1st Floor, Washington Building, Richmond, VA 23219, telephone (804) 864-8930, or email [david.blackwood@sbe.virginia.gov](mailto:david.blackwood@sbe.virginia.gov).

Basis: Item 79(D) of the 2010-2012 budget bill (Chapter 874 of the 2010 Acts of Assembly) requires the State Board of Elections to provide for an administrative fee up to \$25 for each nonelectronic report filed with the board under § 24.2-947.5 of the Code of Virginia. The regulation shall also provide for a waiver of the fee based upon indigence.

Purpose: The goal of this action is to give effect to the language in Item 79(d) of the 2010-2012 budget bill. This item encourages the use of the State Board of Elections' electronic filing system for candidates, committees, and political action committees (PACs). Increased staff time is necessary to process paper-filed reports that causes distraction and delays in completing other tasks. The regulation also reflects the Governor's budget reduction strategies in this manner. The goal is to increase the use of the electronic campaign filing software to promote efficiency.

Rationale for Using Fast-Track Process: The General Assembly approved the promulgation of this regulation in the budget bill using the exact verbiage proposed. Furthermore, an "opt-out" clause has been built in for those proving indigence who still wish to file on paper. Fast-track approval is requested because the proposal is noncontroversial, the continuous nature of the campaign finance filing system, and the desire to have the policy implemented quickly.

Substance: The new provision requires any campaign committee that files a nonelectronic, campaign finance report with the State Board of Elections under § 24.2-947.5 of the Code of Virginia to pay a \$25 administrative fee per report to the State Board of Elections. The payment is due by the filing deadline for the report or upon filing the report, whichever is later. Any committee that is indigent may request a waiver from the State Board of Elections.

Issues: The advantages to this action are that (i) candidates, committees, and PAC's will be encouraged to file electronically, helping to eliminate human error in processing forms; (ii) reports will be uploaded easier and earlier for public inspection; and (iii) staff efficiency will be increased.

There are no disadvantages to the public or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Item 79(D) of the 2010-2012 budget bill (Chapter 874) contains the following language: "The State Board of Elections shall by regulation provide for an administrative fee up to \$25 for each non-electronic report filed with the Board under § 24.2-947.5. The regulation shall provide for waiver of the fee

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# Regulations

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based upon indigence." The State Board of Elections (Board) proposes to add this language to these regulations.

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

**Estimated Economic Impact.** Since the Board is simply adding language to these regulations which is already in statute, the proposal will have no impact beyond proving clarity for the public.

**Businesses and Entities Affected.** Political committees that file paper campaign finance reports with the Board were affected by the legislation. According to the Board there are approximately 70 such committees.

**Localities Particularly Affected.** No locality is disproportional affected.

**Projected Impact on Employment.** The proposed amendments are unlikely to significantly affect employment.

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

**Small Businesses: Costs and Other Effects.** The proposed amendments do not significantly affect small businesses.

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

**Real Estate Development Costs.** The proposed amendments do not significantly affect real estate development costs.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

**Summary:**

*Item 79(D) of the 2010-2012 budget bill (Chapter 874 of the 2010 Acts of Assembly) requires the State Board of Elections to promulgate regulations to provide for an administrative fee up to \$25 for each nonelectronic report filed with the board. The regulation shall provide for a waiver of the fee based upon indigence. This regulation is intended to encourage people to file electronically and also to assist with the Governor's budget reduction strategies.*

CHAPTER 90  
CAMPAIGN FINANCE AND POLITICAL  
ADVERTISEMENTS

**1VAC20-90-10. Definitions. (Reserved)**

**1VAC20-90-20. Filing fee.**

Any campaign committee that files a nonelectronic campaign finance report with the State Board of Elections under § 24.2-947.5 of the Code of Virginia shall pay a \$25 administrative fee per report to the State Board of Elections. Such payment shall be due by the filing deadline for the report or upon filing the report, whichever is later. Any committee that is indigent may request a waiver from the State Board of Elections.

VA.R. Doc. No. R13-2445; Filed October 3, 2012, 4:57 p.m.

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**TITLE 4. CONSERVATION AND NATURAL  
RESOURCES**

**VIRGINIA SOIL AND WATER CONSERVATION  
BOARD**

**Proposed Regulation**

**REGISTRAR'S NOTICE:** The Virginia Soil and Water Conservation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of Title 10.1 of the Code of Virginia, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.



**Title of Regulation: 4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (amending 4VAC50-60-10, 4VAC50-60-1200 through 4VAC50-60-1240).**

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

**Public Hearing Information:**

1:30 p.m. - December 3, 2012, Virginia Department of Alcoholic Beverage Control, Hearing Room, 2901 Hermitage Road, Richmond, VA

10 a.m. - December 5, 2012, Roanoke City Council Chambers, Noel C. Taylor Municipal Building, 215 Church Avenue Southwest, Roanoke, VA

1:30 p.m. - December 7, 2012, Spotsylvania County Public Schools' Administration Board Room, 8020 River Stone Drive, Fredericksburg, VA

**Public Comment Deadline:** January 4, 2013.

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

**Summary:**

*This proposed regulatory action amends and reissues the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s). This action to update and reissue the General Permit is authorized under the federal Clean Water Act (33 USC § 1251 et seq.) and the Virginia Stormwater Management Act (§ 10.1-603.2 et seq.) which require that state permits be effective for a fixed term not to exceed five years. The existing five-year General Permit became effective on July 9, 2008.*

*This proposed regulatory action sets forth guidelines for the permitting of discharges of stormwater runoff from small municipal separate storm sewer systems (small MS4s) in urbanized areas. Small MS4s include systems owned or operated by municipalities, federal facilities, state facilities (including VDOT), and universities. The proposed General Permit establishes standard language for control of small MS4 stormwater discharges through the development, implementation, and enforcement of an MS4 program to reduce the impacts of the stormwater discharges on the receiving streams to the maximum extent practicable. The MS4 Program will require the operator to identify best management practices (BMPs) to control stormwater discharges and measurable goals for each identified BMP for each of the following control measures: (1) public education and outreach on stormwater impacts, (2) public involvement/participation, (3) illicit discharge detection and elimination, (4) construction site stormwater runoff control, (5) post-construction stormwater management in new development and development on*

*prior developed lands, and (6) pollution prevention/good housekeeping for municipal operations. The proposed General Permit requires the operator to evaluate program compliance, the appropriateness of identified BMPs, progress towards achieving the identified measurable goals, and to submit annual reports. The proposed action also requires that the operator address Total Maximum Daily Load (TMDL) Wasteload Allocations, including those associated with the Chesapeake Bay TMDL, assigned to the operator and contains other conditions governing the development, implementation, and reporting requirements of an MS4 Program.*

*The key changes to this permit include:*

- 1. Updating and adding definitions and making global changes in terminology;*
- 2. Clarifying that the General Permit governs discharges to surface waters and not state waters;*
- 3. Inserting Table 1 to clarify the timing for various required elements of Program Plan updates; Table 2 to include calculation sheets for estimating existing source loads; and Table 3 to include calculation sheets for estimating the total reduction required during the permit cycle;*
- 4. Rewriting the Special Conditions in Section I of the General Permit to stipulate detailed strategies and processes;*
- 5. Clarifying and expanding minimum criteria within the General Permit associated with the six minimum control measures; and*
- 6. Providing additional clarity on what is not considered an MS4 Program modification that would require a permit modification, as well as how MS4 Program modifications may be requested by the department.*

**Part I**

**Definitions, Purpose, and Applicability**

**4VAC50-60-10. Definitions.**

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

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

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

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for

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# Regulations

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sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

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

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

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

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

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

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

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

"Channel" means a natural or manmade waterway.

"Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC10-20) adopted pursuant to the Chesapeake Bay Preservation Act.

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

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

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

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

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

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

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

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

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

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

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

"Department" means the Department of Conservation and Recreation.

"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The regulation of discharges from development, for purposes of these regulations, does not include the exemptions found in 4VAC50-60-300.

"Direct discharge" means the discharge of a pollutant.

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

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

"Discharge of a pollutant" means:

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

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

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

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

"Drainage area" means a land area, water area, or both from which runoff flows to a common point.

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

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

"Environmental Protection" or "EPA" means the United States Environmental Protection Agency.

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

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

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

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

"Flood fringe" means the portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes, but is not limited to, the flood or floodway fringe designated by the Federal Emergency Management Agency.

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

"Floodplain" means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes, but is not limited to, the floodplain designated by the Federal Emergency Management Agency.

"Flood-prone area" means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include, but are not limited to, the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than one foot. This includes, but is not limited to, the floodway designated by the Federal Emergency Management Agency.

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

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

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

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a VPDES or VSMP permit (other than the VSMP permit for discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and discharges identified by and in compliance with ~~4VAC50-60-1220-C-2~~ 4VAC50-60-400 D 2 c (3).

"Impervious cover" means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

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

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

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

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

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

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

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

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

"Large construction activity" means construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

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

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F (2000));
2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:
  - a. Physical interconnections between the municipal separate storm sewers;
  - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
  - c. The quantity and nature of pollutants discharged to surface waters;
  - d. The nature of the receiving surface waters; and
  - e. Other relevant factors.
4. The board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Layout" means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

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

"Local stormwater management program" or "local program" means the various methods employed by a locality to manage the quality and quantity of runoff resulting from

land-disturbing activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, plan review, inspection, enforcement, and evaluation consistent with the Act and this chapter. Upon board approval of a local stormwater management program, it shall be recognized as a qualifying local program.

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

"Localized flooding" means smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions.

"Main channel" means the portion of the stormwater conveyance system that contains the base flow and small frequent storm events.

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

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

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

"Manmade" means constructed by man.

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

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

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

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by

the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G (2000));

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

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

- a. Physical interconnections between the municipal separate storm sewers;
- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving surface waters; or
- e. Other relevant factors.

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

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

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

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1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

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

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

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

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

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

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

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

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective VPDES or VSMP permit for discharges at that site.

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

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

"New source," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

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

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

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

from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Predevelopment" refers to the conditions that exist at the time that plans for the land development of a tract of land are submitted to the plan approval authority. Where phased

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development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the first item being submitted shall establish predevelopment conditions.

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

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

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

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

"Qualified personnel" means a person knowledgeable in the principles and practice of erosion and sediment controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and to assess the effectiveness of any sediment and erosion control measures selected to control the quality of stormwater discharges from the construction activity. This may include a licensed professional engineer, responsible land disturber, or other person who holds a certificate of competency from the board in the area of project inspection or combined administrator.

"Qualifying local stormwater management program" or "qualifying local program" means a local stormwater management program, administered by a locality, that has been authorized by the board. To authorize a qualifying local program, the board must find that the ordinances adopted by the locality are consistent with the VSMP General Permit for Discharges of Stormwater from Construction Activities (Part XIV (4VAC50-60-1100 et seq.) of this chapter.

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

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

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

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

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

"Runoff characteristics" include maximum velocity, peak flow rate, volume, and flow duration.

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

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

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

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

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

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

"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

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

"Small construction activity" means:



1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a an approved "total maximum daily load" (TMDL) ~~approved or established by EPA~~ that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

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

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include

separate storm sewers in very discrete areas, such as individual buildings.

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

"State" means the Commonwealth of Virginia.

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

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

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

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

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

"Stormwater conveyance system" means a combination of drainage components that are used to convey stormwater discharge, either within or downstream of the land-disturbing activity. This includes:

1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;
2. "Natural stormwater conveyance system" means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or
3. "Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

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

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

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

"Stormwater management facility" means a control measure that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a document(s) containing material for describing methods for complying with the requirements of the local program or this chapter.

"Stormwater management program" means a program established by a locality that is consistent with the requirements of the Act, this chapter and associated guidance documents.

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges ~~from the construction site.~~ In addition the document A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of; an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"Stormwater program administrative authority" means a local stormwater management program or the department, as the permit-issuing authority, in the absence of a local stormwater management program, which administers the Virginia Stormwater Management Program.

"Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
  - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - c. That are used or could be used for industrial purposes by industries in interstate commerce.

4. All impoundments of waters otherwise defined as surface waters under this definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2000).

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Total maximum daily load Action Plan" or "TMDL Action Plan" means the scheduled steps of activities that the MS4 operator will take to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action plans are implemented over more than one state permit cycle.

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40 CFR Part 125 (2000), or in the applicable federal effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on § 301(c), § 301(g), § 301(h), § 301(i), or § 316(a) of the CWA.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

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

"Virginia Stormwater BMP Clearinghouse website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations and that is jointly created by the department and the Virginia Water Resources Research Center subject to advice to the director from a permanent stakeholder advisory committee.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the Act and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

"Virginia Stormwater Management Program" or "VSMP" means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the CWA, the Act, this chapter, and associated guidance documents.

"Virginia Stormwater Management Program permit" or "VSMP permit" means a document issued by the permit-issuing authority pursuant to the Virginia Stormwater Management Act and this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters. Under the approved state program, a VSMP permit is equivalent to a NPDES permit.

"VSMP application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VSMP permit.

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Act (§

10.1-603.1 et seq. of the Code of Virginia), and the CWA (33 USC § 1251 et seq.).

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which the water drains may be considered the single outlet for the watershed.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

## Part XV

### General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems

#### **4VAC50-60-1200. Definitions.**

The words and terms used in this part shall have the meanings defined in the Act and this chapter unless the context clearly indicates otherwise, except that for the purposes of this part:

"Date brought on line" means the date when the operator determines that a new stormwater management facility is properly functioning to meet its designed pollutant load reduction.

"MS4 Program Plan" means the completed registration statement and all approved additions, changes and modifications detailing the comprehensive program implemented by the operator under this permit to reduce the pollutants in the stormwater discharged from its municipal separate storm sewer system (MS4) that has been submitted and accepted by the department.

"Municipality" means all entities included in the definition of "municipality" found at 4VAC50-60-10 and federal facilities that operate a small municipal separate storm sewer system.

"Operator" means the MS4 operator that has been issued coverage under the General Permit for Discharges of Stormwater from small municipal separate storm sewer systems.

"Physically interconnected" means that a MS4 directly discharges to a second MS4 one MS4 is connected to a second MS4 in such a manner that it allows for direct discharges to the second system.

"Public" as described in Federal Register, Volume 64, No. 235, page 68,750 on December 8, 1999, and as used in the context of this permit means the resident and employee

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population within the fence line of the facility. This concept shall also apply to nontraditional MS4 operators, such as state and federal entities and local school districts, that utilize this statement as guidance when determining their applicable "public" for compliance with this permit.

## **4VAC50-60-1210. Purpose; delegation of authority; effective date of the permit.**

A. This VSMP general permit regulation governs stormwater discharges from regulated small municipal separate storm sewer systems (~~regulated small MS4s~~) (small MS4s) to surface waters of the Commonwealth of Virginia.

1. Unless the small MS4 qualifies for a waiver under subdivision 3 of this subsection, operators are regulated if they operate a small MS4, including but not limited to systems operated by federal, state, tribal, and local governments, including the Virginia Department of Transportation; and:

a. The small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. If the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated; or

b. The small MS4 is designated by the board, including where the designation is pursuant to 40 CFR Part 123.35 (b)(3) or (b)(4) (2001), or is based upon a petition under 4VAC50-60-380 D.

2. A small MS4 may be the subject of a petition pursuant to 4VAC50-60-380 D to the board to require a VSMP permit for their discharge of stormwater. If the board determines that a small MS4 needs a permit and the operator applies for coverage under this general permit, the operator is required to comply with the requirements of Part XV (4VAC50-60-1180 et seq.) of this chapter.

3. The board may waive the requirements otherwise applicable to a ~~regulated~~ small MS4 if it meets the criteria of subdivision 4 or 5 of this subsection. If a waiver is received under this subsection, the operator may subsequently be required to seek coverage under a VSMP permit in accordance with 4VAC50-60-400 C if circumstances change. (See also 40 CFR Part 123.35 (b) (2001))

4. The board may waive permit coverage if the ~~regulated~~ small MS4 serves a population of less than 1,000 within the urbanized area and meets the following criteria:

a. The system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the VSMP stormwater program; and

b. Pollutants are discharged that have been identified as a cause of impairment of any water body to which the ~~regulated~~ small MS4 discharges but stormwater controls are not needed based on wasteload allocations that are part of a ~~State Water Control Board established and EPA~~

~~an~~ approved "total maximum daily load" (TMDL) that addresses the pollutants of concern.

5. The board may waive permit coverage if the ~~regulated~~ small MS4 serves a population under 10,000 and meets the following criteria:

a. The State Water Control Board has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from the ~~regulated~~ small MS4;

b. For all such waters, the board has determined that stormwater controls are not needed based on wasteload allocations that are part of a ~~State Water Control Board established and EPA~~ ~~an~~ approved TMDL that addresses the pollutants of concern or, if a TMDL has not been ~~developed and~~ approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;

c. For the purpose of this subdivision, the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the ~~regulated~~ small MS4; and

d. The board has determined that future discharges from the ~~regulated~~ small MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

B. This general permit will become effective on ~~July 9, 2008~~ July 1, 2013, and will expire five years from the effective date consistent with 4VAC-50-60-330.

## **4VAC50-60-1220. Authorization to discharge.**

A. Any operator governed by this general permit is hereby authorized to discharge stormwater from the ~~regulated~~ small MS4 to surface waters of the Commonwealth of Virginia provided that the operator files and receives acceptance of the registration statement of 4VAC50-60-1230 by the department and files the permit fees required by Part XIII (4VAC50-60-700 et seq.) of this chapter, and provided that the operator shall not have been required to obtain an individual permit according to 4VAC50-60-410 B.

B. The operator shall not be authorized by this general permit to discharge to ~~state surface~~ waters specifically named in other State Water Control Board or board regulations ~~or policies~~ that prohibit such discharges.

C. Nonstormwater discharges or flows into the ~~regulated~~ small MS4 are authorized by this permit and do not need to be addressed in the MS4 Program required under 4VAC50-60-1240, Section II B 3, if:

1. The nonstormwater discharges or flows are covered by a separate individual or general VPDES or VSMP permit for nonstormwater discharges;

2. The individual nonstormwater discharges or flows have been identified in writing by the Department of Environmental Quality as de minimis discharges that are not significant sources of pollutants to ~~state~~ surface waters and do not require a VPDES permit;

3. Nonstormwater discharges or flows ~~in the following categories identified at 4VAC50-60-400 D 2 c (3) that have not been identified by the operator, State Water Control Board, or by the board as significant contributors of pollutants to the regulated small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and discharges or flows from fire fighting activities; or~~

4. The discharge of materials resulting from a spill is necessary to prevent loss of life, personal injury, or severe property damage. The operator shall take, or ensure that the responsible party takes, all reasonable steps to minimize or prevent any adverse effect on human health or the environment. This permit does not transfer liability for a spill itself from the party(ies) responsible for the spill to the operator nor relieve the party(ies) responsible for a spill from the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302 (2001).

~~D.~~ D. In the event the operator is unable to meet certain conditions of this permit due to circumstances beyond the operator's control, a written explanation of the circumstances that prevented permit compliance shall be submitted to the department in the annual report. Circumstances beyond the control of the operator may include abnormal climatic conditions; weather conditions that make certain requirements unsafe or impracticable; or unavoidable equipment failures caused by weather conditions or other conditions beyond the reasonable control of the operator (operator error is not a condition beyond the control of the operator). The failure to provide adequate program funding, staffing or equipment maintenance shall not be an acceptable explanation for failure to meet permit conditions. The board will determine, at its sole discretion, whether the reported information will result in an enforcement action.

~~D.~~ E. Discharges that are excluded from obtaining a VSMP permit pursuant to 4VAC50-60-300 are exempted from the regulatory requirements of this permit.

~~E.~~ F. Pursuant to 40 CFR Part 122.34 (c) (2001), for those portions of a ~~regulated~~ small MS4 that are covered under a

VPDES permit for industrial stormwater discharges, the operator shall follow the conditions established under the VPDES permit. Upon termination of VPDES permit coverage, discharges from previously VPDES authorized outfalls shall meet the conditions of this permit provided it has been determined by the board that an individual MS4 permit is not required.

~~F.~~ G. Stormwater discharges from specific MS4 ~~outfalls~~ operator activities that have been granted conditional exclusion for "no exposure" of industrial activities and materials to stormwater under the VPDES permitting program shall ~~obtain coverage under this VSMP general permit~~ comply with this state permit unless a VPDES permit is obtained. The Department of Environmental Quality is responsible for determining compliance with the conditional exclusion under the State Water Control Law and attendant regulations.

~~G.~~ H. Receipt of this VSMP general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

**4VAC50-60-1230. Permit application (registration statement).**

A. Deadline for submitting a registration statement.

1. Operators of ~~regulated~~ small MS4s designated under 4VAC50-60-1210 A 1 b, that are applying for coverage under this VSMP general permit must submit a complete registration statement to the department within 180 days of notice of designation, unless the board grants a later date.

2. In order to continue uninterrupted coverage under the VSMP general permit, operators of ~~regulated~~ small MS4s shall submit a new registration statement at least 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

B. Registration statement.

The registration statement shall include the following information:

1. The name and location (county or city name) of the ~~regulated~~ small MS4 for which the registration statement is submitted;

2. The name, type (city, county, incorporated town, unincorporated town, college or university, local school board, military installation, transportation system, federal or state facility, or other), and address of the operator of the ~~regulated~~ small MS4;

3. The Hydrologic Unit Code(s) as identified in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset (available online at [http://www.dcr.virginia.gov/soil\\_&\\_water/hu.shtml](http://www.dcr.virginia.gov/soil_&_water/hu.shtml))

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currently receiving discharges or that have potential to receive discharges from the ~~regulated~~ small MS4;

4. The estimated drainage area, in acres, served by the ~~regulated~~ small MS4 directly discharging to any impaired receiving surface waters listed in the ~~2006~~ 2012 Virginia 305(b)/303(d) Water Quality Assessment Integrated Report, and a description of the land use for each such drainage area;

5. A listing of any TMDL wasteloads allocated to the ~~regulated~~ small MS4. This information may be found at: <http://www.deq.state.va.us/tmdl/develop.html>;

6. The name(s) of any ~~regulated~~ physically interconnected MS4s to which the ~~regulated~~ small MS4 discharges;

7. For operators that had coverage under the previous VSMP General Permit, a copy of the currently implemented MS4 Program Plan. The operator shall continue to implement this plan and any updates as required by this state permit in accordance with Table 1 in 4VAC50-60-1240.

~~7. A copy of the MS4 Program Plan that includes~~ 8. For operators applying for initial coverage designated under 4VAC50-60-1210 A, a schedule of development of an MS4 Program Plan that complies with Table 1 in 4VAC50-60-1240 that includes the following:

a. A list of best management practices (BMPs) that the operator proposes to implement for each of the stormwater minimum control measures and their associated measurable goals pursuant to 4VAC50-60-1240, Section II B, that includes:

(1) A list of the existing policies, ordinances, schedules, inspection forms, written procedures, and other documents necessary for best management practice implementation; and

(2) The individuals, departments, divisions, or units responsible for implementing the best management practices;

b. The objective and expected results of each best management practice in meeting the measurable goals of the stormwater minimum control measures;

c. The implementation schedule including any interim milestones for the implementation of a proposed new best management practice; and

d. The method that will be utilized to determine the effectiveness of each best management practice and the MS4 Program as a whole;

~~8.~~ 9. A list of all existing signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures;

~~9.~~ 10. The name, address, telephone number and email address of either the principal executive officer or ranking elected official as defined in 4VAC50-60-370;

~~10.~~ 11. The name, position title, address, telephone number and email address of any duly authorized representative as defined in 4VAC50-60-370; and

~~11.~~ 12. The following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed ~~by the principal executive officer or ranking elected official~~ in accordance with 4VAC50-60-370.

D. An operator may file its own registration statement, or the operator and other operators of ~~regulated~~ small MS4s may jointly submit a registration statement. If responsibilities for meeting the stormwater minimum control measures will be shared with other municipalities or governmental entities, the registration statement must describe which stormwater minimum control measures the operator will implement and identify the entities that will implement the other stormwater minimum control measures within the area served by the regulated small MS4.

E. Where to submit. The registration statement shall be submitted to:

~~Department of Conservation and Recreation  
Division of Soil and Water Conservation  
Stormwater Permitting  
203 Governor Street, Suite 206  
Richmond, VA 23219~~

Department of Conservation and Recreation  
Stormwater Permitting  
600 East Main Street  
4th Floor  
Richmond, VA 23219

## **4VAC50-60-1240. General permit.**

Any operator whose registration statement is accepted by the department will receive coverage under the following permit and shall comply with the requirements therein and be subject to all applicable requirements of the Virginia Stormwater Management Act (Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia) and the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60).

General Permit No.: VAR04

Effective Date: ~~July 9, 2008~~ July 1, 2013

Expiration Date: ~~July 8, 2013~~ June 30, 2018

GENERAL PERMIT FOR DISCHARGES OF  
STORMWATER FROM SMALL MUNICIPAL SEPARATE  
STORM SEWER SYSTEMS

AUTHORIZATION TO DISCHARGE UNDER THE  
VIRGINIA STORMWATER MANAGEMENT PROGRAM  
AND THE VIRGINIA STORMWATER MANAGEMENT  
ACT

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the Virginia Stormwater Management Act and regulations adopted pursuant thereto, this permit authorizes operators of small municipal separate storm sewer systems to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in State Water Control Board and Virginia Soil and Water Conservation Board regulations or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Section I—Discharge Authorization and Special Conditions, Section II—MS4 Program and Section III—Conditions Applicable To All VSMP Permits, as set forth herein. The operator shall utilize all legal authority provided by the laws and regulations of the Commonwealth of Virginia to control discharges to and from the MS4. This legal authority may be a combination of statute, ordinance, permit, specific contract language, order or interjurisdictional agreements.

For operators who have previously held MS4 state permit coverage, the operator shall update the MS4 Program Plan in accordance with the following schedule. Until such time as the required updates are completed and implemented, the operator shall continue to implement the MS4 Program consistent with the MS4 Program Plan submitted with the registration statement.

For operators of small MS4s that are applying for initial coverage under this general permit, the schedule to develop and implement the MS4 Program Plan shall be submitted with the completed registration statement.

Table 1: Schedule of MS4 Program Plan Updates Required in this Permit		
Program Update Requirement	Permit Reference	Update Completed By
Updated TMDL Action Plans (TMDLs approved before July of 2008)	Section I B	24 months after permit coverage
Other TMDL Action Plans for applicable TMDLs	Section I B	36 months after permit coverage

<u>approved between July 2008 and June 2013</u>		
<u>TMDL Action Plans for applicable TMDLs approved after June of 2013</u>	Section I	<u>36 months after notification by the department of their approval</u>
<u>Chesapeake Bay TMDL Action Plan</u>	Section I C	<u>24 months after permit coverage</u>
<u>Public Education Outreach Plan</u>	Section II B	<u>12 months after permit coverage</u>
<u>Outfall Map Completed</u>	Section II B	<u>48 months after permit coverage</u>
<u>Illicit Discharge Procedures</u>	Section II B	<u>12 months after permit coverage</u>
<u>Single Family SWM Special Criteria</u>	Section II B	<u>12 months after permit coverage</u>
<u>Stormwater Management Progressive Compliance and Enforcement</u>	Section II B	<u>24 months after permit coverage</u>
<u>Operator-Owned Stormwater Management Inspection Procedures</u>	Section II B	<u>12 months after permit coverage</u>
<u>Daily Good Housekeeping Procedures</u>	Section II B	<u>24 months after permit coverage</u>
<u>SWPPP Locations</u>	Section II B	<u>12 months after permit coverage</u>
<u>SWPPP Implementation</u>	Section II B	<u>60 months after permit coverage with internal goals</u>
<u>Nutrient Management Plan (NMP) Locations</u>	Section II B	<u>12 months after permit coverage</u>
<u>NMP Implementation</u>	Section II B	<u>60 months after permit coverage</u>
<u>Training Schedule and Program</u>	Section II B	<u>12 months after permit coverage</u>

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## SECTION I DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

A. Coverage under this permit. During the period beginning with the date of coverage under this general permit and lasting until the expiration and reissuance of this permit, the operator is authorized to discharge in accordance with this permit from the small municipal separate storm sewer system identified in the registration statement into surface waters.

~~B. Special conditions. A total maximum daily load (TMDL) approved by the State Water Control Board may include a wasteload allocation to the regulated small MS4 that identifies the pollutant for which stormwater controls are necessary for the surface waters to meet water quality standards. The pollutant identified in a wasteload allocation as of the effective date of this permit must be addressed through the measurable goals of the MS4 Program Plan. A wasteload allocation does not establish that the operator of a regulated small MS4 is in or out of compliance with the conditions of this permit.~~

~~1. The operator shall update its MS4 Program Plan to include measurable goals, schedules, and strategies to ensure MS4 Program consistency with the assumptions of the TMDL WLA within 18 months of permit coverage; or, within 18 months of the effective date of any reopening of this permit to include wasteloads allocated to the regulated small MS4 after issuance of permit coverage.~~

~~2. The measurable goals, schedules, strategies, and other best management practices (BMPs), required in an updated MS4 Program Plan to assure MS4 Program consistency with an approved TMDL for the pollutant identified in a WLA are, at a minimum:~~

~~a. The operator shall develop a list of its current ordinances and legal authorities, BMPs, policies, plans, procedures and contracts implemented as part of the MS4 Program that are applicable to reducing the pollutant identified in a WLA.~~

~~b. The operator shall evaluate existing ordinances and legal authorities, BMPs, policies, plans, procedures and contracts of the existing MS4 Program to determine the effectiveness of the MS4 Program in addressing reductions of the pollutant identified in the WLA. The evaluation shall identify any weakness or limitation in the MS4 Program to reduce the pollutant identified in the WLA in a manner consistent with the TMDL.~~

~~c. The operator shall develop a schedule to implement procedures and strategies that address the MS4 Program weaknesses such as timetables to update existing ordinances and legal authorities within two years, BMPs, policies, plans, procedures and contracts to ensure consistency with the assumptions of the TMDL WLA. When possible, source elimination shall be prioritized over load reduction.~~

~~d. The operator shall implement the schedule established in Section I-B 2 e.~~

~~3. The operator shall integrate an awareness campaign into its existing public education and outreach program that promotes methods to eliminate and reduce discharges of the pollutant identified in the WLA. This may include additional employee training regarding the sources and methods to eliminate and minimize the discharge of the pollutant identified in the WLA.~~

~~4. The operator is encouraged to participate as a stakeholder in the development of any implementation plans developed to address the TMDL and shall incorporate applicable best management practices identified in the TMDL implementation plan in their MS4 Program Plan. The operator may choose to implement BMPs of equivalent design and efficiency instead of those identified in the TMDL implementation plan, provided that the rationale for any substituted BMP is provided and the substituted BMP is consistent with the TMDL and the WLA.~~

~~5. The operator shall develop and implement outfall reconnaissance procedures to identify potential sources of the pollutant identified in the WLA from anthropogenic activities. The operator shall conduct reconnaissance in accordance with the following:~~

~~a. Should the operator have 250 or more total outfalls discharging to the surface water identified in the WLA, the operator shall perform reconnaissance on a minimum of 250 outfalls for each WLA assigned at least once during the five year permit period and shall perform reconnaissance on a minimum of 35 outfalls per year.~~

~~b. Should the operator have less than 250 total outfalls discharging to an identified surface water, the operator shall perform reconnaissance on all outfalls during the five year permit period and shall annually conduct reconnaissance on a minimum of 15% of its known MS4 outfalls discharging to the surface water for which the WLA has been assigned.~~

~~The department recommends that the operator review the publication entitled "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments," EPA cooperative agreement number X 82907801 0, for guidance in implementing its outfall reconnaissance procedures. The operator shall implement procedures designed to reduce the discharge of the pollutant in a manner consistent with the TMDL. Physically interconnected MS4s may coordinate outfall reconnaissance to meet the requirements of this subdivision.~~

~~6. The operator shall evaluate all properties owned or operated by the MS4 operator that are not covered under a separate VPDES permit for potential sources of the pollutant identified in the WLA. Within three years of the~~



required date for updating the MS4 Program Plan, the operator shall conduct a site review and characterize the runoff for those properties where it determines that the pollutant identified in the WLA is currently stored, or has been transferred, transported or historically disposed of in a manner that would expose it to precipitation in accordance with the following schedule:

a. As a part of the site review, the operator shall collect a total of two samples from a representative outfall for each identified municipal property. One sample shall be taken during each of the following six month periods: October through March, and April through September.

b. All collected samples shall be grab samples and collected within the first 30 minutes of a runoff producing event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previous measurable (greater than 0.1 inch rainfall) storm event. The required 72 hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the property. The required 72 hour storm event interval may also be waived where the operator documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted. Analytical methods shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the Environmental Protection Agency (EPA). Where an approved 40 CFR Part 136 method does not exist, the operator must use a method consistent with the TMDL.

c. For properties where there is found to be a discharge of the pollutant identified in the WLA, the operator shall develop and implement a schedule to minimize the discharge of the pollutant identified in the WLA in a manner consistent with the approved TMDL.

7. The operator shall conduct an annual characterization that estimates the volume of stormwater discharged, in cubic feet, and the quantity of pollutant identified in the WLA, in a unit consistent with the WLA, discharged by the regulated small MS4.

8. As part of the annual evaluation, the operator shall update the MS4 Program Plan to include any new information regarding the TMDL in order to ensure consistency with the TMDL.

9. Along with reporting requirements in Section II E, the operator shall include the following with each annual report:

a. Copies of any updates to the MS4 Program Plan completed during the reporting cycle and any new information regarding the TMDL in order to evaluate its ability to assure the consistency of its discharge with the assumptions of the TMDL WLA.

b. The estimate of the volume of stormwater discharged, in cubic feet, and the quantity of pollutant identified in the WLA, in a unit consistent with the WLA discharged by the regulated small MS4 for each WLA.

B. Special conditions for approved total maximum daily loads (TMDL) other than the Chesapeake Bay TMDL. An approved TMDL may allocate an applicable wasteload to a small MS4 that identifies a pollutant or pollutants for which additional stormwater controls are necessary for the surface waters to meet water quality standards. The MS4 operator shall address the pollutants in accordance with this special condition where the MS4 has been allocated a wasteload in an approved TMDL.

1. The operator shall maintain an updated MS4 Program Plan that includes a specific TMDL Action Plan for pollutants allocated to the MS4 in approved TMDLs. TMDL Action Plans may be implemented in multiple phases over more than one state permit cycle using the adaptive iterative approach provided adequate progress is demonstrated. These TMDL Actions Plans shall identify the best management practices and other implementation steps to be implemented during the remaining terms of this state permit.

a. In accordance with Table 1 in this section, the operator shall update the MS4 Program Plans to address any new or modified requirements established under this special condition for pollutants identified in TMDL wasteload allocations approved prior to July 8, 2008.

b. In accordance with Table 1 in this section, the operator shall update the MS4 Program Plan to incorporate Action Plans that identify the best management practices and other implementation steps that will be implemented during the remaining term of this permit for pollutants identified in TMDL wasteload allocations approved either on or after July 8, 2008, and prior to issuance of this permit.

c. In accordance with Table 1 in this section, the operator shall update the MS4 Program Plan with TMDL Action Plans that identify the best management practices and other steps that will be implemented during the remaining term of this state permit for pollutants identified in TMDL wasteload allocations approved after issuance of this permit for impairment listed on the 2012 § 303(d)/305(b) list and for which a TMDL schedule identifies its development as occurring during this state permit cycle.

2. The operator shall:

a. Develop and maintain a list of its legal authorities such as ordinances, state and other permits, orders, specific contract language, and interjurisdictional agreements applicable to reducing the pollutant identified in a WLA;

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b. Identify and maintain an updated list of all additional management practices, control techniques and system design and engineering methods, beyond those identified in Section II B, that have been implemented as part of the MS4 Program Plan that are applicable to reducing the pollutant identified in the WLA;

c. Enhance the public education and outreach and employee training programs to also promote methods to eliminate and reduce discharges of the pollutants identified in the WLA;

d. Assess all facilities of concern owned or operated by the MS4 operator that are not covered under a separate VPDES permit and identify all municipal facilities that may be a significant source of the identified pollutant. For the purpose of this assessment, significant source is identified as facilities of concern where the pollutant discharge is expected to be greater than that average expected existing discharge for the land use identified in the TMDL. For example, the discharge of bacteria would be expected to be greater at a dog park than at other recreational facilities where dogs are prohibited.

e. Develop and implement a method to assess TMDL Action Plans for their effectiveness in reducing the pollutants identified in the WLAs. The evaluation shall use any newly available information, water quality monitoring results, or modeling tools to estimate pollutant reductions for the pollutant or pollutants of concern from implementation of the MS4 Program Plan. Monitoring may include BMP, outfall, or in-stream monitoring, as appropriate, to estimate pollutant reductions. The operator may conduct monitoring, utilize existing data, establish partnerships, or collaborate with other MS4 operators or other third parties, as appropriate. This evaluation shall include assessment of the facilities identified in subdivision 2 d of this subsection. The methodology used for assessment shall be described in the TMDL Action Plan.

3. Analytical methods for any monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the Environmental Protection Agency (EPA). Where an approved 40 CFR Part 136 method does not exist, the operator must use a method consistent with the TMDL.

4. The operator is encouraged to participate as a stakeholder in the development of any TMDL implementation plans applicable to their discharge. The operator may incorporate applicable best management practices identified in the TMDL implementation plan in the MS4 Program Plan or may choose to implement BMPs of equivalent design and efficiency provided that the rationale for any substituted BMP is provided and the substituted BMP is consistent with the assumptions and requirements of the TMDL WLA.

5. Annual reporting requirements.

a. The operator shall submit the required TMDL Action Plans with the appropriate annual report associated schedule identified in this state permit.

b. The operator shall report on the implementation of the TMDL Action Plans and associated evaluation including the results of any monitoring conducted as part of the evaluation.

6. The operator shall identify the best management practices and other steps that will be implemented during the next state permit term as part of the operator's reapplication for coverage as required under Section III M.

## C. Special condition for the Chesapeake Bay TMDL.

1. Definitions. The following definitions apply to this state permit for the purpose of the special condition for discharges in the Chesapeake Bay Watershed:

"Existing sources" means pervious and impervious urban land uses serviced by the MS4 as of June 30, 2009.

"New sources" means pervious and impervious urban land uses served by the MS4 developed on or after July 1, 2009.

"Transitional sources" means regulated land disturbing activities that are temporary in nature and discharge through the MS4.

"Pollutants of concern" or "POC" means total nitrogen, total phosphorus, and total suspended solids.

## 2. Chesapeake Bay TMDL planning.

a. In accordance with Table 1 in this section, the operator shall develop and submit a phased Chesapeake Bay TMDL Action Plan that includes:

(1) A review of the baseline program implemented as a requirement of this state permit including a review of the existing legal authorities;

(2) The identification of any new or modified legal authorities such as ordinances, state and other permits, orders, contracts and interjurisdictional agreements implemented or needing to be implemented to meet the requirements of this special condition;

(3) The means and methods that will be utilized to address discharges into the MS4 from new sources;

(4) An estimate of the annual POC loads discharged from the existing sources as of June 30, 2008, based on the 2009 progress run. The operator shall utilize the appropriate version of Table 2 in this section based on the river basin to which the MS4 discharges by multiplying the total existing acres served by the MS4 on June 30, 2009, and the 2009 EOS loading rate:

**Table 2 a: Calculation Sheet for Estimating Existing Source Loads for the James River Basin**

<u>Subsource</u>	<u>Pollutant</u>	<u>Total Existing Acres Served by MS4 (6/30/09)</u>	<u>2009 EOS Loading Rate (lbs/ac)</u>	<u>Estimated Total POC Load Based on 2009 Progress Run</u>
<u>Regulated Urban Impervious</u>	<u>Nitrogen</u>		<u>9.39</u>	
<u>Regulated Urban Pervious</u>			<u>6.99</u>	
<u>Regulated Urban Impervious</u>	<u>Phosphorus</u>		<u>1.76</u>	
<u>Regulated Urban Pervious</u>			<u>0.5</u>	
<u>Regulated Urban Impervious</u>	<u>Total Suspended Solids</u>		<u>676.94</u>	
<u>Regulated Urban Pervious</u>			<u>101.08</u>	

**Table 2 b: Calculation Sheet for Estimating Existing Source Loads for the Potomac River Basin**

<u>Subsource</u>	<u>Pollutant</u>	<u>Total Existing Acres Served by MS4 (6/30/09)</u>	<u>2009 EOS Loading Rate (lbs/ac)</u>	<u>Estimated Total POC Load Based on 2009 Progress Run</u>
<u>Regulated Urban Impervious</u>	<u>Nitrogen</u>		<u>16.86</u>	
<u>Regulated Urban Pervious</u>			<u>10.07</u>	
<u>Regulated Urban Impervious</u>	<u>Phosphorus</u>		<u>1.62</u>	
<u>Regulated Urban Pervious</u>			<u>0.41</u>	
<u>Regulated Urban Impervious</u>	<u>Total Suspended Solids</u>		<u>1,171.32</u>	
<u>Regulated Urban Pervious</u>			<u>175.8</u>	

**Table 2 c: Calculation Sheet for Estimating Existing Source Loads for the Rappahannock River Basin**

<u>Subsource</u>	<u>Pollutant</u>	<u>Total Existing Acres Served by MS4 (6/30/09)</u>	<u>2009 EOS Loading Rate (lbs/ac)</u>	<u>Estimated Total POC Load Based on 2009 Progress Run</u>
<u>Regulated Urban Impervious</u>	<u>Nitrogen</u>		<u>9.38</u>	
<u>Regulated Urban Pervious</u>			<u>5.34</u>	
<u>Regulated Urban Impervious</u>	<u>Phosphorus</u>		<u>1.41</u>	
<u>Regulated Urban Pervious</u>			<u>0.38</u>	

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<u>Regulated Urban Impervious</u>	<u>Total Suspended Solids</u>		<u>423.97</u>	
<u>Regulated Urban Pervious</u>			<u>56.01</u>	

**Table 2 d: Calculation Sheet for Estimating Existing Source Loads for the York River Basin**

<u>Subsource</u>	<u>Pollutant</u>	<u>Total Existing Acres Served by MS4 (6/30/09)</u>	<u>2009 EOS Loading Rate (lbs/ac)</u>	<u>Estimated Total POC Load Based on 2009 Progress Run</u>
<u>Regulated Urban Impervious</u>	<u>Nitrogen</u>		<u>7.31</u>	
<u>Regulated Urban Pervious</u>			<u>7.65</u>	
<u>Regulated Urban Impervious</u>	<u>Phosphorus</u>		<u>1.51</u>	
<u>Regulated Urban Pervious</u>			<u>0.51</u>	
<u>Regulated Urban Impervious</u>	<u>Total Suspended Solids</u>		<u>456.68</u>	
<u>Regulated Urban Pervious</u>			<u>72.78</u>	

(5) An estimate of the total reductions necessary to reduce the annual POC loads from existing sources to the L2 implementation level utilizing the appropriate version of Table 3 in this section based on the river basin to which the MS4 discharges. This shall be calculated by multiplying the total existing acres service by the MS4 during the first state permit cycle required reduction in loading rate. Existing sources located in any portion of an expanded urbanized area or new urbanized area identified as part of an urbanized area by the 2010 U.S. Census shall not be included in the total acreage in determining the 5.0% reduction requirement in this state permit.

**Table 3 a: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the James River Basin**

<u>Subsource</u>	<u>Pollutant</u>	<u>Total Existing Acres Served by MS4 (7/1/09)</u>	<u>First Permit Cycle Requiring Reduction in Loading Rate (lbs/ac)</u>	<u>Total Reduction Required First Permit Cycle (lbs)</u>
<u>Regulated Urban Impervious</u>	<u>Nitrogen</u>		<u>0.04</u>	
<u>Regulated Urban Pervious</u>			<u>0.02</u>	
<u>Regulated Urban Impervious</u>	<u>Phosphorus</u>		<u>0.01</u>	
<u>Regulated Urban Pervious</u>			<u>0.002</u>	
<u>Regulated Urban Impervious</u>	<u>Total Suspended Solids</u>		<u>6.67</u>	
<u>Regulated Urban Pervious</u>			<u>0.44</u>	

**Table 3 b: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the Potomac River Basin**

<u>Subsource</u>	<u>Pollutant</u>	<u>Total Existing Acres Served by MS4 (7/1/09)</u>	<u>First Permit Cycle Requiring Reduction in Loading Rate (lbs/ac)</u>	<u>Total Reduction Required First Permit Cycle (lbs)</u>
<u>Regulated Urban Impervious</u>	<u>Nitrogen</u>		0.08	
<u>Regulated Urban Pervious</u>			0.03	
<u>Regulated Urban Impervious</u>	<u>Phosphorus</u>		0.01	
<u>Regulated Urban Pervious</u>			0.001	
<u>Regulated Urban Impervious</u>	<u>Total Suspended Solids</u>		11.71	
<u>Regulated Urban Pervious</u>			0.77	

**Table 3 c: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the Rappahannock River Basin**

<u>Subsource</u>	<u>Pollutant</u>	<u>Total Existing Acres Served by MS4 (7/1/09)</u>	<u>First Permit Cycle Requiring Reduction in Loading Rate (lbs/ac)</u>	<u>Total Reduction Required First Permit Cycle (lbs)</u>
<u>Regulated Urban Impervious</u>	<u>Nitrogen</u>		0.04	
<u>Regulated Urban Pervious</u>			0.02	
<u>Regulated Urban Impervious</u>	<u>Phosphorus</u>		0.01	
<u>Regulated Urban Pervious</u>			0.002	
<u>Regulated Urban Impervious</u>	<u>Total Suspended Solids</u>		4.24	
<u>Regulated Urban Pervious</u>			0.25	

**Table 3 d: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the York River Basin**

<u>Subsource</u>	<u>Pollutant</u>	<u>Total Existing Acres Served by MS4 (7/1/09)</u>	<u>First Permit Cycle Requiring Reduction in Loading Rate</u>	<u>Total Reduction Required First Permit Cycle (lbs)</u>
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			(lbs/ac)	
<u>Regulated Urban Impervious</u>	<u>Nitrogen</u>		<u>0.03</u>	
<u>Regulated Urban Pervious</u>			<u>0.02</u>	
<u>Regulated Urban Impervious</u>	<u>Phosphorus</u>		<u>0.01</u>	
<u>Regulated Urban Pervious</u>			<u>0.002</u>	
<u>Regulated Urban Impervious</u>	<u>Total Suspended Solids</u>		<u>4.60</u>	
<u>Regulated Urban Pervious</u>			<u>0.32</u>	

(6) The means and methods that will be utilized to implement sufficient reductions from existing sources equal to 5.0% of the estimated total reductions necessary. The methodology may incorporate reductions documented through the implementation of this state permit;

(7) The means and methods to offset the increased loads from new sources initiating construction between July 1, 2009, and June 30, 2014, that disturb greater than one acre as a result of the utilization of an average land cover condition greater than 16% impervious cover for the design of post-development stormwater management facilities. The operator shall utilize Table 4 in this section to develop the equivalent pollutant load for nitrogen and total suspended solids. The operator shall offset 5.0% of the calculated increased load from these new sources during the permit cycle.

(8) The means and methods to offset the increased loads from grandfathered projects that disturb greater than one acre that begin construction after July 1, 2014, where the project utilized an average land cover condition greater than 16% impervious cover in the design of post-development stormwater management facilities. The operator shall utilize Table 4 in this section to develop the equivalent pollutant load for nitrogen and total suspended solids.

(9) The operator shall address any modification to the TMDL or watershed implementation plan that occurs during the term of this state permit as part of its permit reapplication and not during the term of this state permit.

<u>Ratio of Phosphorus to Other POCs (Based on All Land Uses 2009 Progress Run)</u>	<u>Phosphorus Loading Rate (lbs/ac)</u>	<u>Nitrogen Loading Rate (lbs/ac)</u>	<u>Total Suspended Solids Loading Rate (lbs/ac)</u>
<u>James River Basin</u>	<u>1.0</u>	<u>5.2</u>	<u>420.9</u>
<u>Potomac River Basin</u>	<u>1.0</u>	<u>6.9</u>	<u>469.2</u>
<u>Rappahannock River Basin</u>	<u>1.0</u>	<u>6.7</u>	<u>320.9</u>
<u>York River Basin</u>	<u>1.0</u>	<u>9.5</u>	<u>531.6</u>

(10) A list of future projects and associated acreage that qualify as grandfathered in accordance with 4VAC50-60-48;

(11) An estimate of the expected costs to implement the requirements of this special condition during the state permit cycle; and

(12) An opportunity for receipt and consideration of public comment regarding the draft Chesapeake Bay TMDL Action Plan.

b. As part of development of the Chesapeake Bay TMDL Action Plan, the operator may consider:

(1) Placement of BMPs on unregulated lands. Reductions may only be credited towards the required reductions after any required unregulated land baseline pollutant reductions are met for treated acres;

(2) Utilization of stream restoration projects;

(3) Establishment of a memorandum of understanding (MOU) with other MS4 operators that discharge to the same or adjacent eight digit hydrologic unit to implement BMPs collectively. The MOU shall include a mechanism for dividing the POC reductions created by BMP implementation between the cooperative MS4s;

(4) Utilization of any pollutant trading or offset program in accordance with §§ 10.1-603.15:1 and 10.1-603.8:1 of the Code of Virginia, governing trading and offsetting; and

(5) A more stringent average land cover condition based on less than 16% impervious cover for new sources initiating construction between July 1, 2009, and June 30, 2014, and all grandfathered projects where allowed by law.

3. Chesapeake Bay TMDL Action Plan implementation. The operator shall implement the TMDL Action Plan to the maximum extent practicable and demonstrate adequate progress for this state permit term towards the long-term compliance targets for TMDL wasteload allocations. For the purposes of this permit, the implementation of the following represents implementation to the maximum extent practicable and demonstrates adequate progress:

a. Implementation of nutrient management plans in accordance with the schedule identified in the minimum control measure in Section II related to pollution prevention/good housekeeping for municipal operations;

b. Implementation of the minimum control measure in Section II related to construction site stormwater runoff control in accordance with this state permit shall address discharges from transitional sources;

c. Implementation of the means and methods to address discharges from new sources in accordance with the minimum control measure in Section II related to post-construction stormwater management in new development and development of prior developed lands and in order to offset 5.0% of the total increase in POC loads between July 1, 2009, and June 30, 2014. Increases in the POC load from grandfathered projects initiating construction after July 1, 2014, must be offset prior to completion of the project; and

d. Implementation of means and methods sufficient to meet 5.0% of the total required reductions of POC loads from existing sources in accordance with the Chesapeake Bay TMDL Action Plan.

4. Annual reporting requirements.

a. In accordance with Table 1 in this section, the operator shall submit the Chesapeake Bay Action Plan.

b. Each subsequent annual report shall included a list of control measures implemented during the reporting period and the cumulative progress toward meeting the compliance targets for total nitrogen, phosphorus, and total suspended soils.

c. Each subsequent annual report shall include a list of control measures in an electronic format provided by the department that were implemented during the reporting cycle and the estimated reduction achieved by the control. For stormwater management controls, the report shall include the information required in Section II B 5 e

and shall include whether an existing stormwater management control was retrofitted, and if so, the existing stormwater management control type retrofit used.

d. Each annual report shall include a list of control measures that are expected to be implemented during the next reporting period and the expected progress toward meeting the compliance targets for total nitrogen, phosphorus, and total suspended solids.

5. The operator shall include the following as part of its reapplication package due in accordance with Section III M:

a. Documentation that sufficient control measures have been implemented to meet the compliance target identified in this special condition. If temporary credits or offsets have been purchased in order to meet the compliance target, the list of temporary reductions utilized to meet the 5.0% reduction in this state permit and a schedule of implementation to ensure a permanent 5.0% reduction must be provided; and

b. A draft second phase Chesapeake Bay TMDL Action Plan designed to reduce the existing pollutant load by an additional 35% (or a total of 40% if more than a 5.0% reduction is achieved during the first phase) as determined using Table 3 in this section unless alternative calculations have been provided by the Commonwealth.

## SECTION II MUNICIPAL SEPARATE STORM SEWER SYSTEM MANAGEMENT PROGRAM

A. The operator of a ~~regulated~~ small MS4 must develop, implement, and enforce a MS4 Program designed to reduce the discharge of pollutants from the ~~regulated~~ small MS4 to the maximum extent practicable (MEP), to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the Clean Water Act and regulations. The MS4 Program must include the minimum control measures described in paragraph B of this section. Implementation of best management practices consistent with the provisions of an iterative MS4 Program required pursuant to this section constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable", protects water quality in the absence of a TMDL wasteload allocation, ensures compliance by the operator with water quality

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standards, and satisfies the appropriate water quality requirements of the Clean Water Act and regulations in the absence of a TMDL WLA. The requirements of this section and those special conditions set out in Section I B also apply where a WLA is applicable.

No later than January 9, 2009, the operator shall review its existing MS4 Program Plan and submit a schedule to develop and implement programs to meet the conditions established by this permit. For operators of regulated small MS4s that are applying for initial coverage under this general permit, the schedule to develop and implement the MS4 Program Plan shall be submitted with the completed registration statement.

## B. Minimum control measures.

1. Public education and outreach on stormwater impacts. ~~Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff. The department recommends that the operator review the Environmental Protection Agency (EPA) publication entitled "Getting in Step: A Guide for Conducting Watershed Outreach Campaigns," publication number EPA 841 B 03 002, for guidance in developing a public education program.~~

The operator shall identify, schedule, implement, evaluate and modify, as necessary, BMPs to meet the following public education and outreach measurable goals:

- ~~a. Increased individual and household knowledge about the steps that they can take to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;~~
- ~~b. Increased public employee, business, and general public knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications;~~
- ~~c. Increased individual and group involvement in local water quality improvement initiatives including the promotion of local restoration and clean up projects, programs, groups, meetings and other opportunities for public involvement;~~
- ~~d. Diverse strategies to target audiences specific to the area serviced by the regulated small MS4;~~
- ~~e. Improved outreach program to address viewpoints and concerns of target audiences, with a recommended focus on minorities, disadvantaged audiences and minors; and~~
- ~~f. Targeted strategies towards local groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts.~~

a. The operator shall continue to implement the public education and outreach program as included in the registration statement until the program is updated to meet the conditions of this state permit. Operators who

have not previously held MS4 permit coverage shall implement this program in accordance with the schedule in Table 1 of this section.

b. The public education and outreach program should be designed with consideration of the following goals:

(1) Increasing target audience knowledge about the steps that can be taken to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;

(2) Increasing target audience knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications; and

(3) Implementing a diverse program with strategies that are targeted towards audiences most likely to have significant stormwater impacts.

c. The updated program shall be designed to:

(1) Identify, at a minimum, three high-priority water quality issues, contributed to by the discharge of stormwater (e.g., Chesapeake Bay nutrients, pet wastes and local bacteria TMDLs, high-quality receiving waters, and illicit discharges from commercial sites) and a rationale for the selection of the three high-priority water quality issues;

(2) Identify and estimate the population size of the target audience or audiences who is most likely to have significant impacts for each high-priority water quality issue;

(3) Develop relevant message or messages and associated educational and outreach materials (e.g., various media such as printed materials, billboard and mass transit advertisements, signage at select locations, radio advertisements, television advertisements, websites, and social media) for message distribution to the selected target audiences while considering the viewpoints and concerns of the target audiences including minorities, disadvantaged audiences, and minors;

(4) Provide for public participation during public education and outreach program development;

(5) Annually conduct sufficient education and outreach activities designed to reach an equivalent 20% of each high-priority issue target audience. It shall not be considered noncompliance for failure to reach 20% of the target audience. However, it shall be a compliance issue if insufficient effort is made to annually reach a minimum of 20% of the target audience; and

(6) Provide for the adjustment of target audiences and messages including educational materials and delivery mechanisms to reach target audiences in order to address any observed weaknesses or shortcomings as necessary.

d. The operator may coordinate their public education and outreach efforts with other MS4 operations;



however, each operator shall be individually responsible for meeting all of its state permit requirements.

e. Prior to application for continued state permit coverage required in Section III M, the operator shall evaluate the education and outreach program for:

- (1) Appropriateness of the high-priority stormwater issues;
- (2) Appropriateness of the selected target audiences for each high-priority stormwater issue;
- (3) Effectiveness of the message or messages being delivered; and
- (4) Effectiveness of the mechanism or mechanisms of delivery employed in reaching the target audiences.

f. The MS4 Program Plan shall describe how the conditions of this permit shall be updated in accordance with Table I in this section.

g. The operator shall include in the annual report the following:

- (1) A list of the education and outreach activities conducted during the reporting period for each high-priority water quality issue, the estimated number of people reached, and an estimated percentage of the target audience or audiences that will be reached; and
- (2) A list of the education and outreach activities that will be conducted during the next reporting period for each high-priority water quality issue, the estimated number of people that will be reached, and an estimated percentage of the target audience or audiences that will be reached.

2. Public involvement/participation.

The operator shall comply with applicable state, tribal, and local public notice requirements and identify, schedule, implement, evaluate and modify, as necessary, BMPs to meet the following public involvement/participation measurable goals:

- a. Promote the availability of the operator's MS4 Program Plan and any modifications for public review and comment. Public notice shall be given by any method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation. Provide access to or copies of the MS4 Program Plan or any modifications upon request of interested parties in compliance with all applicable freedom of information regulations;
- b. Provide access to or copies of the annual report upon request of interested parties in compliance with all applicable freedom of information regulations; and
- c. Participate, through promotion, sponsorship, or other involvement, in local activities aimed at increasing public participation to reduce stormwater pollutant loads and improve water quality.
  - a. Public involvement.

(1) The operator shall comply with any applicable federal, state, and local public notice requirements.

(2) The operator shall:

- (a) Maintain an updated MS4 Program Plan on the operator's web page. Updates to the MS4 Program Plan shall be completed a minimum of once a year and should be updated in conjunction with the annual report.
- (b) Post copies of each annual report on the operator's web page within 30 days of submittal to the department and retain copies of annual reports online for the duration of this state permit; and
- (c) Prior to reapplying for coverage as required by Section III M, notify the public and provide for receipt of comment of the proposed MS4 Program Plan that will be submitted with the registration statement. As part of the reapplication, the operator shall address how the received comments were considered in the development of the MS4 Program Plan. Public notice shall be given by a method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to solicit public participation.

b. Public participation. The operator shall participate, through promotion, sponsorship, or other involvement, in a minimum of four local activities annually. The activities shall be aimed at increasing public participation to reduce stormwater pollutant loads; improve water quality; and support local restoration and clean-up projects, programs, groups, meetings, or other opportunities for public involvement.

c. The MS4 Program Plan shall include written procedures for implementing this program.

d. Each annual report shall include:

- (1) A web link to the MS4 Program Plan and annual report; and
- (2) Documentation of compliance with the public participation requirements of this section.

3. Illicit discharge detection and elimination. The MS4 Program shall:

- a. Develop, implement and enforce a program to detect and eliminate illicit discharges, as defined at 4VAC50-60-10, into the regulated small MS4. The department recommends that the operator review the publication entitled "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments," Environmental Protection Agency (EPA) cooperative agreement number X-82907801 0, for guidance in implementing and evaluating its illicit discharge detection and elimination program;
- b. Develop, if not already completed, and maintain, an updated storm sewer system map, showing the location

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~~of all known outfalls of the regulated small MS4 including those physically interconnected to a regulated MS4, the associated surface waters and HUCs, and the names and locations of all impaired surface waters that receive discharges from those outfalls. The operator shall also estimate the acreage within the regulated small MS4 discharging to each HUC and impaired water;~~

~~e. To the extent allowable under state, tribal or local law or other regulatory mechanism, effectively prohibit, through ordinance, or other regulatory mechanism, nonstormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions;~~

~~The following categories of nonstormwater discharges or flows (i.e., illicit discharges) must be addressed only if they are identified by the operator, the State Water Control Board, or by the board as significant contributors of pollutants to the regulated small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, discharges or flows from fire fighting activities, and flows that have been identified in writing by the Department of Environmental Quality as de minimis discharges that are not significant sources of pollutants to state waters and not requiring a VPDES permit;~~

~~d. Develop and implement procedures to detect and address nonstormwater discharges, including illegal dumping, to the regulated small MS4;~~

~~e. Prevent or minimize to the maximum extent practicable, the discharge of hazardous substances or oil in the stormwater discharge(s) from the regulated small MS4. In addition, the MS4 Program must be reviewed to identify measures to prevent the recurrence of such releases and to respond to such releases, and the program must be modified where appropriate. This permit does not relieve the operator or the responsible part(ies) of any reporting requirements of 40 CFR Part 110 (2001), 40 CFR Part 117 (2001) and 40 CFR Part 302 (2001) or § 62.1 44.34:19 of the Code of Virginia;~~

~~f. Track the number of illicit discharges identified, provide narrative on how they were controlled or eliminated, and submit the information in accordance with Section II E 3; and~~

~~g. Notify, in writing, any downstream regulated MS4 to which the small regulated MS4 is physically interconnected of the small regulated MS4's connection to that system.~~

a. The operator shall maintain an accurate storm sewer system map and information table and shall update it in accordance with the schedule set out in Table 1 of this section.

(1) The storm sewer system map must show the following, at a minimum:

(a) The location of all MS4 outfalls. In cases where the outfall is located outside of the MS4 operator's legal responsibility, the operator may elect to map the known point of discharge location closest to the actual outfall. Each mapped outfall must be given a unique identifier, which must be noted on the map; and

(b) The name and location of all waters receiving discharges from the MS4 outfalls and the associated HUC.

(2) At a minimum, the associated information table shall include for each outfall the following:

(a) The unique identifier;

(b) The estimated MS4 acreage served;

(c) The name of the receiving surface water and indication as to whether the receiving water is listed as impaired on the Virginia 2012 303(d)/305(b) list; and

(d) The name of any applicable TMDL or TMDLs.

(3) Within 48 months of coverage under this state permit, the operator shall have a complete and updated storm sewer system map and information table that includes all MS4 outfalls located within the boundaries identified as "urbanized" areas in the 2010 Decennial Census and shall submit the updated information table as an appendix to the annual report.

(4) The operator shall maintain a copy of the current storm sewer system map and outfall information table for review upon request by the public or by the department.

(5) The operator shall continue to identify other points of discharge. The operator shall notify in writing the downstream MS4 of any known physical interconnection.

b. The operator shall effectively prohibit, through ordinance or other legal mechanism, nonstormwater discharges into the storm sewer system to the extent allowable under federal, state, or local law or regulation. Categories of nonstormwater discharges or flows (i.e., illicit discharges) identified in 4VAC50-60-400 D 2 c (3) must be addressed only if they are identified by the operator, the State Water Control Board, or by the board as significant contributors of pollutants to the small MS4. Flows that have been identified in writing by the Department of Environmental Quality as de minimis discharges are not significant sources of pollutants to surface water and do not require a VPDES permit.

c. The operator shall develop and implement written procedures to detect, identify, and address nonstormwater

discharges, including illegal dumping, to the small MS4. These procedures shall include:

(1) Written dry weather field screening methodologies to detect and eliminate illicit discharges to the MS4 that include field observations and field screening monitoring and that provide:

(a) A prioritized schedule of field screening activities determined by the operator based on such things as age of the infrastructure, land use, historical illegal discharges, dumping or cross connections.

(b) The minimum number of field screening activities the operator shall complete annually to be determined as follows: (i) if the total number of outfalls in the small MS4 is less than 50, all outfalls shall be screened annually or (ii) if the small MS4 has 50 or more total outfalls, a minimum of 50 outfalls shall be screened annually.

(c) Methodologies to collect the general information such as time since the last rain, the quantity of the last rain, site descriptions (e.g., conveyance type and dominant watershed land uses), estimated discharge rate (e.g., width of water surface, approximate depth of water, approximate flow velocity, and flow rate), and visual observations (e.g., order, color, clarity, floatables, deposits or stains, vegetation condition, structural condition, and biology;

(d) A time frame upon which to conduct an investigation or investigations to identify and locate the source of any observed continuous or intermittent nonstormwater discharge prioritized as follows: (i) illicit discharges suspected of being sanitary sewage or significantly contaminated must be investigated first and (ii) investigations of illicit discharges suspected of being less hazardous to human health and safety such as noncontact cooling water or wash water may be delayed until after all suspected sanitary sewage or significantly contaminated discharges have been investigated, eliminated, or identified. Discharges authorized under a separate VDPEs or state permit are natural flow and require no further action.

(e) Methodologies to determine the source of all illicit discharges shall be conducted. If an illicit discharge is found, but within six months of the beginning of the investigation neither the source nor the same nonstormwater discharge has been identified, then the operator shall document such in accordance with Section II B 3 f. If the observed discharge is intermittent, the operator must document that a minimum of three separate investigations were made in an attempt to observe the discharge when it was flowing. If these attempts are unsuccessful, the operator shall document such in accordance with Section II B 3 f.

(f) Mechanisms to eliminate identified sources of illicit discharges including a description of the policies and procedures for when and how to use legal authorities;

(g) Methods for conducting a follow-up investigation in order to verify that the discharge has been eliminated.

(h) A mechanism to track all investigations to document at a minimum: (i) the date or dates that the illicit discharge was observed and reported; (ii) the results of the investigation; (iii) any follow-up of the investigation; (iv) resolution of the investigation; and (v) the date that the investigation was closed.

d. The operator shall eliminate or minimize to the maximum extent practicable, the discharge of hazardous substance or oil in the stormwater discharge or discharges from the small MS4. In addition, the MS4 Program Plan must be reviewed to identify measures to prevent the recurrence of such releases, and respond to such releases, and must be modified where appropriate.

e. The operator shall promote, publicize, and facilitate public reporting of illicit discharges into or from MS4s. The operator shall conduct inspections in response to complaints and follow-up inspections as needed to ensure that corrective measures have been implemented by the responsible party.

f. The MS4 Program Plan shall include all procedures developed by the operator to detect, identify, and address nonstormwater discharges to the MS4 in accordance with the schedule in Table 1 in this section. In the interim, the operator shall continue to implement the program as included as part of the registration statement until the program is updated to meet the conditions of this permit. Operators, who have not previously held MS4 permit coverage, shall implement this program in accordance with the schedule provided in Table 1 in this section.

g. Annual reporting requirements. Each annual report shall include:

(1) A list of any written notifications of physical interconnection given by the operator to other MS4s;

(2) The total number of outfalls screened during the reporting period, the screening results, and detail of any follow-up necessary based on screening results; and

(3) A summary of each investigation conducted by the operator of any suspected illicit discharge. The summary must include: (i) the date that the suspect discharge was observed or reported or both; (ii) how the investigation was resolved, including any follow-up, and (iii) resolution of the investigation and the date the investigation was closed.

4. Construction site stormwater runoff control.

a. The operator shall develop, implement, and enforce procedures to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities that result in a land disturbance of greater than or equal

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to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more.

The procedures must include the development and implementation of, at a minimum:

(1) An ordinance or other mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance with the Erosion and Sediment Control Law and attendant regulations, to the extent allowable under state, tribal, or local law. Such ordinances and other mechanisms shall be updated as necessary;

(2) Requirements for construction site owners and operators to implement appropriate erosion and sediment control best management practices as part of an erosion and sediment control plan that is consistent with the Erosion and Sediment Control Law and attendant regulations and other applicable requirements of state, tribal, or local law. Where determined appropriate by the operator, the operator shall encourage the use of structural and nonstructural design techniques to create a design that has the goal of maintaining or replicating predevelopment runoff characteristics and site hydrology;

(3) Requirements for construction site owners and operators to secure authorization to discharge stormwater from construction activities under a VSMP permit for construction activities that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, stormwater discharges from construction activity disturbing less than one acre must secure authorization to discharge under a VSMP permit if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more;

(4) Procedures for receipt and consideration of information submitted by the public; and

(5) Procedures for site inspection and enforcement of control measures.

b. The operator shall ensure that plan reviewers, inspectors, program administrators and construction site owners and operators obtain the appropriate certifications as required under the Erosion and Sediment Control Law;

c. The operator shall track regulated land disturbing activities and submit the following information in accordance with Section II E 3:

(1) Total number of regulated land disturbing activities; and

(2) Total disturbed acreage.

a. Applicable oversight requirements. The operator shall utilize its legal authority, such as ordinances, permits, orders, specific contract language, and interjurisdictional agreements, to address discharges entering the MS4 from the following land-disturbing activities:

(1) Land-disturbing activities as defined in § 10.1-560 of the Code of Virginia that result in the disturbance of 10,000 square feet or greater;

(2) Land-disturbing activities in Tidewater jurisdictions, as defined in § 10.1-2101 of the Code of Virginia, that disturb 2,500 square feet or greater and are located in areas designated as Resource Protection Areas (RPA), Resource Management Areas (RMA) or Intensely Developed Acres (IDA), pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act;

(3) Land-disturbing activities disturbing less than the minimum land disturbance identified in subdivision (1) or (2) above for which a local ordinance requires that an erosion and sediment control plan be developed; and

(4) Land-disturbing activities on individual residential lots or sections of residential developments being developed by different property owners and where the total land disturbance of the residential development is 10,000 square feet or greater. The operator may utilize an agreement in lieu of a plan as provided in § 10.1-563 of the Code of Virginia for these land disturbances.

b. Required plan approval prior to commencement of the land disturbing activity. The operator shall require that land disturbance not begin until an erosion and sediment control plan or an agreement in lieu of a plan as provided in § 10.1-563 is approved by a VESCP authority in accordance with the Erosion and Sediment Control Act (§ 10.1-560 et seq.). The plan shall be:

(1) Compliant with the minimum standards identified in 4VAC-50-30-40 of the Erosion and Sediment Control Regulations; or

(2) Compliant with department-approved annual standards and specifications. Where applicable, the plan shall be consistent with any additional or more stringent, or both, erosion and sediment control requirements established by state regulation or local ordinance.

c. Compliance and enforcement.

(1) The operator shall inspect land-disturbing activities for compliance with an approved erosion and sediment

control plan or agreement in lieu of a plan in accordance with the minimum standards identified in 4VAC50-30-40 or with board-approved standards and specifications.

(2) The operator shall implement an inspection schedule for land-disturbing activities identified in Section II B 4 a as follows:

(a) Upon initial installation of erosion and sediment controls;

(b) At least once during every two-week period;

(c) Within 48 hours of any runoff-producing storm event; and

(d) Upon completion of the project and prior to the release of any applicable performance bonds.

Where an operator establishes an alternative inspection program as provided for in 4VAC50-30-60 B 2, the written schedule shall be implemented in lieu of Section II B 4 c (2) and the written plan shall be included in the MS4 Program Plan.

(3) Operator inspections shall be conducted by personnel who hold an appropriate certificate of competence in accordance with 4VAC-50-50-40. Documentation of certification shall be made available upon request by the VESCP authority or other regulatory agency.

(4) The operator shall promote to the public a mechanism for receipt of complaints regarding regulated land-disturbing activities and shall follow up on any complaints regarding potential water quality and compliance issues.

(5) The operator shall utilize, as appropriate, its legal authority to require compliance with the approved plan where an inspection finds that the approved plan is not being properly implemented.

(6) The operator shall utilize, as appropriate, its legal authority to require changes to an approved plan when an inspection finds that the approved plan is inadequate to effectively control soil erosion, sediment deposition, and runoff to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources.

(7) The operator shall required implementation of appropriate controls to prevent nonstormwater discharges to the MS4, such as wastewater, concrete washout, fuels and oils, and other illicit discharges identified during land-disturbing activity inspections of the MS4. The discharge of nonstormwater discharges other than those identified in 4VAC50-60-1220 through the MS4 is not authorized in this state permit.

(8) The operator may develop and implement a progressive compliance and enforcement strategy provided that such strategy is included in the MS4 Program Plan.

d. Regulatory coordination. The operator shall implement enforceable procedures to require that large construction activities as defined in 4VAC50-60-10 and small construction activities as defined in 4VAC50-60-10, including municipal construction activities, secure necessary state permit authorizations from the department to discharge stormwater.

e. MS4 Program requirements. The operator's MS4 Program Plan shall include:

(1) A description of the legal authorities utilized to ensure compliance with the minimum control measure in Section II related to construction site stormwater runoff control such as ordinances, permits, orders, specific contract language, and interjurisdictional agreements;

(2) Written plan review procedures and all associated documents utilized in plan review;

(3) For the MS4 operators who obtain department-approved standards and specifications, a copy of the current standards and specifications;

(4) Written inspection procedures and all associated documents utilized in plan review including the inspection schedule;

(5) Written procedures for compliance and enforcement, including a progressive compliance and enforcement strategy, where appropriate; and

(6) The roles and responsibilities of each of the operator's departments, divisions, or subdivisions in implementing the minimum control measure in Section II related to construction site stormwater runoff control. If the operator utilizes another entity to implement portions of the MS4 Program Plan, a copy of the written agreement must be retained in the MS4 Program Plan. The description of the roles and responsibilities, including any written agreements with third parties, shall be updated as necessary.

Reference may be made to any listed requirements in this subdivision provided the location of where to find the reference material can be found is included and the reference material is made available to the public upon request.

f. Reporting requirements. The operator shall track regulated land-disturbing activities and submit the following information in all annual reports:

(1) Total number of regulated land-disturbing activities;

(2) Total disturbed acreage;

(3) Total number of inspections performed; and

(4) A summary of the enforcement actions taken.

5. Post-construction stormwater management in new development and development on prior developed lands redevelopment.

a. The operator shall develop, implement, and enforce procedures to address stormwater runoff to the regulated

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small MS4 from new development and redevelopment projects that disturb greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the regulated small MS4. The procedures must ensure that controls are in place that would prevent or minimize water quality and quantity impacts in accordance with this section.

b. The operator shall:

(1) Develop and implement strategies which include a combination of structural and/or nonstructural best management practices (BMPs) appropriate for the operator's community. Where determined appropriate by the operator, the operator shall encourage the use of structural and nonstructural design techniques to create a design that has the goal of maintaining or replicating predevelopment runoff characteristics and site hydrology;

(2) Use an ordinance, regulation, or other mechanism to address post construction runoff from new development and redevelopment projects to ensure compliance with the Virginia Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia) and attendant regulations, and to the extent allowable under state, tribal or local law. Such ordinances and other mechanisms shall be updated as necessary;

(3) Require construction site owners and operators to secure authorization to discharge stormwater from construction activities under a VSMP permit for new development and redevelopment projects that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, stormwater discharges from construction activity disturbing less than one acre must secure authorization to discharge under a VSMP permit if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more;

(4) Require adequate long term operation and maintenance by the owner of structural stormwater management facilities through requiring the owner to develop a recorded inspection schedule and maintenance agreement to the extent allowable under state, tribal or local law or other legal mechanism. The operator shall additionally develop, through the maintenance agreement or other method, a mechanism for enforcement of

maintenance responsibilities by the operator if they are neglected by the owner;

(5) Conduct site inspection and enforcement measures consistent with the Virginia Stormwater Management Act and attendant regulations; and

(6) Track all known permanent stormwater management facilities that discharge to the regulated small MS4 and submit the following information in accordance with Section II E 3:

(a) Type of structural stormwater management facility installed as defined in the Virginia Stormwater Management Handbook;

(b) Geographic location (HUC);

(c) Where applicable, the impaired surface water that the stormwater management facility is discharging into; and

(d) Number of acres treated:

a. Applicable oversight requirements. The operator shall address post-construction stormwater runoff that enters the MS4 from the following land-disturbing activities:

(1) New development and development on prior developed lands that are defined as large construction activities or small construction activities in 4VAC50-60-10;

(2) New development and development on prior developed lands that disturb greater than or equal to 2,500 square feet, but less than one acre, located in a Chesapeake Bay Preservation Area designated by a local government located in Tidewater, Virginia; and

(3) New development and development on prior developed lands where an applicable state regulation or local ordinance has designated a more stringent regulatory size threshold than that identified in subdivision (1) or (2) above.

b. Required design criteria for stormwater runoff controls. The operator shall utilize appropriate legal authority, such as ordinances, permits, orders, specific contract language, and interjurisdictional agreements, to require that activities identified in Section II B 5 a address stormwater runoff in such a manner that stormwater runoff controls are designed and installed:

(1) In accordance with the appropriate water quality and water quantity design criteria as required in Part II (4VAC50-60-40 et seq.) of 4VAC50-60;

(2) In accordance with any additional applicable state or local design criteria required at project initiation; and

(3) Where applicable, in accordance with any department-approved annual standards and specifications.

Upon board approval of a Virginia Stormwater Management Program authority (VSMP authority) as defined in § 10.1-603.2 of the Code of Virginia and reissuance of the Virginia Stormwater Management

Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities, the operator shall require that stormwater management plans are approved by the appropriate VSMP authority prior to land disturbance. The expected implementation date of this requirement is July 1, 2014; as per § 10.1-603.3 M of the Code of Virginia, VSMPS shall become effective July 1, 2014, unless otherwise specified by the board.

c. Inspection, operation, and maintenance verification of stormwater management facilities.

(1) For stormwater management facilities not owned by the MS4 operator, the following conditions apply:

(a) The operator shall require adequate long-term operation and maintenance by the owner of the stormwater management facility by requiring the owner to develop a recorded inspection schedule and maintenance agreement to the extent allowable under state or local law or other legal mechanism;

(b) The operator shall implement a schedule designed to inspect all privately owned stormwater management facilities that discharge into the MS4 at least once every five years to document that maintenance is being conducted in such a manner to ensure long-term operation in accordance with the approved designs.

(c) The operator shall utilize its legal authority for enforcement of maintenance responsibilities by the operator if maintenance is neglected by the owner. The operator may develop and implement a progressive compliance and enforcement strategy provided that the strategy is included in the MS4 Program Plan.

(d) Beginning with the issuance of this state permit, the operator may utilize strategies other than maintenance agreements such as periodic inspections, homeowner outreach and education, and other methods targeted at promoting the long-term maintenance of stormwater control measures that are designed to treat stormwater runoff solely from the individual residential lot. Within 12 month of coverage under this permit, the operator shall develop and implement these alternative strategies.

(2) For stormwater management facilities owned by the MS4 operator, the following conditions apply:

(a) The operator shall provide for adequate long-term operation and maintenance of its stormwater management facilities in accordance with written inspection and maintenance procedures included in the MS4 Program Plan.

(b) The operator shall inspect these stormwater management facilities annually. The operator may choose to implement an alternative schedule to inspect these stormwater management facilities based on facility type and expected maintenance needs provided that the alternative schedule is included in the MS4 Program Plan.

(c) The operator shall conduct maintenance on its stormwater management facilities as necessary.

d. MS4 Program Plan requirements. The operator's MS4 Program Plan shall be updated in accordance with Table 1 in this section to include:

(1) A list of the applicable legal authorities such as ordinance, state and other permits, orders, specific contract language, and interjurisdictional agreements to ensure compliance with the minimum control measure in Section II related to post-construction stormwater management in new development and development on prior developed lands;

(2) Written policies and procedures utilized to ensure that stormwater management facilities are designed and installed in accordance with Section II B 5 b;

(3) Written inspection policies and procedures utilized in conducting inspections;

(4) Written procedures for inspection, compliance and enforcement to ensure maintenance is conducted on private stormwater facilities to ensure long-term operation in accordance with approved design;

(5) Written procedures for inspection and maintenance of operator-owned stormwater management facilities;

(6) The roles and responsibilities of each of the operator's departments, divisions, or subdivisions in implementing the minimum control measure in Section II related to post-construction stormwater management in new development and development on prior developed lands. If the operator utilizes another entity to implement portions of the MS4 Program Plan, a copy of the written agreement must be retained in the MS4 Program Plan. Roles and responsibilities shall be updated as necessary.

e. Stormwater management facility tracking and reporting requirements. The operator shall maintain an updated electronic database of all known operator-owned and privately-owned stormwater management facilities that discharge into the MS4. The database shall include the following:

(1) The stormwater management facility type;

(2) A general description of the facility's location, including the address or latitude and longitude;

(3) The acres treated by the facility, including total acres, as well as the breakdown of pervious and impervious acres;

(4) The date the facility was brought online (MMYYYY). If the date is not known, the operator shall use June 2005 as the date brought online for all previously existing stormwater management facilities;

(5) The sixth order hydrologic unit code (HUC) in which the stormwater management facility is located;

(6) The name of any impaired water segments within each HUC listed on the 2012 § 305(b)/303(d) Water

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(7) Whether the stormwater management facility is operator-owned or privately-owned;

(8) Whether a maintenance agreement exists if the stormwater management facility is privately owned; and

(9) The date of the last inspection.

In addition, the operator shall annually track and report the total number of inspections completed and, when applicable, the number of enforcement actions taken to ensure long-term maintenance.

An electronic database or spreadsheet of all stormwater management facilities brought online during each reporting year shall be submitted with the appropriate annual report. Upon such time as the department provides the operators access to a statewide web-based reporting database, the operator shall utilize such database to complete the pertinent reporting requirements of this state permit.

~~6. Pollution prevention/good housekeeping for municipal operations. Develop and implement an operation and maintenance program consistent with the MS4 Program Plan that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials including those available from EPA, state, tribe, or other organizations, the program shall include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and MS4 maintenance. The operator is encouraged to review the Environmental Protection Agency's (EPA's) National Menu of Stormwater Best Management Practices for ideas and strategies to incorporate into its program. The menu can be accessed at <http://efpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm>.~~

~~The operator shall identify, implement, evaluate and modify, as necessary, BMPs to meet the following pollution prevention/good housekeeping for municipal operations measurable goals:~~

~~a. Operation and maintenance programs including activities, schedules, and inspection procedures shall include provisions and controls to reduce pollutant discharges into the regulated small MS4 and receiving surface waters;~~

~~b. Illicit discharges shall be eliminated from storage yards, fleet or maintenance shops, outdoor storage areas, rest areas, waste transfer stations, and other municipal facilities;~~

~~c. Waste materials shall be disposed of properly;~~

~~d. Materials that are soluble or erodible shall be protected from exposure to precipitation;~~

~~e. Materials, including but not limited to fertilizers and pesticides, that have the potential to pollute receiving surface waters shall be applied according to manufacturer's recommendations; and~~

~~f. For state agencies with lands where nutrients are applied, nutrient management plans shall be developed and implemented in accordance with the requirements of § 10.1-104.4 of the Code of Virginia.~~

~~a. Operations and maintenance activities. The MS4 Program Plan submitted with the registration statement shall be implemented by the operator until updated in accordance with this state permit. In accordance with Table 1 in this section, the operator shall develop and implement written procedures designed to minimize or prevent pollutant discharge from: (i) daily operations such as road, street, and parking lot maintenance; (ii) equipment maintenance; and (iii) the application, storage, transport, and disposal of pesticides, herbicides, and fertilizers. The written procedures shall be utilized, as appropriate, as part of the employee training. At a minimum, the written procedures shall be designed to:~~

~~(1) Prevent illicit discharges;~~

~~(2) Ensure the proper disposal of water materials, including landscape wastes;~~

~~(3) Prevent the discharge of municipal vehicle wash water into the MS4 without authorization under a separate VPDES permit;~~

~~(4) Prevent the discharge of wastewater into the MS4 without authorization under a separate VDPEs permit;~~

~~(5) Require implementation of best management practices when discharging water pumped from utility construction and maintenance activities;~~

~~(6) Minimize the pollutants in stormwater runoff from bulk storage areas (e.g., salt storage, topsoil stockpiles) through the use of best management practices;~~

~~(7) Prevent pollutant discharge into the MS4 from leaking municipal automobiles and equipment; and~~

~~(8) Ensure that the application of materials, including fertilizers and pesticides, is conducted in accordance with the manufacturer's recommendations.~~

~~b. Municipal facility pollution prevention and good housekeeping.~~

~~(1) Within 12 months of state permit coverage, the operator shall identify all municipal high-priority facilities. These high-priority facilities shall include (i) composting facilities, (ii) equipment storage and maintenance facilities, (iii) materials storage yards, (iv) pesticide storage facilities, (v) public works yards, (vi) recycling facilities, (vii) salt storage facilities, (viii) solid waste handling and transfer facilities, and (viii) vehicle storage and maintenance yards.~~



(2) With 12 months of state permit coverage, the operator shall identify which of the municipal high-priority facilities have a high potential of chemicals or other materials to be discharged in stormwater.

(3) The operator shall develop and implement specific stormwater pollution prevention plans for all high-priority facilities identified as having a high potential for the discharge of chemicals and other materials in stormwater. SWPPP development and implementation shall be completed within four years of coverage under this state permit. Facilities covered under a separate VDPES permit shall adhere to the conditions established in that permit and are excluded from this requirement.

(4) Each SWPPP shall include:

(a) A site description that includes a site map identifying all outfalls, direction of flows, existing source controls, and receiving water bodies;

(b) A discussion and checklist of potential pollutants and pollutant sources;

(c) A discussion of all potential nonstormwater discharges;

(d) Written procedures designed to reduce and prevent pollutant discharge;

(e) A description of the applicable training as required in Section II B 6 c;

(f) Procedures to conduct an annual comprehensive site compliance evaluation;

(g) An inspection and maintenance schedule for site specific source controls. The date of each inspection and associated findings and follow-up shall be logged in each SWPPP;

(h) The contents of each SWPPP shall be evaluated and modified as necessary as the result of any release or spill from the high priority facility reported in accordance with Section III G. The date of the release, material spilled and the amount of the release must be listed in each SWPPP; and

(i) A copy of each SWPPP shall be kept at each facility and shall be kept updated and utilized as part of staff training required in Section II B 6 d.

c. Nutrient management.

(1) The operator shall implement nutrient management plans that have been developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia on all lands owned or operated by the MS4 operator where nutrients are applied to a contiguous area greater than one acre. Implementation shall be in accordance with the following schedule:

(a) Within 12 months of state permit coverage, the operator shall identify all applicable lands where nutrients are applied to a contiguous area of more than

one acre. A latitude and longitude shall be provided for each such piece of land and reported in the annual report.

(b) Within 60 months of state permit coverage, the operator shall implement nutrient management plans on all lands where nutrients are applied to a contiguous area of more than one acre. The following measurable goals are established for the implementation of nutrient management plans: (i) within 24 months of permit coverage, not less than 15% of all identified acres will be covered by nutrient management plans; (ii) within 36 months of permit coverage, not less than 40% of all identified acres will be covered by nutrient management plans; and (iii) within 48 months of permit coverage, not less than 75% of all identified acres will be covered by nutrient management plans. The operator shall not fail to meet the measurable goals for two consecutive years.

(c) MS4 operators with lands regulated under § 10.1-104.4 of the Code of Virginia shall continue to implement nutrient management plans in accordance with this statutory requirement.

(2) Operators shall annually track the following:

(a) The total acreage of lands where nutrient management plans are required; and

(b) The acreage of lands upon which nutrient management plans have been implemented.

(3) The operator shall not apply any deicing agent containing urea or other forms of nitrogen or phosphorus to parking lots, roadways, and sidewalks, or other paved surfaces.

d. Training. The operator shall conduct training for employees. The training requirements may be fulfilled, in total or in part, through regional training programs involving two or more MS4 localities provided; however, that each operator shall remain individually liable for its failure to comply with the training requirements in this permit. Training is not required if the topic is not applicable to the operator's operations and therefore does not have applicable relevant personnel provided the lack of applicability is documented in the MS4 Program Plan. The operator shall determine the relevant employees to receive training. The operator shall develop an annual written training plan including a schedule of training events that ensures implementation of the training requirements as follows:

(1) The operator shall provide biennial training to relevant field personnel in the recognition and reporting of illicit discharges.

(2) The operator shall provide biennial training to relevant employees in good housekeeping and pollution prevention practices that are to be employed during road, street, and parking lot maintenance.

(3) The operator shall provide biennial training to relevant employees in good housekeeping and pollution

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prevention practices that are to be employed in and around maintenance and public works facilities.

(4) The operator shall ensure that employees, and require that contractors, applying pesticides and herbicides are properly trained or certified in accordance with the Virginia Pesticide Control Act (§ 3.1-249.27 et seq. of the Code of Virginia).

(5) The operator shall ensure that employees and contractors employed as plan reviewers, inspectors, program administrators, and construction site operators obtain the appropriate certifications as required under the Virginia Erosion and Sediment Control Law and its attendant regulations.

(6) The operator shall ensure that the relevant employees obtain the appropriate certifications as required under the Virginia Erosion and Sediment Control Law and its attendant regulations.

(7) The operators shall provide biennial training to appropriate employees in good housekeeping and pollution prevention practices that are to be employed in and around recreational facilities.

(8) The appropriate emergency response employees shall have training in spill responses. A summary of the training or certification program provided to emergency response employees shall be included in the first annual report.

(9) The operator shall keep documentation on each training event including the training date, the number of employees attending the training, and the objective of the training event for a period of three years after each training event.

e. The operator shall require that municipal contractors use appropriate control measures and procedures for stormwater discharges to the MS4 system. Oversight procedures shall be described in the MS4 Program Plan.

f. In accordance with the schedule of development in Table 1 of this section, the MS4 Program Plan shall contain:

(1) The written protocols being used to satisfy the daily operations and maintenance requirements;

(2) A list of all municipal high-priority facilities that denotes those facilities that have a high potential of chemicals or other materials to be discharged in stormwater and a schedule that identifies the year in which an individual SWPPP will be developed for those facilities required to have SWPPP. Upon completion of a SWPPP, the SWPPP shall be part of the MS4 Program Plan. The MS4 Program Plan shall include the location in which the individual SWPPP is located;

(3) A list of lands where nutrients are applied to a contiguous area of more than one acre. Upon completion of a nutrient management plan, the nutrient management plan shall be part of the MS4 Program Plan. The MS4

Program Plan shall include the location in which the individual nutrient management plan is located; and

(4) The annual written training plan for the next reporting cycle.

g. Reporting requirements.

(1) A summary report on the development and implementation of the daily operational procedures;

(2) A summary report on the development and implementation of the required SWPPPs;

(3) A summary report on the development and implementation of the nutrient management plans that includes:

(a) The total acreage of lands where nutrient management plans are required; and

(b) The acreage of lands upon which nutrient management plans have been implemented; and

(4) A summary report on the required training, including a list of training events, the training date, the number of employees attending training and the objective of the training.

C. If an existing program requires the implementation of one or more of the minimum control measures of Section II B, the operator, with the approval of the board, may follow that program's requirements rather than the requirements of Section II B. A program that may be considered includes, but is not limited to, a local, state or tribal program that imposes, at a minimum, the relevant requirements of Section II B.

The operator's MS4 Program Plan shall identify and fully describe any program that will be used to satisfy one or more of the minimum control measures of Section II B.

If the program the operator is using requires the approval of a third party, the program must be fully approved by the third party, or the operator must be working towards getting full approval. Documentation of the program's approval status, or the progress towards achieving full approval, must be included in the annual report required by Section II E 3. The operator remains responsible for compliance with the permit requirements if the other entity fails to implement the control measures (or component thereof.)

D. The operator may rely on another entity to satisfy the VSMP permit ~~obligations~~ requirements to implement a minimum control measure if: (i) the other entity, in fact, implements the control measure; (ii) the particular control measure, or component thereof, is at least as stringent as the corresponding VSMP permit requirement; and (iii) the other entity agrees to implement the control measure on behalf of the operator. The agreement between the parties must be documented in writing and retained by the operator with the MS4 Program Plan for the duration of this permit.

In the annual reports that must be submitted under Section II E 3, the operator must specify that another entity is being

relied on to satisfy some of the permit obligations requirements.

If the operator is relying on another governmental entity regulated under 4VAC50-60-380 to satisfy all of the permit obligations, including the obligation to file periodic reports required by Section II E 3, the operator must note that fact in the registration statement, but is not required to file the periodic reports.

The operator remains responsible for compliance with the permit obligations requirements if the other entity fails to implement the control measure (or component thereof).

E. Evaluation and assessment.

1. MS4 Program Evaluation. The operator must annually evaluate:

~~a. The operator must annually evaluate:~~

- ~~(1) a. Program compliance;~~
- ~~(2) b. The appropriateness of the identified BMPs (as part of this evaluation, the operator shall evaluate the effectiveness of BMPs in addressing discharges into waters that are identified as impaired in the 2006 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report); and~~
- ~~(3) c. Progress towards achieving the identified measurable goals.~~

~~b. The operator must evaluate its MS4 Program once during the permit cycle using the "Municipal Stormwater Program Evaluation Guidance," Environmental Protection Agency EPA 833-R-07-003. Such information shall be utilized when reapplying for permit coverage. Results of this evaluation shall be kept on file and made available during audits and inspections.~~

2. Recordkeeping. The operator must keep records required by the NPDES permit for at least three years. These records must be submitted to the NPDES permitting authority department only upon specific request. The operator must make the records, including a description of the stormwater management program, available to the public at reasonable times during regular business hours.

3. Annual reports. The operator must submit an annual report for the reporting period of July 1 through June 30 to the department by the following October 1. The reports shall include:

- a. Background Information.
  - (1) The name and permit number of the program submitting the annual report;
  - (2) The annual report permit year;
  - (3) Modifications to any operator's department's roles and responsibilities;
  - (4) Number of new MS4 outfalls and associated acreage by HUC added during the permit year; and
  - (5) Signed certification.

b. The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures;

c. Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

d. A summary of the stormwater activities the operator plans to undertake during the next reporting cycle;

e. A change in any identified best management practices or measurable goals for any of the minimum control measures including steps to be taken to address any deficiencies;

f. Notice that the operator is relying on another government entity to satisfy some of the permit obligations (if applicable);

g. The approval status of any programs pursuant to Section II C (if appropriate), or the progress towards achieving full approval of these programs; and

h. Information required pursuant to Section I B 9; for any applicable TMDL special condition.

~~i. The number of illicit discharges identified and the narrative on how they were controlled or eliminated pursuant to Section II B 3 f;~~

~~j. Regulated land disturbing activities data tracked under Section II 4 e;~~

~~k. All known permanent stormwater management facility data tracked under Section II B 5 b (6) submitted in a database format to be prescribed by the department. Upon filing of this list, subsequent reports shall only include those new stormwater management facilities that have been brought online;~~

~~l. A list of any new or terminated signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures; and~~

~~m. Copies of any written comments received during a public comment period regarding the MS4 Program Plan or any modifications.~~

F. Program Plan modifications. The board may require modifications to the MS4 Program Plan as needed to address adverse impacts on receiving surface water quality caused, or contributed to, by discharges from the regulated small MS4. Modifications required by the board shall be made in writing and set forth the time schedule to develop and implement the modification. The operator may propose alternative program modifications and time schedules to meet the objective of the required modification. The board retains the authority to require any modifications it determines are necessary.

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1. Modifications requested by the operator. Modifications to the MS4 Program are expected throughout the life of this state permit as part of the iterative process to reduce the pollutant loadings and to protect water quality. As such, modifications made in accordance with this state permit as a result of the iterative process do not require modification of this permit unless the department determines that the changes met the criteria referenced in 4VAC50-60-630 or 4VAC50-60-650. Updates and modifications to the MS4 Program may be made during the life of this state permit in accordance with the following procedures:

a. Adding (but not eliminating or replacing) components, controls, or requirements to the MS4 Program may be made by the operator at any time. Additions shall be reported as part of the annual report.

b. Updates and modifications to specific standards and specifications, schedules, operating procedures, ordinances, manuals, checklists, and other documents routinely evaluated and modified are permitted under this state permit provided that the updates and modifications are done in a manner that (i) is consistent with the conditions of this state permit, (ii) follow any public notice and participation requirements established in this state permit, and (iii) are documented in the annual report.

c. Replacing, or eliminating without replacement, any ineffective or infeasible strategies, policies, and BMPs specifically identified in this permit with alternate strategies, policies, and BMPs may be requested at any time. Such requests must include the following:

(1) An analysis of how or why the BMPs, strategies, or policies are ineffective or infeasible, including cost prohibitive;

(2) Expectations on the effectiveness of the replacement BMPs, strategies, or policies;

(3) An analysis of how the replacement BMPs are expected to achieve the goals of the BMP's to be replaced;

(4) A schedule for implementing the replacement BMPs, strategies, and policies;

(5) An analysis of how the replacement strategies and policies are expected to improve the operator's ability to meet the goals of the strategies and policies being replaced; and

(6) Requests or notifications must be made in writing to the department and signed in accordance with 4VAC-50-60-370.

d. The operator follows the public involvement requirements identified in Section II B 2 (a).

2. MS4 Program updates requested by the department. In a manner and following procedures in accordance with the Virginia Administrative Process Act, the Virginia

Stormwater Management regulations, and other applicable state law and regulations, the department may request changes to the MS4 Program to assure compliance with the statutory requirements of the Virginia Stormwater Management Act and its attendant regulations to:

a. Address impacts on receiving water quality caused by discharges from the MS4;

b. Include more stringent requirements necessary to comply with new state or federal laws or regulations; or

c. Include such other conditions necessary to comply with state or federal law or regulation.

Proposed changes requested by the department shall be made in writing and set forth the basis for and objective of the modification as well as the proposed time schedule for the operator to develop and implement the modification. The operator may propose alternative program modifications or time schedules to meet the objective of the requested modification, but any such modifications are at the discretion of the department.

## SECTION III

### CONDITIONS APPLICABLE TO ALL VSMP PERMITS

#### A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 (2001) or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

#### B. Records.

1. Monitoring records/reports shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample,

measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the board.

### C. Reporting monitoring results.

1. The operator shall submit the results of the monitoring required by this permit with the annual report unless another reporting schedule is specified elsewhere in this permit.
2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR); on forms provided, approved or specified by the department; or in any format provided the date, location, parameter, method, and result of the monitoring activity are included.
3. If the operator monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 (2001) or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.
4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The operator shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of surface waters, or such other information as may be necessary to accomplish the purposes of the CWA and Virginia Stormwater Management Act. The operator shall also furnish to the department upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized stormwater discharges. Pursuant to § 10.1-603.2:2 A of the Code of Virginia, except in compliance with a permit issued by the board, it shall be unlawful to cause a stormwater discharge from a MS4.

G. Reports of unauthorized discharges. Any operator of a ~~regulated~~ small MS4 who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or

oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) or 40 CFR Part 302 (2002) that occurs during a 24-hour period into or upon surface waters; or who discharges or causes or allows a discharge that may reasonably be expected to enter surface waters, shall notify the Department of Environmental Quality of the discharge immediately upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department of Environmental Quality and the Department of Conservation and Recreation, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the Department of Environmental Quality and the Department of Conservation and Recreation under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a "bypass" or "upset," as defined herein, should occur from a facility and the discharge enters or could be expected to enter surface waters, the operator shall promptly notify, in no case later than within 24 hours, the Department of Environmental Quality and the Department of Conservation and Recreation by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The operator shall reduce the report to writing and shall submit it to the Department of Environmental Quality and the Department of Conservation and Recreation within five days of discovery of the discharge in accordance with Section III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the facilities; and
4. Flooding or other acts of nature.

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I. Reports of noncompliance. The operator shall report any noncompliance which may adversely affect surface waters or may endanger public health.

1. An oral report shall be provided within 24 hours to the Department of Environmental Quality and the Department of Conservation and Recreation from the time the operator becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:

- a. Any unanticipated bypass; and
- b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board or its designee may waive the written report on a case-by-case basis for reports of noncompliance under Section III I if the oral report has been received within 24 hours and no adverse impact on surface waters has been reported.

3. The operator shall report all instances of noncompliance not reported under Sections III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Section III I 2.

NOTE: The immediate (within 24 hours) reports required to be provided to the Department of Environmental Quality in Sections III G, H and I may be made to the appropriate Department of Environmental Quality's Regional Office Pollution Response Program as found at <http://www.deq.virginia.gov/prep/homepage.html#>.

Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the operator becomes aware of a failure to submit any relevant facts, or submittal of incorrect information in any report to the department or the Department of Environmental Quality, it shall promptly submit such facts or correct information.

J. Notice of planned changes.

1. The operator shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The operator plans an alteration or addition to any building, structure, facility, or installation from which

there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The operator plans alteration or addition that would significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this permit; or

2. The operator shall give advance notice to the department of any planned changes in the permitted facility or activity; which may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a public agency includes:

(1) The chief executive officer of the agency, or

(2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Section III K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described in Section III K 1;
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the operator. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and
- c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Section III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Section III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Sections III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The operator shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Virginia Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the Virginia Stormwater Management Act but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The operator shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the

regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the operator wishes to continue an activity regulated by this permit after the expiration date of this permit, the operator shall submit a new registration statement at least 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Section III U), and "upset" (Section III V) nothing in this permit shall be construed to relieve the operator from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law or § 311 of the Clean Water Act.

Q. Proper operation and maintenance. The operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances), which are installed or used by the operator to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by the operator only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering surface waters.

S. Duty to mitigate. The operator shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

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T. Need to halt or reduce activity not a defense. It shall not be a defense for an operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

## U. Bypass.

1. "Bypass," as defined in 4VAC50-60-10, means the intentional diversion of waste streams from any portion of a treatment facility. The operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Sections III U 2 and U 3.

### 2. Notice.

a. Anticipated bypass. If the operator knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The operator shall submit notice of an unanticipated bypass as required in Section III I.

### 3. Prohibition of bypass.

a. Bypass is prohibited, and the board or its designee may take enforcement action against an operator for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The operator submitted notices as required under Section III U 2.

b. The board or its designee may approve an anticipated bypass, after considering its adverse effects, if the board or its designee determines that it will meet the three conditions listed above in Section III U 3 a.

## V. Upset.

1. An upset, as defined in 4VAC50-60-10, constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Section III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment

facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

3. An operator who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the operator can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The operator submitted notice of the upset as required in Section III I; and

d. The operator complied with any remedial measures required under Section III S.

4. In any enforcement proceeding the operator seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The operator shall allow the department as the board's designee, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the operator's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the Virginia Stormwater Management Act, any substances or parameters at any location.

For purposes of this subsection, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the operator for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

## Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Section III Y 2, a permit may be transferred by the operator to a new



owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new operator and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.

2. As an alternative to transfers under Section III Y 1, this permit may be automatically transferred to a new operator if:

- a. The current operator notifies the department at least two days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new operators containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Section III Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

**NOTICE:** The 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 (4VAC50-60)**

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

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

[Department of Conservation and Recreation MS4 Operator Permit Fee Form, DCR 199-145 \(10/09\) \(09/12\).](#)

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

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

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

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

[VSMP General Permit Registration Statement for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems \(VAR04\) and Instructions, DCR 199-148 \(09/12\).](#)

**DOCUMENTS INCORPORATED BY REFERENCE (4VAC50-60)**

~~Illicit Discharge Detection and Elimination - A Guidance Manual for Program Development and Technical Assessments, EPA Cooperative Agreement X 82907801 0, October 2004, by Center for Watershed Protection and Robert Pitt, University of Alabama, available on the Internet at <http://cfpub.epa.gov/npdes/stormwater/idde.cfm>.~~

~~Getting in Step - A Guide for Conducting Watershed Outreach Campaigns, EPA 841-B-03-002, December 2003, U.S. Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds, available on the Internet at <http://www.epa.gov/owow/watershed/outreach/documents/getinstep.pdf>, or may be ordered from National Service Center for Environmental Publications, telephone 1-800-490-9198.~~

~~Municipal Stormwater Program Evaluation Guidance, EPA-833-R-07-003, January 2007 (field test version), U.S. Environmental Protection Agency, Office of Wastewater Management, available on the Internet at [http://cfpub.epa.gov/npdes/docs.cfm?program\\_id=6&view=alprog&sort=name#ms4\\_guidance](http://cfpub.epa.gov/npdes/docs.cfm?program_id=6&view=alprog&sort=name#ms4_guidance), or may be ordered from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone 1-800-553-6847 or (703) 605-6000.~~

[Virginia Runoff Reduction Method: Instructions & Documentation, March 28, 2011.](#)

VA.R. Doc. No. R12-3136; Filed October 16, 2012, 3:43 p.m.

**TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS**

**CRIMINAL JUSTICE SERVICES BOARD**

**Fast-Track Regulation**

**Title of Regulation: 6VAC20-30. Rules Relating to Compulsory In-Service Training Standards for Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Server Officers and Officers of the Department of Corrections, Division of Operations (amending 6VAC20-30-80).**

**Statutory Authority:** § 9.1-102 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

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# Regulations

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Public Comment Deadline: December 5, 2012.

Effective Date: December 20, 2012.

Agency Contact: Stephanie Morton, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410, or email stephanie.morton@dcjs.virginia.gov.

Basis: Section 9.1-102 of the Code of Virginia authorizes the Department of Criminal Justice Services to promulgate regulations on in-service training.

Purpose: The courses of fire for annual requalification of all criminal justice personnel who are required to recertify are periodically reviewed and need to be updated. Approval for all other changes to training standards is authorized by the Committee on Training of the Criminal Justice Services Board. The proposed amendments make this regulation consistent with the other regulations that impact the training of criminal justice personnel statewide.

Rationale for Using Fast-Track Process: The proposed changes are administrative and clean up the regulation. The specifics of the courses of fire do not need to be listed within the regulation. These are reviewed periodically and if changes to these are needed, such changes are more properly reviewed and approved by the Committee on Training of the Criminal Justice Services Board.

Substance: The regulation is amended to (i) reflect changes already made to the courses of fire for entry-level training and make this consistent in the in-service rules; (ii) remove the specifics regarding rounds and distance since these are contained in the actual course of fire; and (iii) reflect the name of the approved course of fire and remove the specifics on targets, rounds, scoring, and instructions since these are contained in the actual course of fire.

Issues: The advantage of the amendments for criminal justice personnel is to have courses of fire that can be reviewed more frequently and approved by a knowledgeable body with oversight responsibility for criminal justice training without having to go through an extensive and time-consuming regulatory process for needed changes in training. There are no disadvantages since the oversight committee is composed of knowledgeable and experienced persons appointed by the Governor to serve through the Criminal Justice Services Board.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Criminal Justice Services Board proposes to 1) authorize the Committee on Training of the Board to approve the courses of fire used by officers for annual recertification, 2) remove the specific number of rounds from the rules, and 3) remove the specifics listed in the in-service requirement for officers of the Department of Corrections.

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

Estimated Economic Impact. The Criminal Justice Services Board (Board) proposes to 1) authorize the Committee on Training of the Board to approve the courses of fire used by officers for annual recertification, 2) remove the specific number of rounds from the rules, and 3) remove the specifics listed in the in-service requirement for officers of the Department of Corrections.

A separate regulatory action effective January 2010<sup>1</sup> moved the authority to set performance outcomes for entry level training to the Committee on Training so that they will be responsible for setting and amending all parts of the training standards. This proposed change makes the language in this part of the regulation consistent with entry level training rules currently in effect. This change will likely streamline the process of considering recertification standards so that new rules take less time to consider.

The proposed changes also remove the specifics (rounds, times, hands, targets) of in-service firearms training courses from regulations. According to the Department of Criminal Justice Services, the Committee on Training is made up of experts in firearms training who qualify to instruct firearms courses and who have the experience and qualifications to supervise such training knowing what outcomes are needed. They are also members of the Board. The specifics of the courses will be included in curriculum for the courses and will be available for interested parties. This change will allow the Committee on Training to change the specifics of the courses without having to go through the regulatory review process. Given that the Committee on Training is made up of the members of the Board and they are qualified to establish course specifics, regulated entities will likely benefit from the proposed changes.

Businesses and Entities Affected. The proposed regulations establish in-service training rules for law-enforcement officers, jailors or custodial officers, courtroom security officers, process service officers, and Department of Corrections officers. There are approximately 400 law enforcement agencies and training entities in the Commonwealth and approximately 35,382 officers annually recertify for firearms.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs due to this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs or other adverse effects due to this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

<sup>1</sup> See proposed changes to 6 VAC 20-20

Agency's Response to Economic Impact Analysis: The Department of Criminal Justice Services concurs generally with the economic impact analysis (EIA) of the Department of Planning and Budget on the proposed Regulations Relating to Compulsory In-Service Training Standards for Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Service Officers and Officers of the Department of Corrections, Division of Operations.

**Summary:**

*The amendments (i) authorize the Committee on Training of the Board of Corrections to approve the courses of fire used by officers for annual recertification and (ii) remove the specifics, such as number of rounds, from the in-service firearms training courses.*

**6VAC20-30-80. Firearms training.**

Every criminal justice officer required to carry a firearm in the performance of duty shall qualify annually using the

applicable firearms course ~~set forth below~~ approved by the Committee on Training of the board. Annual range qualification shall include a review of issues/policy relating to weapons safety, nomenclature, maintenance and use of force. With prior approval of the director, a reasonable modification of the firearms course may be approved to accommodate qualification on indoor ranges. No minimum number of hours is required.

A. Law-enforcement officers, jailors or custodial officers, courtroom security officers and process service officers shall qualify annually with a minimum passing score of 70% on one of the following courses:

1. Virginia Modified Double Action Course for Semi-Automatic Pistols and Revolvers, 60 rounds, 7, 15, 25 yards shooting.
2. ~~Virginia Modified Double Action Course for Semi-automatic Pistols, 60 rounds, 7, 15, 25 yards shooting.~~
3. 2. Virginia Modified Combat Course I, 60 rounds, 25, 15, 7 yards shooting.
4. 3. Virginia Modified Combat Course II, 60 rounds, 25, 15, 7, 5, 3 yards shooting.
5. 4. Virginia Qualification Course I, 50 rounds, 25 to 5 yards shooting.
6. 5. Virginia Qualification Course II, 60 rounds, 3 to 25 yards shooting.
7. 6. Virginia Tactical Qualification Course I, 50 rounds, 5 or 7, 25 yards shooting.
8. 7. Virginia Tactical Qualification Course II, 36 rounds, 3-25 yards shooting.

B. Officers of the Department of Corrections, Division of Operations.

4. Handgun.

~~a. Department of Corrections Virginia Modified Double Action Combat Course.~~

~~Target Silhouette~~

~~60 rounds~~

~~Double action only~~

~~Minimum qualifying score 70% (points per hit on silhouette minimum 210 points out of a possible 300 points)~~

~~7 yards two handed crouch 6 rounds (one on whistle)~~

~~7 yards two handed crouch 6 rounds (two on whistle)~~

~~7 yards two handed crouch 12 rounds (30 seconds from whistle)~~

~~15 yards two handed point shoulder 6 rounds (one on whistle)~~

~~15 yards two handed point shoulder 6 rounds (two on whistle)~~

~~15 yards two handed point shoulder 12 rounds (30 seconds from whistle)~~

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# Regulations

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~~25 yards two handed point shoulder 6 rounds (10 seconds/right hand)~~

~~25 yards two handed point shoulder 6 rounds (10 seconds/left hand)~~

C. Law-enforcement officers, jailors or custodial officers, courtroom security officers, civil process officers and officers of the Department of Corrections, Division of Operations.

4. Special weapons.

a. All agencies whose personnel possess, or have available for immediate use, shotguns or other similar special weapons, shall design an appropriate qualification weapons program and require all applicable personnel to complete annually.

b. The course, number of rounds to be fired and qualification score shall be determined by the agency or approved training school. Documentation of such qualification programs shall be available for inspection by the director or staff.

VA.R. Doc. No. R13-2733; Filed October 9, 2012, 8:39 a.m.

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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Forms

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

**Title of Regulation:** **8VAC20-70. Regulations Governing Pupil Transportation.**

**Agency Contact:** June Eanes, Director, Support Services, Department of Education, James Monroe Building, 101 N. 14th Street, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2037, email [june.eanes@doe.virginia.gov](mailto:june.eanes@doe.virginia.gov).

FORMS (8VAC20-70)

~~[School Bus Driver's Application for Physician's Certificate \(rev. 4/08\).](#)~~

[School Bus Driver's Application for Physician's Certificate \(rev. 9/12\).](#)

VA.R. Doc. No. R13-3432; Filed October 3, 2012, 3:32 p.m.

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

### Final Regulation

**REGISTRAR'S NOTICE:** The State Council of Higher Education for Virginia is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

**Title of Regulation:** **8VAC40-150. Virginia Two-Year College Transfer Grant Program Regulations (amending 8VAC40-150-10).**

**Statutory Authority:** § 23-38.10:9 of the Code of Virginia.

**Effective Date:** October 15, 2012.

**Agency Contact:** Linda H. Woodley, Regulatory Coordinator, State Council of Higher Education for Virginia, James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 371-2938, FAX (804) 786-2027, or email [lindawoodley@schev.edu](mailto:lindawoodley@schev.edu).

**Summary:**

*The amendment conforms the definition of "financial need" to Item 144 H 2 of Chapter 3 of the 2012 Acts of Assembly, Special Session I, by setting the maximum expected family contribution at \$9,000 for students entering a participating institution as a two-year transfer student for the first time in the fall 2012 academic year and thereafter.*

**8VAC40-150-10. Definitions.**

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

"Academic year" means the enrollment period that normally extends from late August to May or early June and that is normally comprised of two semesters (fall and spring) or three quarters (fall, winter, and spring).

"Accredited institution" means any institution approved to confer degrees pursuant to Chapter 21.1 (§ 23-276.1 et seq.) of Title 23 of the Code of Virginia."

"Approved course of study" means a curriculum of courses at the undergraduate level leading to a first bachelor's degree. Programs in the 39.xxxx series, as classified in the National Center for Education Statistics' Classification of Instructional Programs (CIP), provide religious training or theological education and are not approved courses of study.

"Award" means a grant from state funds appropriated for the Virginia Two-Year College Transfer Grant Program (CTG).

"Award year" means the 12-month enrollment period during which a college or university holds classes, normally comprised of (i) one fall semester, one spring semester, and a summer session or (ii) one fall quarter, one winter quarter, one spring quarter, and a summer session. For purposes of awarding funds for this program, the summer will be treated as a trailing term.

"Cost of attendance" means the sum of tuition, required fees, room, board, books and supplies, and other education-related expenses as determined by an institution for purposes of awarding federal Title IV student financial assistance.

"Council" means the State Council of Higher Education for Virginia or its designated staff.

"Domiciliary resident of Virginia" means a student who is determined by a participating institution to meet the eligibility requirements specified by § 23-7.4 of the Code of Virginia.

"Expected family contribution" or "EFC" means the amount a student and the student's family is expected to contribute toward the cost of college attendance. The EFC is calculated using information provided on the Free Application for Federal Student Aid. The institution may exercise professional judgment to adjust the student's EFC, as permitted under federal law, based on factors that affect the family's ability to pay.

"Financial need" means a maximum expected family contribution of \$8,000 based on a standard nine-month academic year. Beginning with students who are entering a participating institution as a two-year transfer student for the first time in the fall 2012 academic year, and who otherwise meet the eligibility criteria of § 23-38.10:10 of the Code of Virginia, the maximum EFC is raised to \$9,000.

"First-time entering freshman" means a student attending any institution for the first time at the undergraduate level. Includes students enrolled in the fall term who attended college for the first time in the immediate prior summer term. Also includes students who entered with advanced standing (college credits earned before high school graduation).

"Free Application for Federal Student Aid" or "FAFSA" means the needs analysis form provided by the United States Department of Education, which is completed annually by students applying for federal Title IV student financial assistance and need-based financial aid programs sponsored by the Commonwealth of Virginia and that results in the calculation of the expected family contribution.

"Full-time study" means enrollment for at least 12 credit hours per semester or its equivalent in quarter hours at the undergraduate level. The total hours counted will not include courses taken for audit, but may include required developmental or remedial courses and other elective courses that normally are not counted toward a degree at the participating institution.

"Participating institution of higher education" or "participating institution" means a four-year public or private nonprofit accredited institution within the Commonwealth of Virginia whose primary purpose is to provide undergraduate collegiate education and not to provide religious training or theological education.

"Program" means the Virginia Two-Year College Transfer Grant.

"Quarter" means a division of an academic year approximately 10 to 11 weeks in length from the first day of classes through the last day of exams for the fall, winter, and spring enrollment periods.

"Satisfactory academic progress" means acceptable progress towards completion of an approved course of study as defined by the institution for the purposes of eligibility under § 668 of the Federal Compilation of Student Financial Aid Regulations.

"Semester" means a division of an academic year approximately 15 to 16 weeks in length from the first day of classes through the last day of exams for the fall and spring enrollment periods.

"Student" means an undergraduate student who is entitled to in-state tuition charges pursuant to § 23-7.4 of the Code of Virginia.

"Summer session" means a division of an award year consisting of one or more summer sessions normally extending from late May to August, exclusive of the participating institution's fall, winter, and spring terms.

"Term" means the fall semester or quarter, winter quarter, spring semester or quarter, or summer session.

V.A.R. Doc. No. R13-3421; Filed October 11, 2012, 1:05 p.m.



**TITLE 9. ENVIRONMENT**

**STATE WATER CONTROL BOARD**

**Proposed Regulation**

**REGISTRAR'S NOTICE:** The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

**Title of Regulation: 9VAC25-193. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concrete Products Facilities (amending 9VAC25-193-10 through 9VAC25-193-70; adding 9VAC25-193-15).**

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# Regulations

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

Public Hearing Information:

December 5, 2012 - 10 a.m. - Department of Environmental Quality, Piedmont Regional Office, Training Room, 4949 Cox Road, Glen Allen, VA

Public Comment Deadline: January 11, 2013.

Agency Contact: Eleanore M. Daub, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4032, TTY (804) 698-4021, or email [eleanor.daub@deq.virginia.gov](mailto:eleanor.daub@deq.virginia.gov).

Summary:

*The proposed regulatory action reissues the existing Virginia Pollutant Discharge Elimination System (VPDES) general permit that expires on September 30, 2013. The general permit contains limitations and monitoring requirements for point source discharge of treated wastewaters from concrete products facilities to surface waters.*

*Substantive proposed changes (i) add two reasons authorization to discharge cannot be granted (if the antidegradation policy is not met or if the discharge is not consistent with a total maximum daily load (TMDL)), (ii) add language to allow for administrative continuances of coverage, (iii) add approval of representative outfalls and closure plans for portable plants as part of the registration, (iv) reduce monitoring requirements from monthly to quarterly, (v) clarify that total petroleum hydrocarbon monitoring was only necessary when vehicle degreasing was occurring on site, (vi) add benchmark monitoring concentrations for storm water, and (vii) remove total petroleum hydrocarbon and iron monitoring from the storm water limits page.*

*In the special conditions, the proposed changes clarify what information is required for temporary and long-term facility closure plans and add (i) that no oil sheen shall be present and waste water should be reused or recycled when feasible, (ii) that settling basins must be lined if they are expanded, (iv) quantification levels of total suspended solids and total petroleum hydrocarbons, (v) that discharges to TMDL waters must implement measures and controls consistent with the TMDL, (vi) an allowance for deleting or adding outfalls, (vii) procedures for termination of coverage, (viii) instructions for allowing temporary closures for inactive and unstaffed sites, (ix) that discharges must meet water quality standards and (x) that coverage under the permit did not relieve an owner of compliance with any other federal, state, or local statute, ordinance, or regulation.*

*This action revises Part II (Storm Water Management) to make it more consistent with the 2009 Industrial Storm*

*Water General Permit (9VAC25-151) conditions. Changes make this general permit similar to other general permits issued recently and respond to staff and technical advisory committee members' requests to clarify and update permit limits and conditions.*

## **9VAC25-193-10. Definitions.**

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

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

"Department" or "DEQ" means the Virginia Department of Environmental Quality.

"Industrial activity" means facilities or those portions of a facility where the primary purpose is classified as:

1. Standard Industrial Classification (SIC) Code 3271—Concrete Block and Brick (Office of Management and Budget (OMB) SIC Manual, 1987);
2. SIC Code 3272—Concrete Products, Except Block and Brick; or
3. SIC Code 3273—Ready-Mixed Concrete, including both permanent and portable plants.

These facilities are collectively defined as "Concrete Products Facilities".

"Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the Clean Water Act (CWA) (33 USC § 1251 et seq.) that discharges to surface waters of the state; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW).

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

"Significant spills" includes, but is not limited to, releases of oil or hazardous substances in excess of reportable quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or § 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.) (see 40 CFR 302.4).

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

"Vehicle or equipment degreasing" means the washing or steam cleaning of engines or other drive components of a vehicle or piece of equipment in which the purpose is to degrease and clean petroleum products from the equipment for maintenance purposes. Removing sediment and concrete residue is not considered vehicle or equipment degreasing.

**9VAC25-193-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted herein and incorporated by reference, that regulation shall be as it exists and has been published as a final regulation in the Federal Register prior to July 1, 2013, with the effective date as published in the Federal Register notice or October 1, 2013, whichever is later.

**9VAC25-193-20. Purpose.**

This general permit regulation governs the discharge of process waste water, noncontact cooling water, and storm water associated with industrial activity from concrete products facilities classified as Standard Industrial Classification Codes 3271, 3272 and 3273, provided that the discharge is through a point source to surface waters.

**9VAC25-193-30. Delegation of authority.**

The director of the Department of Environmental Quality, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

**9VAC25-193-40. Effective date of the permit.**

This general VPDES permit ~~became~~ will become effective on ~~October 1, 2008~~ October 1, 2013, and it will expire on ~~September 30, 2013~~ September 30, 2018. ~~With respect to a particular facility, this~~ This general permit ~~shall become~~ is effective for any covered owner upon ~~the facility owner's~~ compliance with all the provisions of 9VAC25-193-50 ~~and the receipt of a copy of the general VPDES permit.~~

**9VAC25-193-50. Authorization to discharge.**

A. Any owner governed by this general permit is hereby authorized to discharge process water, storm water associated with this industrial activity, cooling water, or commingled discharges of these types to surface waters of the Commonwealth of Virginia provided that ~~the owner has filed with the department the registration statement described in 9VAC25-193-60, has filed the required permit fee, has complied or will comply with the effluent limitations and other requirements of 9VAC25-193-70, and has complied with the following conditions:~~

1. The owner submits a registration statement in accordance with 9VAC25-193-60 and that registration statement is accepted by the board;
2. The owner submits the required permit fee;
3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-193-70; and
4. The board has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

B. The board will notify an owner that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The owner ~~shall not have been~~ is required to obtain an individual permit ~~as may be required~~ in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation; ~~and~~
2. The owner ~~shall not be authorized by this general permit~~ is proposing to discharge to state waters specifically named in other board regulations or policies which that prohibit such discharges;
3. The discharge violates or would violate the antidegradation policy in the Water Quality Standards at 9VAC25-260-30; or
4. The discharge is not consistent with the assumptions and requirements of an approved TMDL.

~~B. Receipt of~~ C. Compliance with this general permit constitutes compliance with the federal Clean Water Act (33 USC § 1251 et seq.), the State Water Control Law, and applicable regulations under either with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

**D. Continuation of permit coverage.**

1. Any owner that was authorized to discharge under the concrete products general permit issued in 2008 and that submits a complete registration statement on or before October 1, 2013, is authorized to continue to discharge under the terms of the 2008 general permit until such time as the board either:

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a. Issues coverage to the owner under this general permit;  
or

b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the general permit that has been continued;

b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the continued general permit or be subject to enforcement action for discharging without a permit;

c. Issue an individual permit with appropriate conditions;  
or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

## **9VAC25-193-60. Registration statement.**

A. Deadlines for submitting registration statement. The owner shall file a complete General VPDES Permit registration statement which shall serve as a notice of intent to be covered under the general VPDES permit for concrete products facilities. Any owner proposing a new discharge shall file a complete registration statement at least 30 days prior to the date planned for commencing operation of the concrete products facility. Any owner of an existing concrete products facility covered by an individual VPDES permit who is proposing to be covered by this general permit shall file a complete registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing concrete products facility not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file a complete registration statement. The owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for concrete products facilities.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement at least 30 days prior to the date planned for commencement of the new discharge.

### 2. Existing facilities.

a. Any owner covered by an individual VPDES permit who is proposing to be covered by this general permit shall submit a complete registration statement at least 210 days prior to the expiration date of the individual VPDES permit.

b. Any owner that was authorized to discharge under the general VPDES permit that became effective on October 1, 2008, and who intends to continue coverage under this general permit shall submit a complete registration statement to the board on or before July 1, 2013.

B. Late registration statements. Registration statements for existing facilities covered under subdivision A 2 b of this section will be accepted after October 1, 2013, but authorization to discharge will not be retroactive. Owners described in subdivision A 2 b of this section that submit registration statements after July 1, 2013, are authorized to discharge under the provisions of 9VAC25-193-50 D if a complete registration statement is submitted on or before October 1, 2013.

C. The required registration statement shall contain the following information:

~~B. The owner shall submit a registration statement that contains the following information:~~

~~1. Name and location of the facility;~~

~~2. Name, mailing address, and telephone number of the facility owner;~~

~~3. Name, mailing address, and telephone number of the operator if different than owner;~~

1. Facility name and address, owner name, mailing address, telephone number, and email address (if available);

2. Operator or other contact name, mailing address, telephone number, and email address (if available) if different from owner;

4. 3. Facility's Standard Industrial Classification (SIC) Code(s);

~~5. 4. Nature of business at facility;~~

~~6. 5. Indicate if the facility is proposed or existing; if the facility has a current VPDES and/or VPA Permit; and Permit Number(s) for any current VPDES and/or VPA Permits;~~

~~7. 6. Description of the wastewater treatment or reuse/recycle system(s); indicate if there are any system(s) which operate in a "no discharge" mode;~~

~~8. 7. If settling basins are used for treatment and control of process wastewater and commingled storm water, indicate the original date of construction, and whether these basins are lined with concrete or any other impermeable materials;~~

~~9. 8. Indicate if there are vehicle/equipment maintenance vehicle or equipment degreasing activities performed on site. If yes, indicate if there is any process wastewater generated from these activities;~~

~~10. 9. Indicate if a noncontact cooling water system is in use and if this facility discharges noncontact cooling water from a geothermal unit or other system. If yes, description of the source of noncontact cooling water;~~ 11. Indicate if



~~any chemical additives are used in the geothermal or other system which discharges noncontact cooling water. If yes, list of chemical additive employed and its purpose; proposed schedule and quantity of chemical usage, and estimated concentration in the discharge; description of any wastewater treatment or retention during the use of the additives, if applicable; and a Material Safety Data Sheet (MSDS) and available aquatic toxicity information for each additive proposed for use; provide the following:~~

- ~~a. Describe the source of noncontact cooling water; and~~
- ~~b. If applicable, list chemical additives employed and their purpose, proposed schedule and quantity of chemical usage, estimated concentration in the discharge, description of any wastewater treatment or retention during the use of the additives, and a Material Safety Data Sheet (MSDS) and available aquatic toxicity information for each additive proposed for use;~~

~~14- 10. Description of any measures employed to reclaim, reuse or disposal of the waste residual concrete materials;~~

~~13- 11. A schematic drawing which shows the source(s) of water used on the property, the industrial operations contributing to or using water, and the conceptual design of the methods of treatment and disposal of wastewater and solids and the storm water pollution prevention plan site map (see 9VAC25-193-70 Part II G 6 c);~~

~~14- 12. A USGS 7.5 minute topographic map or equivalent computer generated map, extending to at least one mile beyond property boundary, which shows the outline of the facility property boundary, the location of each of its existing and proposed intake and discharge points, and the locations of any wells, springs, and other surface water bodies;~~

~~15- 13. Discharge outfall information, including outfall number(s), processes involved description of wastewater discharged from each outfall, estimated flow (gallons per day), receiving water bodies, and duration and frequency of each discharge (hours per day and days per week), and latitude and longitude of outfall location;~~

~~14. Indicate which storm water outfalls will be representative outfalls (if any). For storm water outfalls that are to be represented by other outfall discharges, provide the following:~~

- ~~a. The locations of the outfalls;~~
- ~~b. Why the outfalls are expected to discharge substantially identical effluents including, where available, evaluation of monitoring data;~~

**9VAC25-193-70. General permit.**

Any owner whose registration statement is accepted by the board will receive the following permit and shall comply with the requirements contained therein and be subject to all requirements of 9VAC25-31.

c. Estimates of the size of the drainage area (in square feet) for each of the outfalls; and

d. An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%);

~~16. For a proposed facility that discharges storm water, indicate 15. Indicate if a Storm Water Pollution Prevention Plan has been prepared;~~

16. Whether the facility will discharge to a municipal separate storm sewer system (MS4). If so, provide the name of the MS4 owner. The owner of the facility shall notify the MS4 owner in writing of the existence of the discharge within 30 days of coverage under the general permit and shall copy the DEQ regional office with the notification. The notification shall include the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number;

17. For portable concrete products operations, submit a closure plan and include the requirements specified by the operation and maintenance manual in 9VAC25-70 Part I B 9 a (4) of the permit; and

~~17- 18. The following certification: "I hereby grant to duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property where the treatment works is located for the purpose of determining compliance with or the suitability of coverage under the General Permit. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."~~

D. The registration statement shall be signed in accordance with the requirements of 9VAC25-31-110.

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General Permit No: VAG11

Effective Date: ~~October 1, 2008~~ October 1, 2013

Expiration Date: ~~September 30, 2013~~ September 30, 2018

## GENERAL PERMIT FOR CONCRETE PRODUCTS FACILITIES AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of concrete products facilities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I-Effluent Limitations, Monitoring Requirements, and Special Conditions, Part II-Storm Water Management, and Part III-Conditions Applicable to All VPDES Permits, as set forth herein.

### Part I

#### Effluent Limitations, Monitoring Requirements, and Special Conditions.

#### A. Effluent limitations and monitoring requirements.

##### 1. Process wastewater.

During the period beginning ~~on the permit's effective date~~ with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge process wastewater which may contain input from ~~vehicle/equipment maintenance activities~~ vehicle wash water, or vehicle or equipment degreasing activities, and may be commingled with noncontact cooling water ~~or~~ storm water associated with industrial activity, or both. Samples taken in compliance with the monitoring requirements specified below shall be taken at outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Average	Maximum	Minimum	Frequency <sup>(6)</sup>	Sample Type
Flow (MGD)	NL	NL	<del>NL</del> <u>NA</u>	<sup>(6)</sup> <u>1/3 Months</u>	Estimate
Total Suspended Solids (mg/l)	30	60	<del>NL</del> <u>NA</u>	<sup>(6)</sup> <u>1/3 Months</u>	Grab
pH (standard units)	NA	9.0 <sup>(1)</sup>	6.0 <sup>(1)</sup>	<sup>(6)</sup> <u>1/3 Months</u>	Grab
Total Petroleum Hydrocarbons <sup>(2)</sup> (mg/l)	NA	15	<del>NL</del> <u>NA</u>	1/3 Months	Grab
Total Residual Chlorine <sup>(3)</sup> (mg/l)	0.016	0.016	<del>NL</del> <u>NA</u>	<sup>(6)</sup> <u>1/3 Months</u>	Grab
Ammonia-N <sup>(3)</sup> (mg/l)	NA	NL	<del>NL</del> <u>NA</u>	<sup>(6)</sup> <u>1/3 Months</u>	Grab
Temperature <sup>(4)</sup> (°C)	NA	<sup>(5)</sup>	<del>NL</del> <u>NA</u>	<sup>(6)</sup> <u>1/3 Months</u>	Immersion Stabilization

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup>Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

<sup>(2)</sup>Total Petroleum Hydrocarbons limitation and monitoring are only required where a discharge contains process wastewater generated from the ~~vehicle/equipment maintenance~~ vehicle or equipment degreasing activities. Total Petroleum Hydrocarbons shall be analyzed using ~~the Wisconsin Department of Natural Resources Modified Diesel Range Organics Method as specified in Wisconsin publication SW 141 (1995), or by EPA SW-846 Method 8015 B (1996), 8015C (2000), 8015C (2007), 8015 D (2003) for diesel range organics, or by EPA SW-846 Method 8270D (2007) or EPA 40 CFR 136. If Method 8270D is used, the lab must report the combination of diesel range organics and polynuclear aromatic hydrocarbons.~~

<sup>(3)</sup>Chlorine limitation and monitoring are only required where the discharge contains cooling water that is chlorinated. Ammonia monitoring is only required where the discharge contains cooling water that is disinfected using chloramines.

<sup>(4)</sup>Temperature limitation and monitoring are only required where a discharge contains cooling water.

<sup>(5)</sup>The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, 31°C for mountain and upper piedmont waters, 21°C for put and take trout waters, or 20°C for natural trout waters. No maximum temperature limit applies to discharges to estuarine waters.

For estuarine waters, nontidal coastal and piedmont waters, mountain and upper piedmont waters, and put and take trout waters, the effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. For natural trout waters, the temperature of the effluent shall not cause an increase of 1°C above natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour, except in the case of natural trout waters where the hourly temperature change shall not exceed 0.5°C.

Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point-source discharge.

~~<sup>(6)</sup>For a facility that was covered by the previous general permit, and reduced monitoring was granted and compliance demonstrated, monitoring frequency shall be 1/quarter. In all other cases, monitoring frequency shall be 1/month in the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations and the permittee receives authorization from the DEQ regional office, monitoring frequency shall be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency shall revert to 1/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted 1/3 months means one sample collected per calendar quarter with reports due to the DEQ regional office no later than the 10th day of April, July, October, and January.~~

**Part I. Effluent Limitations and Monitoring Requirements**

~~A. Effluent limitations and monitoring requirements.~~

2. Noncontact cooling water.

During the period beginning ~~on the permit's effective date~~ with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge noncontact cooling water. Samples taken in compliance with the monitoring requirements specified below shall be taken at outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Average	Maximum	Minimum	Frequency <sup>(4)</sup>	Sample Type
Flow (MGD)	NL	NL	NA	<sup>(4)</sup> <u>1/3 Months</u>	Estimate
pH (standard units)	NA	9.0 <sup>(1)</sup>	6.0 <sup>(1)</sup>	<sup>(4)</sup> <u>1/3 Months</u>	Grab
Total Residual Chlorine <sup>(2)</sup> (mg/l)	0.016	0.016	NA	<sup>(4)</sup> <u>1/3 Months</u>	Grab
Ammonia-N <sup>(2)</sup> (mg/l)	NA	NL	NA	<sup>(4)</sup> <u>1/3 Months</u>	Grab
Temperature (°C)	NA	<sup>(3)</sup>	NA	<sup>(4)</sup> <u>1/3 Months</u>	Immersion Stabilization

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup>Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

<sup>(2)</sup>Chlorine limitation and monitoring are only required where the source of cooling water is chlorinated. Ammonia monitoring is only required where cooling water is disinfected using chloramines.

<sup>(3)</sup>The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, 31°C for mountain and upper piedmont waters, 21°C for put and take trout waters, or 20°C for natural trout waters. No maximum temperature limit applies to discharges to estuarine waters. For estuarine waters, nontidal coastal and piedmont waters, mountain and upper piedmont waters, and put and take trout waters, the effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. For natural trout waters, the temperature of the effluent shall not cause an increase of 1°C above natural water temperature. The effluent shall not cause the temperature in

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the receiving stream to change more than 2°C per hour, except in the case of natural trout waters where the hourly temperature change shall not exceed 0.5°C. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point-source discharge.

~~(4) For a facility that was covered by the previous general permit, and reduced monitoring was granted and compliance demonstrated, monitoring frequency shall be 1/quarter. In all other cases, monitoring frequency shall be 1/month in the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations and the permittee receives authorization from the DEQ regional office, monitoring frequency shall be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency shall be reverted to 1/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted 1/3 months means one sample collected per calendar quarter with reports due to the DEQ regional office no later than the 10th day of April, July, October, and January.~~

## Part I. Effluent Limitations and Monitoring Requirements

### A. Effluent limitations and monitoring requirements.

3. Storm water associated with industrial activity—storm event benchmark monitoring.

During the period beginning ~~on the permit's effective date with the permittee's coverage under this general permit~~ and lasting until the permit's expiration date, the permittee is authorized to discharge storm water associated with industrial activity which does not combine with other process wastewaters or noncontact cooling water prior to discharge. Samples taken in compliance with the monitoring requirements specified below shall be taken at outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS <u>BENCHMARK MONITORING</u>		MONITORING REQUIREMENTS <sup>(2)</sup> <sup>(5)</sup>	
	Maximum	Minimum	Frequency <sup>(4)</sup>	Sample Type
Flow <del>(MGD)</del> (MG)	NL	NA	1/Year	Estimate <sup>(1)</sup>
Total Petroleum Hydrocarbons <sup>(3)</sup> (mg/l)	NL	NA	1/Year	Grab <sup>(2)</sup>
Total Suspended Solids (mg/l)	NL <sup>(2)</sup>	NA	1/Year	Grab <sup>(2)</sup>
Total Recoverable Iron (mg/l)	NL	NA	1/Year	Grab <sup>(2)</sup>
pH (standard units)	NL <sup>(2)</sup>	<u>NANL</u> <sup>(2)</sup>	1/Year	Grab <sup>(2)</sup>

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup> Estimate of the total volume of the discharge during the storm event in accordance with the Operation and Maintenance Manual.

<sup>(2)</sup> The grab sample shall be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge, and the permittee shall submit with the Discharge Monitoring Report a description of why a grab sample during the first 30 minutes was impracticable.

<sup>(3)</sup> Total Petroleum Hydrocarbons shall be analyzed using the Wisconsin Department of Natural Resources Modified Diesel Range Organics Method as specified in Wisconsin publication SW 141 (1995), or by EPA SW 846 Method 8015C (2007) for diesel range organics, or by EPA SW 846 Method 8270D (2007). If Method 8270D is used, the lab must report the combination of diesel range organics and polynuclear aromatic hydrocarbons.

~~4. All storm water samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Specific storm event data shall be reported with the Discharge Monitoring Report in accordance with Part II A.~~

~~5. Reports of annual monitoring shall be submitted to the DEQ regional office no later than the 10th day of January of each year.~~

~~6. A quarterly visual monitoring shall be performed and recorded in accordance with Part II D.~~

<sup>(2)</sup> Should the benchmark monitoring for TSS exceed 100 mg/l maximum or the pH fall outside of the range of 6.0-9.0 standard units, the permittee shall evaluate the overall

effectiveness of the SWPPP in controlling the discharge of pollutants to receiving waters. Benchmark concentration values are not effluent limitations. Exceedance of a benchmark concentration does not constitute a violation of this permit and does not indicate that violation of a water quality standard has occurred; however, it does signal that modifications to the SWPPP are necessary, unless justification is provided in the routine facility inspection or comprehensive site compliance evaluation.

<sup>(3)</sup>Specific storm event data shall be reported with the Discharge Monitoring Report (DMR) in accordance with Part II A.

<sup>(4)</sup>1/year means one sample taken per calendar year with the annual report due to the DEQ regional office no later than the 10th day of January of each year.

<sup>(5)</sup>Quarterly visual monitoring shall be performed and recorded in accordance with Part II D.

B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts. There shall be no solids deposition or oil sheen from petroleum products in surface water as a result of the industrial activity in the vicinity of the outfall.

2. Except as expressly authorized by this permit, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, byproduct or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to surface waters.

3. Vehicles and equipment utilized during the industrial activity on a site must be operated and maintained in such a manner as to minimize the potential or actual point source pollution of surface waters. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products, shall not be disposed of by discharging on the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or ground waters of the state and in accordance with the applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up to the maximum extent practicable and disposed of in a manner so as not to allow their entry into the surface or ground waters of the state.

4. All washdown and washout of trucks, mixers, transport buckets, forms or other equipment shall be conducted within designated washdown and washout areas. All ~~washout/washdown~~ washdown and washout water shall be collected for recycle or collected and treated to meet the limits in Part I A prior to discharge to the receiving stream.

5. Any waste concrete and dredged solids from the settling basins shall be managed within a designated area, and any wastewaters including storm water generated from these

activities shall be collected for recycle or treated prior to discharge.

6. Wastewater should be reused or recycled whenever feasible.

~~6. 7.~~ No ~~domestic~~ sewage discharges to surface waters are permitted under this general permit.

~~7. 8.~~ For geothermal or other system which discharges noncontact cooling water, the use of any chemical additives, except chlorine, without prior approval is prohibited under this general permit. Prior approval shall be obtained from the DEQ Regional Office before any changes are made to the chemical usage in the geothermal or other system. Requests for approval of chemical use shall be made in writing and shall include the following information:

- a. The chemical additive to be employed and its purpose;
- b. The proposed schedule and quantity of chemical usage, and the estimated concentration in the discharge;
- c. The wastewater treatment or retention (if any) to be provided during the use of the additive; and
- d. A Material Safety Data Sheet (MSDS) and available any of the manufacturer's aquatic toxicity information for each additive proposed for use.

~~8. 9.~~ Operations and Maintenance (O&M) Manual.

a. Within 180 days after the date of coverage under this general permit, the permittee shall develop or review and update, as appropriate, an Operations and Maintenance (O&M) Manual for the permitted facility. The O&M Manual shall include procedures and practices for the mitigation of pollutant discharges ~~and~~ for the protection of state waters from the facility's operations and to ensure compliance with the requirements of the permit. The manual shall address, at a minimum, ~~operations;~~

(1) Operations and maintenance practices for the wastewater treatment process units and chemical and material storage areas, ~~solids;~~

(2) Methods for estimating process wastewater flows;

(3) Solids management and disposal procedures; ~~temporary;~~

(4) Temporary and long-term facility closure plans; ~~testing that shall include (i) treatment, removal, and final disposition of residual wastewater, contaminated storm water held at the facility, and solids; (ii) fate of structures; (iii) a removal plan for all exposed industrial materials; and (iv) description of the stabilization of land in which they were stored or placed;~~

(5) Testing requirements and procedures; ~~recordkeeping;~~

(6) Recordkeeping and reporting requirements ~~and the duties; and~~

(7) Duties and roles of responsible officials.

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~~b. The permittee shall implement the O&M Manual procedures and practices as soon as possible but no later than 12 months after the date of coverage under this general permit. The manual shall be kept on site at the permitted facility and shall be made available to the department upon request. operate the treatment works in accordance with the O&M manual. The O&M manual shall be reviewed and updated at least annually and shall be signed and certified in accordance with Part III K of this permit. The O&M manual shall be made available for review by department personnel upon request.~~

~~For a facility that was covered by the previous permit, an O&M Manual was required to be developed and implemented for that facility. Within 90 days after the date of coverage under this general permit, the existing O&M Manual shall be reviewed and modified, as appropriate, to conform to the requirements of this permit. The existing O&M Manual shall continue to be implemented until the manual, if required, is revised and implemented.~~

9- 10. If the concrete products facility discharges through a municipal separate storm sewer system to surface waters, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system of the existence of the discharge and provide the following information: the name of the facility; a contact person and phone number; the nature of the discharge; number of the outfalls; and, the location of the discharge, and the facility's VPDES general permit number. A copy of such notification shall be provided to the department.

~~10- 11.~~ 11. The permittee shall ensure that all basins and lagoons maintain a minimum freeboard of one foot at all times except during a 72-hour transition period after a measurable rainfall event. During the 72-hour transition period, no discharge from the basins and lagoons shall occur unless it is in accordance with this permit. Within 72 hours after a measurable rainfall event, the freeboard in all basins and lagoons shall ~~return~~ be returned to the minimum freeboard of one foot. Where basins are operated in a series mode of operation, the one-foot freeboard requirement for the upper basins may be waived provided the final basin will maintain the freeboard requirements of this special condition. Should the one-foot freeboard not be maintained, the permittee shall immediately notify the DEQ Regional Office, describe the problem and corrective measures taken to correct the problem. Within five days of notification, the permittee shall submit a written statement to the ~~regional office of explanation~~ DEQ Regional Office with an explanation of the problem and corrective measures taken. In order to demonstrate compliance with this special condition, the permittee shall conduct daily inspections while the facility is in operation and maintain an inspection log. The inspection log shall include at least the date and time of inspection, the weather data including the occurrence of a measurable rainfall event, the printed

name and the handwritten signature of the inspector, the freeboard measurement in inches, a notation of observation made, and any corrective measures, if appropriate, taken. The log shall be kept onsite and be made available to the department upon request.

~~11- 12.~~ 12. For treatment systems which operate only in a "no discharge" mode, there shall be no discharge of pollutants to surface waters from these systems except in the case of a storm event which is greater than a 25 year-24 hour storm event. The operation of these systems shall not contravene the Water Quality Standards (9VAC25-260), as adopted and amended by the board, or any provision of the State Water Control Law.

~~12- 13.~~ 13. The permittee shall notify the department as soon as he knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in this permit if that discharge will exceed the highest of the following notification levels:

- (1) One hundred micrograms per liter (100 µg/l);
- (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- (3) Five times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the board in accordance with 9VAC25-31-220 F.

b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in this permit if that discharge will exceed the highest of the following notification levels:

- (1) Five hundred micrograms per liter (500 µg/l);
- (2) One milligram per liter (1 mg/l) for antimony;
- (3) Ten times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the board in accordance with 9VAC25-31-220 F.

~~13- 14.~~ 14. All settling basins used for treatment and control of process wastewater or process wastewater commingled with storm water that were constructed on or after February 2, 1998, shall be lined with concrete or any other impermeable materials. Regardless of date of construction, all settling basins used for treatment and control of process wastewater or process wastewater commingled with storm water that are expanded or dewatered for major structural repairs shall be lined with concrete or any other impermeable materials.

~~14. Treated~~ 15. Settled wastewater may be used on site for the purposes of dust suppression or for spraying stockpiles. ~~Dust suppression~~ These activities shall be carried out as a best management practice but not a wastewater disposal method. No ponding or surface runoff shall occur as a result of such activity. There shall be no direct discharge to surface waters from dust suppression or as a result of spraying stockpiles.

~~15.~~ 16. Compliance reporting under Part I A.

a. The quantification levels (QL) shall be as follows:

Effluent Characteristic	Quantification Level
<u>TSS</u>	<u>1.0 mg/l</u>
<u>TPH</u>	<u>5.0 mg/l</u>
Chlorine	0.10 mg/l
Ammonia-N	0.20 mg/l

b. Reporting.

(1) Monthly Average. Compliance with the monthly average limitations and/or reporting requirements for the parameters listed in Part I A shall be determined as follows: All concentration data below the QL listed in ~~subsection 15~~ subdivision 16 a of this subsection shall be treated as zero. All concentration data equal to or above the QL listed shall be treated as it is reported. An arithmetic average shall be calculated using all reported data, including the defined zeros, for the month. This arithmetic average shall be reported on the DMR as calculated. If all data are below the QL then the average shall be reported as "<QL." If reporting for quantity is required on the DMR and the calculated concentration is <QL then report "<QL" for the quantity, otherwise use the calculated concentration.

(2) Daily Maximum. Compliance with the daily maximum limitations and/or reporting requirements for the parameters listed in Part I A shall be determined as follows: All concentration data below the QL listed in subdivision 15 a of this subsection shall be treated as zero. All concentration data equal to or above the QL shall be treated as reported. An arithmetic average of the values shall be calculated using all reported data, including the defined zeros, collected for each day during the reporting month. The maximum value of these daily averages thus determined shall be reported on the DMR as the Daily Maximum. If all data are below the QL then the average shall be reported as "<QL." If reporting for quantity is required on the DMR and the calculated concentration is <QL then report "<QL" for the quantity, otherwise use the calculated concentration.

(3) Any single datum required shall be reported as "<QL" if it less than the QL listed in subdivision ~~15~~ 16 a of this subsection. Otherwise the numerical value shall be reported.

(4) The permittee shall report at least two significant digits for a given parameter. Regardless of the rounding convention used (i.e. five always rounding up or to the nearest even number) by the permittee, the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

17. Discharges to waters with an approved total maximum daily load (TMDL). Owners of facilities that are a source of the specified pollutant of concern to waters where an approved TMDL has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL.

18. Adding or deleting outfalls. The permittee may add new or delete existing outfalls at the facility as necessary and appropriate. The permittee shall update the O&M manual and storm water pollution prevention plan (SWPPP) and notify the department of all outfall changes within 30 days of the change. New outfalls require a new or updated registration statement including an updated SWPPP site map.

19. Notice of termination.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer discharges of process wastewater, noncontact cooling water, or storm water associated with the industrial activity;

(2) A new owner has assumed responsibility for the facility (NOTE: A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement form has been submitted);

(3) All discharges associated with this facility have been covered by an individual VPDES permit or an alternative VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES general permit registration number for the facility; and

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

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(b) A statement indicating that operations have ceased at the facility, a closure plan has been implemented according to the O&M manual, and there are no longer discharges from the facility;

(c) A statement indicating that all discharges have been covered by an individual VPDES permit; or

(d) A statement indicating that termination of coverage is being requested for another reason (state the reason).

c. The following certification: "I certify under penalty of law that all concrete products waste water and storm water discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge concrete products waste water or storm water in accordance with the general permit, and that discharging pollutants to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

d. The notice of termination shall be submitted to the department and signed in accordance with Part III K.

20. Temporary closure at inactive and unstaffed sites waiver.

a. When the permittee is unable to conduct effluent monitoring, benchmark monitoring, and/or storm water management requirements at an inactive and unstaffed site, a waiver of these requirements may be exercised by the board as long as the facility remains inactive and unstaffed and there are no industrial materials or activities exposed to storm water. The waiver request shall be submitted to the department for approval and shall include the information in the temporary closure plan specified in Part I B 9 a (4). If this waiver is granted, the permittee must retain a copy of the request and the board's written approval of the waiver in accordance with Part III B.

b. To reactivate the site the permittee must notify the department 30 days prior to reopening the facility and commencing any point source discharges of either treated process wastewater or storm water runoff associated with industrial activities. Upon this notification all effluent monitoring, benchmark monitoring, and/or storm water management requirement or requirements of this permit shall be required. This notification must be submitted to the department, signed in accordance with Part III K, and retained on site at the facility covered by this permit in accordance with Part III B.

21. The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards.

22. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other federal, state, or local statute, ordinance, or regulation.

## Part II-

### Storm Water Management.

#### A. Monitoring instructions.

1. Collection and analysis of samples. Sampling requirements shall be assessed on an outfall by outfall basis. Samples shall be collected and analyzed in accordance with the requirements of Part III A.

2. When and how to sample. A minimum of one grab sample shall be taken resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event"), providing the interval from the preceding measurable storm event is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document with the discharge monitoring report (DMR) that less than a 72-hour interval is representative for local storm events during the sampling period. The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first hour of discharge provide that the permittee explains with the DMR why a grab sample during the first 30 minutes was impractical.

A- 3. Recording of results. For each discharge measurement or sample taken pursuant to the storm event monitoring requirements of this permit, the permittee shall record and report with the Discharge Monitoring Reports (DMRs) the following information:

1. ~~The date~~ a. Date and duration (in hours) of the storm event(s) sampled;

2. ~~The rainfall~~ b. Rainfall measurements or estimates (in inches) of the storm event which generated the sampled discharge; and

3. ~~The duration~~ c. Duration between the storm event sampled and the end of the previous measurable (~~greater than 0.1 inch rainfall~~) storm event.

B. Representative discharge. ~~When~~ If a facility has two or more exclusively storm water outfalls that discharge substantially identical effluents, based on a ~~consideration of industrial activity~~ similarities of the industrial activities, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluent, the permittee may test the effluent of one of such outfalls and include with the DMRs an explanation that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes a description of the



~~location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each exclusively storm water outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided. size of drainage areas, and storm water management practices occurring within the drainage areas of the outfalls, the permittee may monitor the effluent of just one of the outfalls. Representative outfalls must be identified in the registration statement submitted for coverage under this permit. Substantially identical outfalls can apply to quarterly visual and benchmark monitoring. The permittee must include the following information in the storm water pollution prevention plan (SWPPP):~~

- ~~1. The locations of the outfalls;~~
- ~~2. Why the outfalls are expected to discharge substantially identical effluents;~~
- ~~3. Estimates of the size of the drainage area (in square feet) for each of the outfalls; and~~
- ~~4. An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%).~~

C. Sampling waiver waivers.

~~1. When a permittee is unable to collect storm water samples required in Part I A or other applicable sections of this permit within a specified sampling period conduct benchmark monitoring or visual examinations within the specified sampling period due to no "measureable" storm event or adverse climatic weather conditions, the permittee shall collect a substitute sample from a the next separate qualifying event ~~in the next period~~ and submit these data along with ~~the data for the routine sample in that period~~ documentation explaining a facility's inability to conduct benchmark monitoring or visual examinations (including dates and times the outfalls were viewed and sampling was attempted) of no "measureable" storm event or of adverse weather conditions with the DMR to the DEQ. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) ~~or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).~~ Acceptable documentation includes, but is not limited to National Climatic Data Center weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data. All documentation shall also be maintained with the SWPPP.~~

2. Sampling waiver for inactive and unstaffed sites. See Part I B 20.

D. Quarterly visual examination of storm water quality. The permittee shall perform and document a visual examination of a storm water discharge associated with industrial activity from each outfall, except discharges ~~exempted below~~ waived in subdivision D 1 and subsection C of this section. The visual examination(s) must be made during daylight hours (e.g., normal working hours), at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December.

1. Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examination shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The examination must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that ~~is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previous measurable (greater than 0.1 inch rainfall) storm event~~ results in an actual discharge from the site (defined as a "measurable storm event") providing the interval from the preceding measurable storm event is at least 72 hours. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the facility. The ~~required~~ 72-hour storm event interval may also be waived where the permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted. If no qualifying storm event resulted in discharge from the facility during a monitoring period, visual monitoring is exempted provided that the permittee ~~document~~ documents that no qualifying storm event occurred that resulted in a storm water discharge during that quarter. Where practicable, the same individual should carry out the collection and examination of discharges for the entire permit term.

2. Visual examination reports must be maintained onsite with the ~~pollution prevention plan~~ SWPPP. The report shall include the outfall location, the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), visual quality of the receiving stream (including observations of solids deposition and oil sheen from the industrial activity) in the vicinity of the outfall (including ditches and conveyances) and probable sources of any observed storm water contamination.

~~3. If the facility has two or more outfalls that, based on a consideration of industrial activity, significant materials,~~

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~~and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the examination data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (i.e., low (under 40%), medium (40 to 65%), or high (above 65%)) shall be provided in the plan.~~

~~4. When the permittee is unable to conduct the visual examination due to adverse climatic conditions, the permittee must document the reason for not performing the visual examination and retain this documentation onsite with the records of the visual examinations. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).~~

#### E. Allowable nonstorm water discharges.

1. The following nonstorm water discharges are authorized by this permit provided the nonstorm water component of the discharge is in compliance with Part II E 2 below.

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

but NOT intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

2. Except for flows from fire fighting activities, the ~~Storm Water Pollution Prevention Plan~~ SWPPP must include:

- a. Identification of each allowable nonstorm water source;
- b. The location where it is likely to be discharged; and
- c. Descriptions of appropriate BMPs best management practices (BMPs) for each source.

3. If mist blown from cooling towers is included as one of the allowable nonstorm water discharges, the ~~facility must specifically evaluate the potential for the discharges to be contaminated by chemicals used in the cooling tower. The permittee must determine that the levels of such chemicals in the discharges will not cause or contribute to a violation of an applicable water quality standard after implementation of the BMPs selected to control such discharges.~~ permittee shall specifically evaluate the discharge for the presence of chemicals used in the cooling tower. This evaluation shall be included in the SWPPP.

F. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the storm water discharge(s) from this facility shall be prevented or minimized in accordance with the ~~applicable storm water pollution prevention plan~~ SWPPP for the facility. This permit does not authorize the discharge of hazardous substances or oil resulting from an onsite spill. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 or § 62.1-44.34:19 of the Code of Virginia.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (~~1998~~), 40 CFR Part 117 (~~1998~~), or 40 CFR Part 302 (~~1998~~) occurs during a 24-hour period, ~~the~~

1. The permittee is required to notify the department in accordance with the requirements of Part III G as soon as he has knowledge of the discharge;

2. Where a release enters a municipal separate storm sewer system (MS4), the permittee shall also notify the owner of the MS4; and

3. In addition, the storm water pollution prevention plan ~~The~~ SWPPP required by this permit ~~must~~ shall be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate. ~~This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110 (1998), 40 CFR Part 117 (1998) and 40 CFR Part 302 (1998) or § 62.1-44.34:19 of the Code of Virginia.~~

G. Storm water pollution prevention plans (SWPPP). ~~A storm water pollution prevention plan is required to be developed for the facility. The plan shall be prepared in accordance with good engineering practices, and shall~~

identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Permittees must implement the provisions of the storm water pollution prevention plan as a condition of this permit. A SWPPP shall be developed and implemented for the facility. The plan shall include BMPs that are reasonable, economically practicable, and appropriate in light of current industry practices. The BMPs shall be selected, designed, installed, implemented, and maintained in accordance with good engineering practices to eliminate or reduce the pollutants in all storm water discharges from the facility. The SWPPP shall also include any control measures necessary from the storm water discharges to meet applicable water quality standards.

The storm water pollution prevention plan SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents such as an erosion and sediment control plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act or best management practices (BMP) BMP programs otherwise required for the facility provided that the incorporated plan meets or exceeds the plan requirements of Part II G 4 6 (Contents of Plan). If an erosion and sediment control plan is being incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate plan approving authority authorized under the Virginia Erosion and Sediment Control Regulation, 4VAC50-30. All plans incorporated by reference into the storm water pollution prevention plan SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all the requirements of Part II G 6, the permittee shall develop the missing SWPPP elements and include them in the required plan.

1. Deadlines for plan preparation and compliance.

a. ~~For a storm water discharge associated with industrial activity that is existing on or before the effective date of this permit, the storm water pollution prevention plan shall be prepared and implemented as expeditiously as practicable, but not later than 270 days from the date of coverage under this permit. For a facility that was covered by the previous permit, a storm water pollution prevention plan was required to be developed and implemented for that facility. Within 120 days after the date of coverage under this permit, the existing storm water pollution prevention plan shall be reviewed and modified, as appropriate, to conform to the requirements of this permit. The existing storm water pollution prevention plans shall continue to be implemented until a new plan, if required, is developed and implemented.~~

b. ~~The plan for any facility where industrial activity commences after the effective date of this permit, and except as provided elsewhere in this permit, shall be prepared, implemented and provide for compliance with the terms of the plan and this permit on or before the date of submission of a registration statement to be covered under this permit.~~

e. ~~In cases where construction is necessary to implement measures required by the plan, the plan shall contain a schedule that provides compliance with the plan as expeditiously as practicable, but no later than three years from the date of coverage under this permit. Where a construction compliance schedule is included in the plan, the schedule shall include appropriate nonstructural and/or temporary controls to be implemented in the affected portion(s) of the facility prior to completion of the permanent control measure.~~

a. Owners of facilities that were covered under the 2008 Concrete Products General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP not later than January 1, 2014.

b. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit who elect to be covered under this general permit shall prepare and implement the SWPPP prior to commencing operations.

c. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility shall update and implement any revisions to the SWPPP within 60 days of the ownership change.

d. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.

2. Signature and plan review.

a. ~~The plan SWPPP shall be signed in accordance with Part III K, and be retained on-site at the facility covered by this permit in accordance with Part III B.~~

b. ~~The permittee shall make the storm water pollution prevention plan SWPPP, annual site compliance inspection report, or other information available to the department upon request.~~

c. The director, or his designee, may notify the permittee in writing at any time that the plan does SWPPP, BMPs, or other components of the facility's storm water program do not meet one or more of the minimum requirements of this part. Such notification shall identify those specific provisions of the permit which that are not being met by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this part and may include required modifications to the storm water program, additional monitoring requirements, and special reporting

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requirements. Within 60 days of such notification from the director, or as otherwise provided by the director, the permittee shall make the required changes to the plan and shall submit to the department a written certification that the requested changes have been made.

3. Keeping plans current. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the state or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part II G 4 b of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. Maintaining an updated SWPPP. The permittee shall review and amend the SWPPP as appropriate whenever:

a. There is construction or a change in design, operation, or maintenance that has a significant effect on the discharge or the potential for the discharge of pollutants to surface waters;

b. Routine inspections or compliance evaluations determine that there are deficiencies in the BMPs;

c. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;

d. There is a spill, leak, or other release at the facility; or

e. There is an unauthorized discharge from the facility.

4. SWPPP modifications shall be made within 30 calendar days after discovery, observation, or event requiring a SWPPP modification. Implementation of new or modified BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II G 7) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a BMP or implement additional BMPs shall be documented in the SWPPP.

5. If the SWPPP modification is based on a release or unauthorized discharge, include a description and date of the release, the circumstances leading to the release, actions taken in response to the release, and measures to prevent the recurrence of such releases. Unauthorized releases and discharges are subject to the reporting requirements of Part III G of this permit.

4. 6. Contents of plan. The plan shall include, at a minimum, the following items:

a. Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation,

and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan. Each plan shall identify the staff individuals by name or title that comprise the facility's storm water pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising, and ensuring compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.

b. Description Summary of potential pollutant sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum: The plan shall identify where industrial materials or activities at the facility are exposed to storm water. Industrial materials or activities include, but are not limited to: material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, and waste products. Material handling activities include, but are not limited to: the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product, or waste product. The description shall include:

(1) A list of the activities (e.g., material storage, equipment fueling and cleaning, cutting steel beams); and

(2) A list of the associated pollutant(s) or pollutant constituents (e.g., crankcase oil, zinc, sulfuric acid, cleaning solvents, etc.) for each activity. The pollutant list shall include all significant materials handled, treated, stored or disposed that have been exposed to storm water in the three years prior to the date this SWPPP was prepared or amended. This list shall include any hazardous substances or oil at the facility.

(1) Drainage. A site map indicating an c. Site map. The site map shall document:

(1) An outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each;

(2) Each existing structural control measure to reduce pollutants in storm water runoff, surface;

(3) Surface water bodies, locations;

(4) Locations where significant materials are exposed to precipitation, locations;

(5) Locations where major spills or leaks identified under Part II G 4 b (3) II G 6 d have occurred, ~~and the locations;~~

(6) Locations of the following activities: fueling stations; vehicle ~~and or~~ equipment maintenance ~~and/or~~ cleaning areas; degreasing activities, maintenance areas, loading/unloading loading or unloading areas; vehicle wash down areas, vehicle wash out areas, bag house or other dust control device, ~~recycle/sedimentation pond recycle ponds, sedimentation ponds, clarifier or other device or clarifiers or other devices~~ used for the treatment of process wastewater; (and the areas that drain to the treatment device), ~~locations;~~

(7) Locations used for the storage or disposal of wastes; liquid storage tanks; processing areas; and storage areas. ~~The map must indicate the outfall;~~

(8) Outfall locations, designation (e.g., 001) and the types of discharges contained in the drainage areas of the outfalls; ~~and for~~

(9) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, ~~a prediction of the direction of locations of storm water conveyances including ditches, pipes, swales, and inlets, and the directions of storm water flow;~~ and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of ~~significant~~ leaks or spills of toxic or hazardous pollutants; ~~and~~

(10) Flows with a ~~significant~~ potential for causing erosion shall be identified.

(2) Inventory of exposed materials. ~~An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of coverage under this general permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of three years prior to the date of coverage under this general permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.~~

(3) d. Spills and leaks. A list of significant spills and ~~significant~~ leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the

facility after the date of three years prior to the date of coverage under this general permit. Such list shall be updated as appropriate during the term of the permit.

(4) e. Sampling data. ~~A~~ The plan shall include a summary of existing storm water discharge sampling data describing pollutants in storm water discharges from taken at the facility, including a. ~~The summary of sampling shall include, at a minimum, any data collected during the term of this permit previous three years.~~

(5) ~~Risk identification and summary of potential pollutant sources. A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.~~

e. Measures and f. Storm water controls. ~~Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:~~

(1) BMPs shall be implemented for all areas identified in Part II G 6 b to prevent or control pollutants in storm water discharges from the facility. All reasonable steps shall be taken to control or address the quality of discharges from the site that may not originate at the facility. The SWPPP shall describe the type, location, and implementation of all BMPs for each area where industrial materials or activities are exposed to storm water.

(4) (2) Good housekeeping. Good housekeeping requires the clean and orderly maintenance of areas that may contribute pollutants to storm waters discharges. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants in storm water. Particular attention should be paid to areas where raw materials are stockpiled, material handling areas, storage areas, liquid storage tanks, vehicle fueling and maintenance areas, and loading/unloading areas. The plan shall describe procedures performed to minimize the discharge of: spilled cement, aggregate (including sand and gravel), kiln dust, fly ash, settled dust, or other significant material in storm water from paved portions of the site that are exposed to storm water. Regular sweeping of impervious areas or other equivalent

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measures to minimize the presence of these materials shall be employed. The frequency of sweeping or equivalent measures shall be specified in the plan based upon a consideration of the amount of industrial activity occurring in the areas and the frequency of precipitation, but it shall be a minimum of once a week if cement, aggregate, kiln dust, fly ash or settled dust are being handled/processed. ~~Where practicable, efforts~~ Efforts must be made to prevent the exposure of fine granular solids (cement, fly ash, etc.) to storm water by storing these materials in enclosed silos/hoppers, buildings or under other covering. The introduction of raw, final, or waste materials to exposed areas of the facility shall be minimized to the maximum extent practicable. The generation of dust, along with off-site vehicle tracking of raw, final or waste materials, or sediments, shall be minimized to the maximum extent practicable.

~~(2)~~ (3) Preventive maintenance. A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) inspecting and testing facility regular inspection, testing, maintenance, and repairing of all industrial equipment and systems to uncover conditions that could cause avoid breakdowns or failures resulting in discharges of pollutants to surface waters, and appropriate maintenance of such equipment and systems that could result in leaks, spills and other releases. This program is in addition to the specific BMP maintenance required under Part II G 7 (Maintenance of BMPs).

~~(3)~~ (4) Spill prevention and response procedures. Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel. The plan shall describe the procedures that will be followed for preventing and responding to spills and leaks.

(a) Preventive measures include barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling.

(b) Response procedures shall include (i) notification of appropriate facility personnel, emergency agencies, and regulatory agencies and (ii) procedures for stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable RCRA regulations at 40 CFR Part 264

and 40 CFR Part 265. Employees who may cause, detect, or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals shall be a member of the pollution prevention team.

(c) Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP and in other locations where it will be readily available.

~~(4)~~ (5) Routine facility inspections. Facility personnel who are familiar with the industrial activity, the BMPs and the storm water pollution prevention plan shall be identified to possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility and who can also evaluate the effectiveness of BMPs shall regularly inspect designated equipment and areas of the facility. Inspections shall be conducted while the facility is in operation and include, but are not limited to, the following areas exposed to storm water: material handling areas, above ground storage tanks, hoppers or silos, dust collection/containment systems, and truck wash down/equipment cleaning areas. The inspection frequency shall be specified in the plan based on a consideration of the level of industrial activity at the facility, but it shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit. When practical, the routine facility inspection should be conducted once each calendar year during a period when a storm water discharge is occurring. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained with the pollution prevention plan. These inspections are in addition to, or as part of, the comprehensive site compliance evaluation required under Part II G 8. At least one member of the pollution prevention team shall participate in the routine facility inspections.

Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 30 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP, along with the date(s) and description(s) of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.

~~(5)~~ (6) Employee training. Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution

~~prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training. The permittee shall implement a storm water employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training, and shall document all training sessions and the employees who received the training. Training shall be provided for all employees who work in areas where industrial materials or activities are exposed to storm water and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance personnel, etc.). The training shall cover the components and goals of the SWPPP and include such topics as spill response, good housekeeping, material management practices, BMP operation and maintenance, etc. The SWPPP shall include a summary of any training performed.~~

~~(6) Recordkeeping and internal reporting procedures. A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.~~

~~(7) Sediment and erosion control. The plan shall identify areas which, that, due to topography, activities, land disturbance (e.g., construction, landscaping, sit grading), or other factors, have a high potential for significant soil erosion, and. The permittee shall identify and implement structural, vegetative, and/or stabilization measures to be used to limit erosion. BMPs to prevent or control on-site and off-site erosion and sedimentation.~~

~~(8) Management of runoff. The plan shall contain a narrative consideration of the appropriateness of traditional describe the storm water run-off management practices (practices other than those which control the generation or source(s) of pollutants) (i.e., permanent structural BMPs) for the facility. These types of BMPs are typically used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces reduce pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, wet detention/retention devices; or other~~

~~equivalent measures. Some structural BMPs may require a separate permit under § 404 of the Clean Water Act and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.~~

~~7. Maintenance of BMPs. All BMPs identified in the SWPPP shall be maintained in effective operating condition. Storm water BMPs identified in the SWPPP should be observed during active operation where feasible (i.e., during a storm water runoff event) to ensure that they are functioning correctly. Where discharge locations are inaccessible, nearby downstream locations shall be observed. The observations shall be documented in the SWPPP.~~

~~The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all BMPs and shall include a description of the back-up practices that are in place should a runoff event occur while a BMP is off line. The effectiveness of nonstructural BMPs shall also be maintained by appropriate means (e.g., spill response supplies available and personnel trained, etc.).~~

~~If site inspections required by Part II G 6 f (5) (Routine facility inspections) or Part II G 8 (Comprehensive site compliance evaluation) identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. If maintenance prior to the next anticipated storm event is not possible, maintenance shall be scheduled and accomplished as soon as practicable. In the interim, back-up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the date(s) of regular maintenance, date(s) of discovery of areas in need of repair or replacement, and for repairs, date(s) that the BMP(s) returned to full function, and the justification for any extended maintenance or repair schedules.~~

~~8. Comprehensive site compliance evaluation. Qualified facility personnel who are familiar with the industrial activity, the BMPs and the storm water pollution prevention plan shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once a year. The permittee shall conduct comprehensive site compliance evaluations at least once a year. The evaluations shall be done by qualified personnel who possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility and who can also evaluate the effectiveness of BMPs. The personnel conducting the evaluations may be either facility employees or outside constituents hired by the facility. Such evaluations shall include the following:~~

~~(1) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce~~

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~~pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.~~

~~a. Industrial materials, residue or trash that may have or could come into contact with storm water;~~

~~b. Leaks or spills from industrial equipment, drums, barrels, tanks, or other containers that have occurred within the past three years;~~

~~c. Off-site tracking of industrial or waste materials or sediment where vehicles enter or exit the site;~~

~~d. Evidence of or the potential for pollutants entering the drainage system;~~

~~e. Evidence of pollutants discharging to surface waters at all facility outfalls and the condition of and around the outfall, including flow dissipation measures to prevent scouring;~~

~~f. Review of training performed, inspections completed, maintenance performed, quarterly visual examinations, and effective operation of BMPs;~~

~~g. Documentation that all outfalls have been evaluated annually for the presence of unauthorized discharges (i.e., discharges other than storm water; the authorized nonstorm water discharges described in Part II E; or discharges covered under a separate VPDES permit, other than this permit). The documentation shall include:~~

~~(1) The date of the evaluation;~~

~~(2) A description of the evaluation criteria used;~~

~~(3) A list of the outfalls or on-site drainage points that were directly observed during the evaluation;~~

~~(4) A description of the results of the evaluation for the presence of unauthorized discharges; and~~

~~(5) The actions taken to eliminate unauthorized discharges, if any were identified (i.e., a floor drain was sealed, a sink drain was rerouted to sanitary, or a VPDES permit application was submitted for a cooling water discharge);~~

~~h. Results of both visual and any analytical monitoring done during the past year shall be taken into consideration during the evaluation;~~

~~(2) i. Based on the results of the evaluation, the description of potential pollutant sources identified in the plan in accordance with Part II G 4 b and pollution prevention measures and controls identified in the plan in accordance with Part II G 4 c shall be revised as appropriate within two weeks of such evaluation and~~

~~shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the evaluation. the SWPPP shall be modified as necessary (e.g., show additional controls on the site map required by Part II G 6 c; revise the description of storm water controls required by Part II G 6 f to include additional or modified BMPs designed to correct problems identified). Revisions to the SWPPP shall be completed within 30 days following the evaluation, unless permission for a later date is granted in writing by the director. If existing BMPs need to be modified or if additional BMPs are necessary, implementation shall be completed before the next anticipated storm event, if practicable, but not more than 60 days after completion of the comprehensive site evaluation, unless permission for a later date is granted in writing by the department;~~

~~(3) j. Compliance evaluation report. A report shall be written summarizing the scope of the inspection evaluation, names(s) of personnel making the inspection evaluation, the date(s) date of the inspection, major evaluation, and all observations relating to the implementation of the storm water pollution prevention plan SWPPP, and actions taken in accordance with Part II G 4 d shall be made and retained as part of the storm water pollution prevention plan as required in Part III B. including elements stipulated in Part II G 8 a through e above. Observations shall include such things as: the location(s) of discharges of pollutants from the site; locations(s) of previously unidentified sources of pollutants; location(s) of BMPs that need to be maintained or repaired; locations(s) of failed BMPs that need replacement; and location(s) where additional BMPs are needed. The report shall identify any incidents of noncompliance that were observed. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan SWPPP and this permit. The report shall be signed in accordance with Part III K; and maintained with the SWPPP; and~~

~~(4) k. Where compliance evaluation schedules overlap with routine inspections required under Part II G 4 e (4) f (5), the annual compliance evaluation may be conducted in place of one such inspection used as one of the routine inspections.~~

## ~~5. Special pollution prevention plan requirements:~~

~~a. Additional requirements for storm water discharges associated with industrial activity from facilities subject to § 313 of the Emergency Planning and Community Right to Know Act of 1986 (EPCRA) reporting requirements. Potential pollutant sources for which the facility has reporting requirements under EPCRA 313 must be identified in the summary of potential pollutant sources as per Part II G 4 b.~~



~~b. Additional requirements for salt storage. Storage piles of salt used for deicing or other commercial or industrial purposes must be enclosed or covered to prevent exposure to precipitation (except for exposure resulting from adding or removing materials from the pile). Piles do not need to be enclosed or covered where storm water from the pile is not discharged to surface waters or the discharges from the piles are authorized under another permit.~~

Part III-

Conditions Applicable To All VPDES Permits.

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.
4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

B. Records.

1. Records of monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The individuals who performed the sampling or measurements;
  - c. The dates and times analyses were performed;
  - d. The individuals who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain (i) records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, (ii) copies of all reports required by this permit, and (iii) records of all data used to complete the registration statement for this permit for a period of at least three years from the date ~~of the sample, measurement, report or request for coverage~~ that coverage under this permit expires or is terminated. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the

regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.
2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.
3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.
4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from ~~his~~ its discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

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G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the

circumstances. The following shall be included as information which shall be reported within 24 hours under this subdivision:

- a. Any unanticipated bypass; and
  - b. Any upset which causes a discharge to surface waters.
2. A written report shall be submitted within five days and shall contain:
- a. A description of the noncompliance and its cause;
  - b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
  - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Parts III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

NOTE: The immediate (within 24 hours) reports required in Parts III G, H and I may be made to the department's regional office by telephone ~~or by fax, FAX, or online at~~ <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx>. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24 hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- (1) After promulgation of standards of performance under § 306 of Clean Water Act which are applicable to such source; or

- (2) After proposal of standards of performance in accordance with § 306 of Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants

discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statements. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where ~~if~~ authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part III K 1, or by a duly authorized

representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Parts III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge

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use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least ~~180~~ 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U), and "upset" (Part III V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in Part III U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- a. An upset occurred and that the permittee can identify the causes of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee submitted notice of the upset as required in Part III I; and
- d. The permittee complied with any remedial measures required under Part III S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or his designee, upon presentation of credentials and other documents as may be required by law, to:

- 1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- 2. Have access to and copy at reasonable times any records that must be kept under the conditions of this permit;
- 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- 4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

- 1. Permits are not transferable to any person except after notice to the department. Except as provided in Part III Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.
- 2. As an alternative to transfers under Part III Y 1, this permit may be automatically transferred to a new permittee if:
  - a. The current permittee notifies the department ~~at least~~ within 30 days ~~in advance~~ of the ~~proposed~~ transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

**DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-193)**

Standard Industrial Classification Manual, 1987, Office of Management and Budget.

Standard Methods for the Examination of Water and Wastewater, 18th, 19th, 20th and 21st Editions, 1992, 1995, 1998 and 2005, American Public Health Association.

~~Method 8270D, Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 4, February 2007, U.S. Government Printing Office.~~

[Method 8015B, Nonhalogenated Organics Using GC/FID, Revision 2, December 1996, U.S. Government Printing Office.](#)

[Method 8015C, Nonhalogenated Organics Using GC/FID, Revision 3, November 2000, U.S. Government Printing Office.](#)

[Method 8015C, Nonhalogenated Organics Using GC/FID, Revision 3, February 2007, U.S. Government Printing Office.](#)

[Method 8015D, Nonhalogenated Organics Using GC/FID, Revision 4, June 2003, U.S. Government Printing Office.](#)

~~Modified DRO Method for Determining Diesel Range Organics, PUBL SW 141, September 1995, Wisconsin Department of Natural Resources.~~

VA.R. Doc. No. R12-3072; Filed October 10, 2012, 12:37 p.m.

**TITLE 16. LABOR AND EMPLOYMENT**

**SAFETY AND HEALTH CODES BOARD**

**Final Regulation**

**Title of Regulation:** 16VAC25-50. Boiler and Pressure Vessel Regulations (amending 16VAC25-50-150, 16VAC25-50-360, 16VAC25-50-380, 16VAC25-50-430, 16VAC25-50-480).

**Statutory Authority:** § 40.1-51.6 of the Code of Virginia.

**Effective Date:** December 12, 2012.

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# Regulations

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Agency Contact: Ed Hilton, Director, Boiler Safety Compliance, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-2389, FAX (804) 371-2324, TTY (804) 785-2376, or email ed.hilton@doli.virginia.gov.

Summary:

*The amendments (i) update the current regulation for consistency with national and international standards; (ii) add a fee of \$10 for the reprinting of inspection certificates; and (iii) increase the boiler inspection fee from \$800 to \$1,000.*

*Changes made to the proposed regulation reflect a revised form and the most recent versions of documents incorporated by reference.*

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

**16VAC25-50-150. Inspection certificate and inspection fees.**

A. Upon the inspection and determination that a boiler or pressure vessel is suitable and conforms to this chapter, the owner or user shall remit the payment for an inspection certificate in one of the following forms and amounts for each item required to be inspected under the Act.

1. Payment of \$20 may be sent from the owner or user to the chief inspector by check, credit card or money order. Payment of inspection certificate fees should be made payable to the Treasurer of Virginia; or
2. Payment may be presented to a special inspector, where the inspector is authorized to collect and forward such fees on the department's behalf. The commissioner may authorize special inspectors to collect and forward to the chief inspector \$16 for each inspection certificate. Pursuant to § 40.1-51.10:1 of the Code of Virginia, special inspectors may charge owners or users a fee not exceeding \$4.00 for collecting and forwarding inspection certificate fees.

An inspection certificate will not be issued to the owner or user until payment is received by either the department or, if previously authorized, by a special inspector. A fee of \$10 will be charged for each reprint of an inspection certificate.

B. The chief inspector may extend an inspection certificate for up to three additional months beyond a two month grace period following the expiration of a certificate. Such extension is subject to a satisfactory external inspection of the boiler or pressure vessel and receipt of a fee of \$20 for each month of extension.

C. When the chief inspector determines that no contract fee inspectors are available to inspect a regulated uninsured boiler or pressure vessel in a timely manner, a commonwealth inspector may be directed to conduct a certification inspection. Contract fee inspection service shall be

determined unavailable where (i) at least two contract fee inspectors contacted will not agree to provide inspection services to the owner or user within at least 21 days from the request and (ii) the owner's or user's inspection certificate will expire within that same period.

The following rates per inspected object, in addition to inspection certificate fees, shall apply for certification inspections conducted by a commonwealth inspector:

1. Power boilers and high pressure, high temperature water boilers	\$135
2. Heating boilers	\$70
3. Pressure vessels	\$50

D. The review of a manufacturer's or repair organization's facility for the purpose of national accreditation will be performed by the chief inspector or his qualified designee for an additional fee of ~~\$800~~ \$1,000 per review or survey.

E. The owner or user who causes a boiler or pressure vessel to be operated without a valid certificate shall be subject to the penalty as provided for in § 40.1-51.12 of the Act.

F. Inspection certificates are not required for unfired pressure vessels inspected by an authorized owner-user inspection agency. However, the agency shall keep on file in its office in the establishment where the equipment is located a true record or copy of the report of the latest of each inspection signed by the inspector who made the inspection.

Part III  
Existing Installations

**16VAC25-50-360. Power and high-pressure, high-temperature water boilers.**

A. Age limit of existing boilers.

1. The age limit of any boiler of nonstandard construction, installed before July 1, 1974, other than one having a riveted, longitudinal lap joint, shall be 30 years; however, any boiler passing a thorough internal and external inspection, and not displaying any leakage or distress under a hydrostatic pressure test of 1-1/2 times the allowable working pressure held for at least 30 minutes, may be continued in operation without reduction in working pressure. The age limit of any boiler having riveted, longitudinal, lap joints and operating at a pressure in excess of 50 psig shall be 20 years. This type of boiler, when removed from an existing setting, shall not be reinstalled for a pressure in excess of 15 psig. A reasonable time for replacement, not to exceed one year, may be given at the discretion of the chief inspector.

2. The shell or drum of a boiler in which a typical lap seam crack is discovered along a longitudinal riveted joint for either butt or lap joints shall be permanently removed from service.

3. The age limit of boilers of standard construction, installed before July 1, 1974, shall be determined from the

results of a thorough internal and external inspection by an authorized inspector and the application of an appropriate pressure test. Hydrostatic test pressure shall be 1-1/2 times the allowable working pressure and maintained for 30 minutes. The boiler may be continued in service at the same working pressure provided there is no evidence of leakage or distress under these test conditions.

4. The minimum temperature of the water used for the hydrostatic test of low-pressure boilers and pressure vessels shall be 60°F. The minimum temperature of the water used for the hydrostatic test of power boilers shall be 70°F or ambient whichever is greater.

B. The maximum allowable working pressure for standard boilers shall be determined in accordance with the applicable provisions of the edition of the ASME Code under which they were constructed and stamped.

C. 1. The maximum allowable working pressure on the shell of a nonstandard boiler shall be determined by the strength of the weakest section of the structure, computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint or tube ligaments, the inside diameter of the weakest course and the factor of safety allowed by this chapter.

$$\frac{\text{TStE}}{\text{RFS}} = \text{Maximum allowable working pressure, psi}$$

where:

TS = ultimate tensile strength of shell plates, psi

t = minimum thickness of shell plate, in weakest course, inches

E = efficiency of longitudinal joint:

For tube ligaments, E shall be determined by the rules in Section I of the ASME Code for Power Boilers. For riveted joints, E shall be determined by the rules in the applicable edition of the ASME Code. For seamless construction, E shall be considered 100%.

R = inside radius of the weakest course of the shell, in inches

FS = factor of safety permitted.

2. Tensile strength. When the tensile strength of steel or wrought iron shell plates is not known, it shall be taken as 55,000 psi.

3. Crushing strength of mild steel. The resistance to crushing of mild steel shall be taken at 95,000 psi of cross-sectional area.

4. Strength of rivets in shear. When computing the ultimate strength of rivets in shear, the following values, in pounds per square inch, of the cross-sectional area of the rivet shank shall be used.

PSI

Iron rivets in single shear	38,000
Iron rivets in double shear	76,000
Steel rivets in single shear	44,000
Steel rivets in double shear	88,000

When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, may be selected from Table 1, or as ascertained by cutting out one rivet in the body of the joint.

Plate of Thickness	Rivet Diameter after Driving
1/4	11/16
9/32	11/16
5/16	3/4
11/32	3/4
3/8	13/16
13/32	13/16
7/16	15/16
15/32	15/16
1/2	15/16
9/16	1-1/16
5/8	1-1/16

5. Factors of safety. The following factors of safety shall be increased by the inspector if the condition and safety of the boiler demand it:

a. The lowest factor of safety permissible on existing installations shall be 4.5 for vessels built prior to January 1, 1999. For vessels built on or after January 1, 1999, the factor of safety may be 4.0. Horizontal-return-tubular boilers having continuous longitudinal lap seams more than 12 feet in length, shall have a factor of safety of eight. When this type of boiler is removed from its existing setting, it shall not be reinstalled for pressures in excess of 15 psig.

b. Reinstalled or secondhand boilers shall have a minimum factor of safety of six when the longitudinal seams are of lap-riveted construction, and a minimum factor of safety of five when the longitudinal seams are of butt-strap and double-strap construction.

D. Cast-iron headers and mud drums. The maximum allowable working pressure on a water tube boiler, the tubes

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of which are secured to cast iron or malleable-iron headers, or which have cast iron mud drums, shall not exceed 160 psig.

E. Pressure on cast iron boilers. The maximum allowable working pressure for any cast iron boiler, except hot water boilers, shall be 15 psig.

F. Safety valves.

1. The use of weighted-lever safety valves, or safety valves having either the seat or disk of cast iron, shall be prohibited. Valves of this type shall be replaced by direct, spring-loaded, pop-type valves that conform to the requirements of the ASME Code, Section I.

2. Each boiler shall have at least one safety valve and, if it has more than 500 square feet of water-heating surface or an electric power input of more than 500 kilowatts, it shall have two or more safety valves.

3. The valve or valves shall be connected to the boiler, independent of any other steam connection, and attached as close as possible to the boiler without unnecessary intervening pipe or fittings. Where alteration is required to conform to this requirement, the chief inspector shall allow the owner or user reasonable time in which to complete the work.

4. No valves of any description shall be placed between the safety valve and the boiler nor on the escape pipe, if used, between the safety valve and the atmosphere, except as provided by applicable sections of the ASME Code. When an escape pipe is used, it shall be at least full size of the safety-valve discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or escape pipe. When an elbow is placed on a safety valve escape pipe, it shall be located close to the safety-valve outlet or the escape pipe shall be anchored and supported securely. All safety valve discharges shall be located or piped as not to endanger persons working in the area.

5. The safety-valve capacity of each boiler shall be so that the safety valve or valves will discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6.0% above the highest pressure to which any valve is set, and in no case to more than 6.0% above the maximum allowable working pressure.

6. One or more safety valves on every boiler shall be set at or below the maximum allowable working pressure. The remaining valves may be set within a range of 3.0% above the maximum allowable working pressure, but the range of setting of all the safety valves on a boiler shall not exceed 10% of the highest pressure to which any valve is set.

7. When two or more boilers, operating at different pressures and safety valve settings, are interconnected, the lower pressure boilers or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

8. In those cases where the boiler is supplied with feedwater directly from water mains without the use of feeding apparatus (not to include return traps), no safety valve shall be set at a pressure higher than 94% of the lowest pressure obtained in the supply main feeding the boiler.

9. The relieving capacity of the safety valves on any boiler shall be checked by one of the three following methods and, if found to be insufficient, additional valves shall be provided:

a. By making an accumulation test, which consists of shutting off all other steam-discharge outlets from the boiler and forcing the fires to the maximum. The safety-valve capacity shall be sufficient to prevent a rise of pressure in excess of 6.0% of the maximum allowable working pressure. This method shall not be used on a boiler with a superheater or reheater.

b. By measuring the maximum amount of fuel that can be burned and computing the corresponding evaporative capacity (steam-generating capacity) upon the basis of the heating value of this fuel. These computations shall be made as outlined in the appendix of the ASME Code, Section I<sub>2</sub>.

c. By measuring the maximum amount of feedwater that can be evaporated.

When either of the methods (b or c) outlined in this subdivision is employed, the sum of the safety-valve capacities shall be equal to or greater than the maximum evaporative capacity (maximum steam-generating capacity) of the boiler.

10. The relieving capacity of safety valves for forced-flow steam generators shall be in accordance with the requirements of Section I of the ASME Boiler Code.

11. Safety valves and safety relief valves requiring repair shall be replaced with a new valve or repaired by the original manufacturer, its authorized representative or the holder of a "VR" Stamp.

G. Boiler feeding.

1. Each boiler shall have a feed supply which will permit it to be fed at any time while under pressure.

2. A boiler having more than 500 square feet of water-heating surface shall have at least two means of feeding, one of which shall be an approved feed pump or injector. A source of feed directly from water mains at a pressure 6.0% greater than the set pressure of the safety valve with the highest setting may be considered one of the means. As provided in the ASME Power Boiler Code, Section I, boilers fired by gaseous, liquid or solid fuel in suspension may be equipped with a single means of feeding water provided means are furnished for the immediate shutoff of heat input if the water feed is interrupted.

3. The feedwater shall be introduced into the boiler in a manner so that it will not be discharged close to riveted



joints of shell or furnace sheets, or directly against surfaces exposed to products of combustion, or to direct radiation from the fire.

4. The feed piping to the boiler shall be provided with a check valve near the boiler and a valve or cock between the check valve and the boiler. When two or more boilers are fed from a common source, there shall also be a valve on the branch to each boiler between the check valve and source of supply. Whenever a globe valve is used on feed piping, the inlet shall be under the disk of the valve.

5. In all cases where returns are fed back to the boiler by gravity, there shall be a check valve and stop valve in each return line, the stop valve to be placed between the boiler and the check valve, and both shall be located as close to the boiler as is practicable. No stop valves shall be placed in the supply and return pipe connections of a single boiler installation.

6. Where deaerating heaters are not employed, the temperature of the feedwater shall not be less than 120°F to avoid the possibility of setting up localized stress. Where deaerating heaters are employed, the minimum feedwater temperature shall not be less than 215°F so that dissolved gases may be thoroughly released.

#### H. Water level indicators.

1. Each boiler shall have at least one water gauge glass installed and located so that the lowest visible part of the water glass shall be at least two inches above the lowest permissible water level, at which level there will be no danger of overheating any part of the boiler when in operation at that level; except as provided by the ASME Code.

2. No outlet connections (except for damper regulator, feedwater regulator, low-water fuel cutout, drain, steam gauges, or such apparatus that does not permit the escape of an appreciable amount of steam or water from it) shall be placed on the piping that connects the water column to the boiler. The water column shall be provided with a valved drain of at least 3/4 inch pipe size; the drain is to be piped to a safe location.

3. When the direct reading of gauge glass water level is not readily visible to the operator in his working area dependable indirect indications shall be provided utilizing remote level indicators or equipment to transmit the gauge glass image. When remote level indication is provided for the operator instead of the gauge glass, the minimum level reference shall be clearly marked.

#### I. Steam gauges.

1. Each steam boiler shall have a steam gauge, with dial range not less than 1-1/2 times the maximum allowable working pressure, connected to the steam space or to the steam connection to the water column. The steam gauge shall be connected to a siphon or equivalent device of sufficient capacity to keep the gauge tube filled with water

and arranged so that the gauge cannot be shut off from the boiler except by a cock with a tee or lever handle placed in the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

2. When a steam gauge connection longer than eight feet becomes necessary, a shutoff valve may be used near the boiler provided the valve is of the outside-screw-and-yoke type and is locked open. The line shall be of ample size with provision for free blowing.

3. Each boiler shall be provided with a test gauge connection and suitable valving for the exclusive purpose of attaching a test gauge so that the accuracy of the boiler steam gauge may be ascertained while the boiler is in operation.

#### J. Stop valves.

1. Except for a single-boiler, prime-mover installation, each steam outlet from a boiler (except safety valve and water column connections) shall be fitted with a stop valve located as close as practicable to the boiler.

2. In a single-boiler, prime-mover installation the steam stop valve may be omitted provided the prime-mover throttle valve is equipped with an indicator to show whether the valve is open or closed and is designed to withstand the required hydrostatic pressure test of the boiler.

3. When a stop valve is so located that water can accumulate, ample drains shall be provided. The drainage shall be piped to a safe location and shall not be discharged on the top of the boiler or its setting.

4. When boilers provided with manholes are connected to a common steam main, the steam connection from each boiler shall be fitted with two stop valves having an ample free-blow drain between them. The discharge of the drain shall be visible to the operator and shall be piped clear of the boiler setting. The stop valves shall consist preferably of one automatic nonreturn valve (set next to the boiler) and a second valve of the outside-screw-and-yoke type.

#### K. Blowoff connection.

1. The construction of the setting around each blowoff pipe shall permit free expansion and contraction. Careful attention shall be given to the problem of sealing these setting openings without restricting the movement of the blowoff piping.

2. All blowoff piping, when exposed to furnace heat, shall be protected by firebrick or other heat-resisting material constructed so that the piping may be inspected.

3. Each boiler shall have a blowoff pipe, fitted with a valve or cock, in direct connection with the lowest water space. Cocks shall be of the gland or guard type and suitable for the pressure allowed. The use of globe valves shall not be permitted. Where the maximum allowable working pressure exceeds 100 psig, each blowoff pipe shall be

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provided with two valves or a valve and cock; however only one valve need be provided for forced-flow steam generators with no fixed steam and waterline; high-temperature water boilers and those used for traction or portable purposes with less than 100 gallons normal water content.

4. Blowoff piping shall comply with the requirements of the ASME Code, Section I, and ANSI B31.1, from the boiler to the valve or valves, and shall be run full size without use of reducers or bushings. All piping shall be steel. Galvanized steel pipe and fittings shall not be used for blowoff piping.

5. All fittings between the boiler and blowoff valve shall be of steel. In case of renewal of blowoff pipe or fittings, they shall be installed in accordance with this chapter for new installations.

L. Repairs and renewals of boiler fittings and appliances. Whenever repairs are made to fittings or appliances or it becomes necessary to replace them, such repairs or replacements shall comply with the requirements for new installations.

M. Each automatically fired steam boiler or system of commonly connected steam boilers shall have at least one steam pressure control device that will shut off the fuel supply to each boiler or system of commonly connected boilers when the steam pressure reaches a preset maximum operating pressure. In addition, each individual automatically fired steam boiler shall have a high steam pressure limit control that will prevent generation of steam pressure in excess of the maximum allowable working pressure.

N. Conditions not covered by this chapter. All cases not specifically covered by this chapter shall be treated as new installations pursuant to 16VAC25-50-280 or may be referred to the chief inspector for instructions concerning the requirements.

## 16VAC25-50-380. Pressure vessels.

A. Maximum allowable working pressure for standard pressure vessels. The maximum allowable working pressure for standard pressure vessels shall be determined in accordance with the applicable provisions of the edition of the ASME or API-ASME code under which they were constructed and stamped. The maximum allowable working pressure shall not be increased to a greater pressure than shown on the manufacturers nameplate stamping and data report.

B. Maximum allowable working pressure for nonstandard pressure vessels.

1. For internal pressure. The maximum allowable working pressure on the shell of a nonstandard pressure vessel shall be determined by the strength of the weakest course computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal

joint, the inside diameter of the weakest course and the factor set by this chapter.

$$\frac{TStE}{RFS} = \text{maximum allowable working pressure, psi}$$

where:

TS = ultimate tensile strength of shell plate, psi. When the tensile strength of the steel plate is not known, it shall be taken as 55,000 psi for temperatures not exceeding 700°F.

t = minimum thickness of shell plate of weakest course, inches,

E = efficiency of longitudinal joint depending upon construction. Use the following values:

For riveted joints -- calculated riveted efficiency;

For fusion-welded joints:

Single lap weld	40%
Double lap weld	50%
Single butt weld	60%
Double butt weld	70%
Forge weld	70%
Brazed steel	80%

R = inside radius of weakest course of shell, inches, provided the thickness does not exceed 10% of the radius. If the thickness is over 10% of the radius, the outer radius shall be used.

FS = factor of safety allowed by this chapter.

2. For external pressure. The maximum allowable working pressure for cylindrical nonstandard pressure vessels subjected to external or collapsing pressure shall be determined by the rules in Section VIII, Division 1, of the ASME Code.

3. Factors of safety. The minimum factor of safety shall in no case be less than ~~four~~ 3.5 for ~~existing installations~~ vessels built on or after January 1, 1999. For vessels built prior to January 1, 1999, the minimum factor of safety shall in no case be less than 4.0. The factor of safety may be increased when deemed necessary by the inspector to insure the operation of the vessel within safe limits. The condition of the vessel and the particular service of which it is subject will be the determining factors.

4. The maximum allowable working pressure permitted for formed heads under pressure shall be determined by using the appropriate formulas from Section VIII, Division 1, ASME Code and the tensile strength and factors of safety given in subdivisions 1 and 3 of this subsection.

C. Inspection of inaccessible parts. Where in the opinion of the inspector, as the result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove

the materials to permit proper inspection and to establish construction details. Metal thickness shall be determined utilizing appropriate equipment including drilling if necessary.

D. Pressure relief devices. Pressure relief devices for each pressure vessel installation, not exempt by the Act, shall comply with the requirements of ASME Pressure Vessel Code, Section VIII.

E. Safety appliances.

1. Each pressure vessel shall be protected by safety and relief valves and indicating and controlling devices which will insure its safe operation. These valves and devices shall be constructed, located and installed so that they cannot readily be rendered inoperative. The relieving capacity of the safety valves shall prevent a rise of pressure in the vessel of more than 10% above the maximum allowable working pressure, taking into account the effect of static head. Safety valve discharges shall be located or piped so as not to endanger persons working in the area.

2. Safety valves and safety relief valves requiring repair shall be replaced with a new valve or repairs shall be performed by the original manufacturer, its authorized representative, or the holder of a "VR" stamp.

F. Repairs and renewals of fittings and appliances. Whenever repairs are made to fittings or appliances, or it becomes necessary to replace them, the repairs or replacements shall comply with requirements for new installations.

G. Conditions not covered by this chapter. All cases not specifically covered by this chapter shall be treated as new installations or may be referred to the chief inspector for instructions concerning the requirements.

**16VAC25-50-430. Hydrostatic pressure tests.**

A. A hydrostatic pressure test, when applied to boilers or pressure vessels, shall not exceed ~~1½~~ 1.25 times the maximum allowable working pressure, except as provided by the ASME Code. The pressure shall be under proper control so that in no case shall the required test pressure be exceeded by more than 2.0%.

B. See 16VAC25-50-360 A 4 for temperature limitations on particular power boiler installations.

C. When a hydrostatic test is to be applied to existing installations, the pressure shall be as follows:

1. For all cases involving the question of tightness, the pressure shall be equal to the working pressure.

2. For all cases involving the question of safety, the test pressure shall ~~be equal to 1½~~ not exceed 1.25 times the maximum allowable working pressure for temperature. During such test the safety valve or valves shall be removed or each valve disk shall be held to its seat by means of a testing clamp and not by screwing down the compression screw upon the spring.

**16VAC25-50-480. Repairs and alterations.**

A. Prior to any repair, the owner or user shall notify a special inspector with the appropriate endorsement for direction or advice, or both, regarding the method and extent of repair.

B. Repairs to boilers and pressure vessels shall be done in accordance with the National Board Inspection Code by holders of an "R" Certificate of Authorization. The completed repairs shall be reviewed by and found acceptable to the inspector or the same inspection agency who authorized the repair.

C. Alterations to boilers and pressure vessels shall be performed by an organization holding an appropriate ASME or "R" Certificate of Authorization and shall be in accordance with the National Board Inspection Code.

D. All repairs and alterations, except seal welds as defined in this subsection, shall be reported on the applicable Report of Welded Repair or Alteration form. The completed form including proper certification shall be forwarded to the chief inspector by the organization performing the repair or alteration. ~~A seal weld is a tube to tubesheet weld used to supplement an expanded tube joint to ensure leak tightness. Seal welds on carbon steel (P-1) tube joints made by qualified welders will not require an inspection nor a Form R-1.~~

E. The completed forms for routine repairs, as the term is defined in the National Board Inspection Code, need not be forwarded to the chief inspector.

**NOTICE:** The following forms used in administering the regulation have been 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 of a form with a hyperlink to access it. 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 (16VAC25-50)

R 1 Form, Report of Welded \_\_\_\_\_ Repair or \_\_\_\_\_ Alteration, CVR1 Rev 1.0.

~~[ Form R-1, Report of ] Welded [ Repair, National Board Inspection Code ] (eff. 1/1/99) [ NB-66, Rev. 11.~~

[Form R-1, Report of Repair, National Board Inspection Code, NB-66 \(rev. 2012\).](#) ]

Form R-2, Report of Alteration, National Board Inspection Code (eff. 1/1/99).

Form R-3, Report of Parts Fabricated By Welding, National Board Inspection Code (eff. 1/1/99).

Form R-4, Report Supplementary Sheet, National Board Inspection Code (eff. 1/1/99).

BPV-5, Boiler or Pressure Vessel Data Report- First Internal Inspection (eff. 1/1/99).

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BPV-6, Boiler - Fired Pressure Vessel - Report of Inspection (eff. 1/1/99).

DOCUMENTS INCORPORATED BY REFERENCE (16VAC25-50)

~~2004~~ 2007 Boiler and Pressure Vessel Code, ASME Code, American Society of Mechanical Engineers.

National Board Bylaws, National Board of Boiler and Pressure Vessel Inspectors, August 8, 1996.

ANSI/NB 23, ~~2004~~ 2007 National Board Inspection Code, National Board of Boiler and Pressure Vessel Inspectors.

ASME B31.1, ASME Code for [ ~~Pressure Power~~ ] Piping, American National Standards Institute, ~~1998~~ [ 2006 2007 ].

NFPA 85 Boiler and Combustion Systems Hazards, 2001 Edition, National Fire Protection Association.

Part CG (General), Part CW (Steam and Waterside Control) and Part CF (Combustion Side Control) Flame Safeguard of ANSI/ASME CSD-1, Controls and Safety Devices for Automatically Fired Boilers, ~~1998~~ [ 2006 2009 ], American Society of Mechanical Engineers.

"Boiler Blowoff Equipment," National Board of Boiler and Pressure Vessel Inspectors, Rules and Recommendations for the Design and Construction of Boiler Blowoff Systems, 1991.

API510, Pressure Vessel Inspection Code, Maintenance Inspection, Rating, Repair and Alteration, ~~Sixth Edition, June 1989~~ Ninth Edition, June 2006, American Petroleum Institute.

VA.R. Doc. No. R08-1235; Filed October 11, 2012, 10:44 a.m.

## Final Regulation

Title of Regulation: **16VAC25-60. Administrative Regulation for the Virginia Occupational Safety and Health Program (amending 16VAC25-60-90, 16VAC25-60-240; adding 16VAC25-60-245).**

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: December 5, 2012.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

### Summary:

*The amendments establish procedures for the commissioner or his appointed representatives under § 40.1-6 of the Code of Virginia to take and preserve testimony, examine witnesses, and administer oaths and, pursuant to § 40.1-11 of the Code of Virginia, allow individuals the right to request a copy of their own interview comments when involved in an investigation.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

## **16VAC25-60-90. Release of information and disclosure pursuant to requests under the Virginia Freedom of Information Act and subpoenas.**

A. Pursuant to the Virginia Freedom of Information Act (FOIA) and with the exceptions stated in subsections B through H of this section, employers, employees and their representatives shall have access to information gathered in the course of an inspection.

B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner ~~in confidence~~ pursuant to § 40.1-49.8 of the Code of Virginia ~~shall not be disclosed for any purpose, except to the individual giving the statement~~ are confidential. Pursuant to the requirements set forth in § 40.1-11 of the Code of Virginia, individuals shall have the right to request a copy of their own interview statements.

C. All file documents contained in case files which are under investigation, and where a citation has not been issued, are not disclosable until:

1. The decision has been made not to issue citations; or
2. Six months has lapsed following the occurrence of an alleged violation.

D. Issued citations, orders of abatement and proposed penalties are public documents and are releasable upon a written request. All other file documents in cases where a citation has been issued are not disclosable until the case is a final order of the commissioner or the court, except that once a copy of file documents in a contested case has been provided to legal counsel for the employer in response to a request for discovery, or to a third party in response to a subpoena duces tecum, such documents shall be releasable upon a written request, subject to the exclusions in this regulation and the Virginia Freedom of Information Act.

E. Information required to be kept confidential by law shall not be disclosed by the commissioner or by any employee of the department. In particular, the following specific information is deemed to be nondisclosable:

1. The identity of and statements of an employee or employee representative who has complained of hazardous conditions to the commissioner;
2. The identities of employers, owners, operators, agents or employees interviewed during inspections and their interview statements;
3. Employee medical and personnel records obtained during VOSH inspections. Such records may be released to the employee or his duly authorized representative upon a written, and endorsed request; and
4. Employer trade secrets, commercial, and financial data.

F. The commissioner may decline to disclose a document that is excluded from the disclosure requirements of the Virginia FOIA, particularly documents and evidence related to criminal investigations, writings protected by the attorney-

client privilege, documents compiled for use in litigation and personnel records.

G. An effective program of investigation and conciliation of complaints of discrimination requires confidentiality. Accordingly, disclosure of records of such complaints, investigations, and conciliations will be presumed to not serve the purposes of Title 40.1 of the Code of Virginia, except for statistical and other general information that does not reveal the identities of particular employers or employees.

H. All information gathered through participation in consultation services or training programs of the department shall be withheld from disclosure except for statistical data which does not identify individual employers.

I. The commissioner, in response to a subpoena, order, or other demand of a court or other authority in connection with a proceeding to which the department is not a party, shall not disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without the approval of the Commissioner of Labor and Industry.

J. The commissioner shall disclose information and statistics gathered pursuant to the enforcement of Virginia's occupational safety and health laws, standards, and regulations where it has been determined that such a disclosure will serve to promote the safety, health, and welfare of employees. Any person requesting disclosure of such information and statistics should include in his written request any information that will aid the commissioner in this determination.

**16VAC25-60-240. Walkthrough.**

Walkthrough by the commissioner for the inspection of any workplace includes the following privileges.

1. The commissioner shall be in charge of the inspection and, as part of an inspection, may question privately any employer, owner, operator, agent, or employee. The commissioner shall conduct the interviews of persons during the inspection or at other convenient times. The commissioner may take and preserve testimony, examine witnesses [ , ] and administer oaths as provided for in 16VAC25-60-245.
2. As part of an inspection, the commissioner may take or obtain photographs, video recordings, audio recordings and samples of materials, and employ other reasonable investigative techniques as deemed appropriate. As used here, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other devices to employees in order to monitor their exposures.
3. Any employee representative selected to accompany the commissioner during the inspection of the workplace shall be an employee of the employer. Additional employer

representatives and employee representatives may be permitted by the commissioner to accompany the inspection team where the commissioner determines such additional persons will aid in the inspection. A different employer representative or employee representative may accompany the commissioner during each phase of the inspection if, in the determination of the commissioner, this will aid in the conduct of the inspection.

4. The commissioner may limit the number of representatives when the inspection group would be of such size as to interfere with the inspection or create possible safety hazards, or when the representative does not represent an employer or employee present in the particular area under inspection.

5. In such cases as stated in subdivision 4 of this section, the commissioner must give each walkthrough representative the opportunity to advise of possible safety or health hazards and then proceed with the inspection without walkthrough representatives. Whenever the commissioner has limited the number of employee walkthrough representatives, a reasonable number of employees shall be consulted during the inspection concerning possible safety or health hazards.

6. Technical personnel such as safety engineers and industrial hygienists or other consultants to the commissioner or the employer may accompany the commissioner if the commissioner determines that their presence would aid in the conduct of the inspection and agreement is obtained from the employer or the commissioner obtains an order under § 40.1-6(8)(b) of the Code of Virginia. All such consultants shall be bound by the confidentiality requirements of § 40.1-51.4:1 of the Code of Virginia.

7. The commissioner is authorized to dismiss from the inspection party at any time any person or persons whose conduct interferes with the inspection.

**16VAC25-60-245. Take and preserve testimony, examine witnesses and administer oaths.**

A. Subdivision 4 of § 40.1-6 of the Code of Virginia authorizes the commissioner, in the discharge of his duties, to take and preserve testimony, examine witnesses and administer oaths. In accordance with subdivision 5 of § 40.1-6 of the Code of Virginia, the Commissioner of Labor and Industry may appoint such representatives as are necessary to carry out the functions outlined in subdivision 4 of § 40.1-6 of the Code of Virginia. Such appointments shall be made in writing; identify the individual being appointed, the length of appointment, [ and ] the method of withdrawal of such appointment; and specify what duties are being prescribed.

B. The oath shall be administered by the commissioner's appointed representative to the witness as follows: "Do you swear or affirm to tell the truth."

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C. Testimony given under oath shall be recorded by a court reporter.

D. Questioning of employers, owners, operators, agents or employees under oath shall be in private in accordance with subdivision 2 of § 40.1-49.8 of the Code of Virginia.

E. An employer's refusal to make an owner, operator, agent or employee available to the commissioner for examination under this section shall be considered a refusal to consent to the commissioner's inspection authority under § 40.1-49.8 of the Code of Virginia. Upon such refusal the commissioner may seek an administrative search warrant in accordance with the provisions contained in §§ 40.1-49.9 through 40.1-49.12 of the Code of Virginia, and obtain an order from the appropriate judge commanding the employer to make the subject owner, operator, agent or employee available for examination at a specified location by a date and time certain.

F. In accordance with § 40.1-10 of the Code of Virginia, if any person who may be sworn to give testimony shall willfully fail or refuse to answer any legal and proper question propounded to him concerning the subject of the examination under § 40.1-6 of the Code of Virginia, he shall be guilty of a misdemeanor. Such person, upon conviction thereof, shall be fined not exceeding \$100 nor less than \$25 or imprisoned in jail not exceeding 90 days or both. Any such refusal on the part of any person to comply with this section may be referred by the Commissioner of Labor and Industry to the appropriate attorney for the Commonwealth for prosecution.

VA.R. Doc. No. R08-1046; Filed October 11, 2012, 10:46 a.m.

## **Withdrawal of Proposed Regulation**

Titles of Regulations: 16VAC25-90. Federal Identical General Industry Standards (repealing 16VAC25-90-1910.151).

**16VAC25-95. Medical Services and First Aid for General Industry (adding 16VAC25-95-10).**

**16VAC25-175. Federal Identical Construction Industry Standards (repealing 16VAC25-175-1926.50).**

**16VAC25-177. Medical Services and First Aid Standards for the Construction Industry (adding 16VAC25-177-10).**

Statutory Authority: § 40.1-22 of the Code of Virginia.

The Safety and Health Codes Board has **WITHDRAWN** the proposed regulatory actions for 16VAC25-90, Federal Identical General Industry Standards (repealing 16VAC25-90-1910.151); 16VAC25-95, Medical Services and First Aid Standards for General Industry (adding 16VAC25-95-10); 16VAC25-175, Federal Identical Construction Industry Standards (repealing 16VAC25-175-1926.50); and 16VAC25-177, Medical Services and First Aid Standards for the Construction Industry (adding 16VAC25-177-10), which were published in 25:2 VA.R. 277 September 29, 2008.

Agency Contact: Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, Main

Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418, TTY (804) 786-2376, or email regina.cobb@doli.virginia.gov.

VA.R. Doc. No. R07-05; Filed October 15, 2012, 11:13 a.m.

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## **TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

### **BOARD FOR CONTRACTORS**

#### **Final Regulation**

Title of Regulation: 18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-10, 18VAC50-30-40, 18VAC50-30-120, 18VAC50-30-185, 18VAC50-30-190; adding 18VAC50-30-73, 18VAC50-30-75).

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

Effective Date: January 1, 2013.

Agency Contact: Eric L. Olson, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

#### Summary:

*The amendments clarify provisions of the current regulations and respond to changes in the industry and requests from current licensees. With the exception of regulations promulgated due to the statutory implementation of the Certified Elevator Mechanic program and the Certified Water Well System Provider program, the last nonfee related regulatory change was made in 2003.*

*The most substantive change to these regulations is the creation of an inactive license status for tradesmen. Other changes include the deletion of language duplicated in the statutes, clarification of some sections, and the elimination of the fee for duplicate copies of a license.*

*Changes made to the proposed regulation (i) clarify the definition of "inactive tradesmen," (ii) add a section for the licensing of inactive tradesmen, (iii) provide clarification for an inactive tradesman who wishes to activate his license, and (iv) change statutory references to the Code of Virginia.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part I  
General

**18VAC50-30-10. Definitions.**

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

"Apprentice" means a person who assists tradesmen while gaining knowledge of the trade through on-the-job training and related instruction in accordance with the Virginia Voluntary Apprenticeship Act (§ 40.1-117 et seq. of the Code of Virginia).

"Backflow prevention device work" means work performed by a backflow prevention device worker as defined in § 54.1-1128 of the Code of Virginia.

"Building official/inspector" is an employee of the state, a local building department or other political subdivision who enforces the Virginia Uniform Statewide Building Code.

"Certified elevator mechanic" means an individual who is certified by the board who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing or maintaining elevators, escalators, or related conveyances in accordance with the Uniform Statewide Building Code.

"Division" means a limited subcategory within any of the trades, as approved by the department.

"Electrical work" consists of, but is not limited to, the following: (i) planning and layout of details for installation or modifications of electrical apparatus and controls including preparation of sketches showing location of wiring and equipment; (ii) measuring, cutting, bending, threading, assembling and installing electrical conduits; (iii) performing maintenance on electrical systems and apparatus; (iv) observation of installed systems or apparatus to detect hazards and need for adjustments, relocation or replacement; and (v) repairing faulty systems or apparatus.

"Electrician" means a tradesman who does electrical work including the construction, repair, maintenance, alteration or removal of electrical systems in accordance with the National Electrical Code and the Virginia Uniform Statewide Building Code.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the ~~department board~~, conducted by trade associations, businesses, the military, correspondence schools or other similar training organizations.

"Gas fitter" means an individual who does gas fitting-related work usually as a division within the HVAC or plumbing trades in accordance with the Virginia Uniform Statewide Building Code. This work includes the installation, repair, improvement or removal of liquefied petroleum or natural gas piping, tanks, and appliances annexed to real property.

"Helper" or "laborer" means a person who assists a licensed tradesman and who is not an apprentice as defined in this chapter.

"HVAC tradesman" means an individual whose work includes the installation, alteration, repair or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heating systems, boilers, process piping, backflow prevention devices, and mechanical refrigeration systems, including tanks incidental to the system.

"Inactive tradesman [ license ]" means an individual who [ is not currently employed as a licensed tradesman and who is not performing any of the activities defined in § 54.1-1128 of the Code of Virginia meets the requirements of 18VAC50-30-73 and is licensed under that section ].

"Incidental" means work that is necessary for that particular repair or installation and is outside the scope of practice allowed to the regulant by this chapter.

"Journeyman" means a person who possesses the necessary ability, proficiency and qualifications to install, repair and maintain specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code and according to plans and specifications.

"Liquefied petroleum gas fitter" means any individual who engages in, or offers to engage in, work for the general public for compensation in work that includes the installation, repair, improvement, alterations or removal of piping, liquefied petroleum gas tanks and appliances (excluding hot water heaters, boilers and central heating systems that require a heating, ventilation and air conditioning or plumbing certification) annexed to real property.

"Maintenance" means the reconstruction or renewal of any part of a backflow device for the purpose of maintaining its proper operation. This does not include the actions of removing, replacing or installing, except for winterization.

"Master" means a person who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation and supervise the work of installing, repairing and maintaining specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Statewide Building Code.

"Natural gas fitter provider" means any individual who engages in, or offers to engage in, work for the general public for compensation in the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property, excluding new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment that requires heating, ventilation and air conditioning or plumbing certification.

"Periodic inspection" means to examine a cross connection control device in accordance with the requirements of the locality to be sure that the device is in place and functioning

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in accordance with the standards of the Virginia Statewide Building Code.

"Plumber" means an individual who does plumbing work in accordance with the Virginia Statewide Building Code.

"Plumbing work" means work that includes the installation, maintenance, extension, or alteration or removal of piping, fixtures, appliances, and appurtenances in connection with any of the following:

1. Backflow prevention devices;
2. Boilers;
3. Domestic sprinklers;
4. Hot water baseboard heating systems;
5. Hydronic heating systems;
6. Process piping;
7. Public/private water supply systems within or adjacent to any building, structure or conveyance;
8. Sanitary or storm drainage facilities;
9. Steam heating systems;
10. Storage tanks incidental to the installation of related systems;
11. Venting systems; or
12. Water heaters.

These plumbing tradesmen may also install, maintain, extend or alter the following:

1. Liquid waste systems;
2. Sewerage systems;
3. Storm water systems; and
4. Water supply systems.

"Regulant" means an individual licensed as a tradesman, liquefied petroleum gas fitter, natural gas fitter provider or certified as a backflow prevention device worker, elevator mechanic, or water well systems provider.

"Reinstatement" means having a license or certification card restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or certification card for another period of time.

"Repair" means the reconstruction or renewal of any part of a backflow prevention device for the purpose of returning to service a currently installed device. This does not include the removal or replacement of a defective device by the installation of a rebuilt or new device.

"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code, one of whom must be on the job site at all times during installation.

"Testing organization" means an independent testing organization whose main function is to develop and administer examinations.

"Trade" means any of the following: electrical, gas fitting, HVAC (heating, ventilation and air conditioning), liquefied petroleum gas fitting, natural gas fitting, plumbing, and divisions within them.

"Water distribution systems" include fire sprinkler systems, highway/heavy, HVAC, lawn irrigation systems, plumbing, or water purveyor work.

## **18VAC50-30-40. Evidence of ability and proficiency.**

A. Applicants for examination to be licensed as a journeyman shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in the trade and 240 hours of formal vocational training in the trade. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 80 hours of formal training, but not to exceed 200 hours;
2. Four years of practical experience and 80 hours of vocational training for liquefied petroleum gas fitters and natural gas fitter providers except that no substitute experience will be allowed for liquefied petroleum gas and natural gas workers;
3. An associate degree or a certificate of completion from at least a two-year program in a tradesman-related field from an accredited community college or technical school as evidenced by a transcript from the educational institution and two years of practical experience in the trade for which licensure is desired;
4. A bachelor's degree received from an accredited college or university in an engineering curriculum related to the trade and one year of practical experience in the trade for which licensure is desired; or
5. On or after July 1, 1995, an applicant with 10 years of practical experience in the trade as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients attesting to the applicant's work in the trade, may be granted permission to sit for the journeyman's level examination without having to meet the educational requirements.

B. Applicants for examination to be licensed as a master shall furnish evidence that one of the following experience standards has been attained:

1. Evidence that they have one year of experience as a licensed journeyman; or
2. On or after July 1, 1995, an applicant with 10 years of practical experience in the trade, as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients, attesting to the applicant's work in the trade, may be granted permission to sit for the master's level examination without having to meet the educational requirements.



C. Individuals who have successfully passed the Class A contractors trade examination prior to January 1, 1991, administered by the Virginia Board for Contractors in a certified trade shall be deemed qualified as a master in that trade in accordance with this chapter.

D. Applicants for examination to be certified as a backflow prevention device worker shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in water distribution systems and 40 hours of formal vocational training in a school approved by the board; or
2. Applicants with seven or more years of experience may qualify with 16 hours of formal vocational training in a school approved by the board.

The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

E. An applicant for certification as an elevator mechanic shall:

1. Have three years of practical experience in the construction, maintenance and service/repair of elevators, escalators, or related conveyances; 144 hours of formal vocational training; and satisfactorily complete a written examination administered by the board. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 40 hours of formal training, but not to exceed 120 hours;
2. Have three years of practical experience in the construction, maintenance, and service/repair of elevators, escalators, or related conveyances and a certificate of completion of the elevator mechanic examination of a training program determined to be equivalent to the requirements established by the board; or
3. Successfully complete an elevator mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor, as evidenced by providing a certificate of completion or other official document, and satisfactorily complete a written examination administered by the board.

F. Pursuant to [ ~~§ 54.1-1129-D~~ § 54.1-1129.1 A ] of the Code of Virginia, an applicant for examination as a certified water well systems provider shall provide satisfactory proof to the board of at least:

1. One year of full-time practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board to qualify for examination as a trainee water well systems provider;

2. Three years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board and 24 hours of formal vocational training in the trade to qualify for examination as a journeyman water well systems provider; or

3. Six years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board and 48 hours of formal vocational training in the trade to qualify for examination as a master water well systems provider.

**[ 18VAC50-30-73. Licensing of inactive tradesmen.**

Any individual who is not currently employed as a licensed tradesman and who is not performing any of the activities defined in § 54.1-1128 of the Code of Virginia may be licensed as an inactive tradesman by completing a form provided by the board. ]

**18VAC50-30-75. Activation of license.**

Any [ ~~individual~~ inactive tradesman ] may activate [ ~~an inactive tradesman a~~ ] license to practice as [ ~~an inactive a tradesman~~ ] by completing a form provided by the board and completing the continuing education requirements for the current licensing cycle. Any tradesman that has not had an active license for a period of greater than three years will be required to meet the current precicensing eligibility criteria.

**18VAC50-30-120. Renewal.**

A. Licenses and certification cards issued under this chapter shall expire two years from the last day of the month in which they were issued as indicated on the license or certification card.

B. Effective with all licenses issued or renewed after December 31, 2007, as a condition of renewal or reinstatement and pursuant to § 54.1-1133 of the Code of Virginia, all individuals holding tradesman licenses with the trade designations of plumbing, electrical and heating ventilation and cooling shall be required to satisfactorily complete three hours of continuing education for each designation and individuals holding licenses as liquefied petroleum gas fitters and natural gas fitter providers, one hour of continuing education, relating to the applicable building code, from a provider approved by the board in accordance with the provisions of this chapter. [ ~~Inactive tradesmen are~~ An inactive tradesman is ] not required to meet the continuing education requirements as a condition of renewal.

C. Certified elevator mechanics, as a condition of renewal or reinstatement and pursuant to § 54.1-1143 of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education relating to the provisions of the Virginia Statewide Building Code pertaining to elevators, escalators and related conveyances. This continuing education

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will be from a provider approved by the board in accordance with the provisions of this chapter.

D. Certified water well systems providers, as a condition of renewal or reinstatement and pursuant to [ ~~§ 54.1-1129 B~~ § 54.1-1129.1 B ] of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education in the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction from a provider approved by the board in accordance with the provisions of this chapter.

E. Renewal fees are as follows:

Tradesman license	\$90
Liquefied petroleum gas fitter license	\$90
Natural gas fitter provider license	\$90
Backflow prevention device worker certification	\$90
Elevator mechanic certification	\$90
Water well systems provider certification	\$90

All fees are nonrefundable and shall not be prorated.

F. The board will mail a renewal notice to the regulant outlining procedures for renewal. Failure to receive this notice, however, shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a photocopy of the tradesman license or backflow prevention device worker certification card may be submitted with the required fee as an application for renewal within 30 days of the expiration date.

G. The date on which the renewal fee is received by the department or its agent will determine whether the regulant is eligible for renewal or required to apply for reinstatement.

H. The board may deny renewal of a tradesman license or a backflow prevention device worker certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

I. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

## Part V Standards of Conduct

### **18VAC50-30-185. Revocation of licensure or certification.**

A. Licensure or certification may be revoked for misrepresentation or a fraudulent application or for incompetence as demonstrated by an egregious or repeated violation of the Virginia Uniform Statewide Building Code.

B. The board shall have the power to require remedial education and to fine, suspend, revoke or deny renewal of a license or certification card of any individual who is found to be in violation of the statutes or regulations governing the practice of licensed tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers or elevator mechanics in the Commonwealth of Virginia.

### **18VAC50-30-190. Prohibited acts.**

Any of the following are cause for disciplinary action:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board;
2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license or certification card;
3. Where the regulant has failed to report to the board, in writing, the suspension or revocation of a tradesman, liquefied petroleum gas fitter or natural gas fitter provider license, certificate or card, or backflow prevention device worker or water well systems provider certification card, by another state or a conviction in a court of competent jurisdiction of a building code violation;
4. ~~Gross negligence~~ Negligence or incompetence in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, or water well systems provider;
5. Misconduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, or water well systems provider;
6. A finding of improper or dishonest conduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, or water well systems provider by a court of competent jurisdiction;
7. For licensed tradesmen, liquefied petroleum gas fitters or natural gas fitter providers performing jobs under \$1,000, or backflow prevention device workers, elevator mechanics, or water well systems providers performing jobs of any amount, abandonment, the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part (unjustified cessation of work under the contract for a period of 30 days or more shall be considered evidence of abandonment);
8. Making any misrepresentation or making a false promise of a character likely to influence, persuade, or induce;
9. Aiding or abetting an unlicensed contractor to violate any provision of Chapter 1 or Chapter 11 of Title 54.1 of the Code of Virginia, or these regulations; or combining or

conspiring with or acting as agent, partner, or associate for an unlicensed contractor; or allowing one's license or certification to be used by an unlicensed or uncertified individual;

10. Where the regulant has offered, given or promised anything of value or benefit to any federal, state, or local government employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry;

11. Where the regulant has been convicted or found guilty, after initial licensure or certification, regardless of adjudication, in any jurisdiction of any felony or of a misdemeanor involving lying, cheating or stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession, there being no appeal pending therefrom or the time of appeal having elapsed. Any pleas of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;

12. Having failed to inform the board in writing, within 30 days, that the regulant has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession;

13. Having been disciplined by any county, city, town, or any state or federal governing body for actions relating to the practice of any trade, backflow prevention device work, or water well systems provider work, which action shall be reviewed by the board before it takes any disciplinary action of its own;

14. Failure to comply with the Virginia Statewide Building Code, ~~as amended~~;

15. Practicing in a classification or specialty service for which the regulant is not licensed or certified; ~~and~~

16. Failure to obtain any document required by the Virginia Department of Health for the drilling, installation, maintenance, repair, construction, or removal of water wells, water well systems, water well pumps, or other water well equipment; and

17. Failure to obtain a building permit or applicable inspection, where required.

**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 (18VAC50-30)

- [ ~~Tradesman License Application, 2710LIC (rev. 4/10).~~
- [Backflow Prevention Device Worker Certification Application, 2710BPD \(rev. 4/10\).](#)
- [Elevator Mechanic Certification Application, 2710ELE \(rev. 4/10\).](#)
- [Individual Experience Form, 2710EXP \(rev. 5/09\).](#)
- [Vocational Training Form, 2710VOTR \(rev. 5/09\).](#)
- [Education Provider Registration/Course Approval Application, 27edreg \(rev. 5/09\).](#)
- [Certified Water Well System Provider Application, 2710WSP \(rev. 4/10\).](#)
- [Education Provider Listing Form \(rev. 5/09\).](#)
- [Education Provider Listing Application, A503-27EDLIST-v2 \(rev. 3/11\).](#)
- [Education Provider Registration/Course Approval Application, A503-27EDREG-v4 \(rev.10/11\).](#)
- [Tradesman Additional Designation & License Upgrade Application, A503-2710\\_ADDLIC-v1 \(rev. 10/11\).](#)
- [Tradesman Exam & License Application, A503-2710EXLIC-v1 \(eff. 10/11\).](#)
- [Tradesman Individual Experience Form, A503-2710EXP-v1 \(rev. 10/11\).](#)
- [Backflow Prevention Device Worker Certification Application, A503-2717BPD \(rev. 10/11\).](#)
- [Certified Elevator Mechanic Application, A503-2718ELE \(rev. 10/11\).](#)
- [Certified Water Well System Provider Application, A503-2719WSP \(rev. 10/11\).](#)
- [Temporary Elevator Mechanic Certification \(rev. 4/10\). \]](#)

VA.R. Doc. No. R08-1571; Filed October 5, 2012, 11:02 a.m.

**BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS**

**Fast-Track Regulation**

**Title of Regulation:** **18VAC145-40. Regulations for the Geology Certification Program (amending 18VAC145-40-10, 18VAC145-40-20; adding 18VAC145-40-83, 18VAC145-40-85).**

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** December 5, 2012.

**Effective Date:** January 1, 2013.

**Agency Contact:** Kathleen R. Nobsisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals,

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and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email soilscientist@dpor.virginia.gov.

**Basis:** Section 54.1-201 of the Code of Virginia states that the board has the power and duty "To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title."

**Purpose:** Currently, several colleges and universities, in other states, require students graduating with degrees in geology to take the Fundamentals of Geology (FG) exam as part of their degree program. The board believes that allowing individuals to take the FG exam shortly after completion of course work rather than years after completion of course work may result in a higher pass rate. By allowing qualified college students and more recent college graduates to sit for the FG exam, and for college graduates who have passed the FG exam to earn the designation of Geologist-in-Training (GIT), the board believes there will be an increase in the number individuals who pass the FG exam, and subsequently, meet all of the qualifications to become certified Virginia professional geologists. Ensuring that geologists have at least the minimal competencies to perform geological work protects the health, safety, and welfare of Virginia citizens.

**Rationale for Using Fast-Track Process:** The fast-track process is being used because the proposed amendments are less restrictive than the current regulation, are expected to be noncontroversial, and are consistent with other professions (e.g., professional engineers and architects). The proposed amendments do not diminish the qualifications that must be met to become a Virginia certified professional geologist. Individuals seeking certification will be required to meet all education, examination, and experience requirements as set forth in the board's regulations.

**Substance:** Substantive changes to existing sections include adding the definition of "Geologist-in-Training (GIT)" and an application fee for the GIT designation. New substantive provisions include adding qualifications for individuals to sit for the Fundamentals of Geology (FG) exam and adding qualifications for individuals to earn the GIT designation.

**Issues:** The advantages to the public are the less restrictive qualifications to sit for the FG exam and creation of the GIT designation while continuing to ensure that individuals seeking certification as a Virginia certified professional geologist possess all qualifications and minimum competencies set by the board's regulation.

The primary advantage to the Commonwealth is the continuance of a successful voluntary certification program with the potential for an increase in individuals seeking certification as professional geologists.

There are no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Board for Geology (Board) proposes to create a Geologist-in-Training (GIT) designation.

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

Estimated Economic Impact. Section 54.1-2208.1 (formerly § 54.1-1401) of the Code of Virginia states, in part, that "The certification program set forth in this chapter is voluntary and shall not be construed to prevent or affect the practice of geology by uncertified geologists; however, no person may represent himself as a Virginia certified professional geologist unless he has been so certified by the Board." Thus, professional geologist certification is essentially title protection and is not required in order to legally work as a geologist.

The current and proposed regulations specify the qualifications required for certification as a professional geologist. The qualifications include the completion of extensive education and experience requirements, as well as passing a Board-approved examination. The Board proposes to create a Geologist-in-Training (GIT) designation which would have similar education requirements to the professional geologist certification, but would not require geological work experience.

The current regulations do not specify that applicants must complete geological work experience prior to sitting for the Board-approved exam. In practice though, it appears that the Board does not permit applicants to take the exam until work experience is completed. In the agency background document for this proposed action the Department of Professional and Occupation Regulation (Department) states the following:

Currently, several colleges and universities, in other states, require students graduating with degrees in geology to take the exam as part of their degree program. The Board believes that allowing individuals to take the exam shortly after completion of course work rather than years after completion of course work may result in a higher pass rate. By allowing qualified college students and more recent college graduates to sit for the exam, and for college graduates who have passed the exam to earn the designation of GIT, the Board believes there will be an increase in the number individuals who pass the exam, and subsequently, meet all of the qualifications to become Certified Virginia Professional Geologists.

Whether or not new language is necessary in order to allow qualified college students and more recent college graduates to sit for the exam, there appears to be no disadvantage to the public for allowing these individuals to sit for the exam.

**Businesses and Entities Affected.** The Department expects approximately 60 applicants for the Geologist-in-Training designation annually.

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

**Projected Impact on Employment.** The proposal amendments are unlikely to significantly affect total employment.

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

**Small Businesses: Costs and Other Effects.** The proposed amendments are unlikely to significantly affect small businesses.

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

**Real Estate Development Costs.** The proposed amendments are unlikely to significantly affect real estate development costs.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

**Summary:**

*The amendments change the qualifications for applicants applying to sit for the Fundamentals of Geology (FG) exam by removing the work experience requirement and by allowing not only college graduates with baccalaureate or*

*higher degrees, but also undergraduate college students within 12 months of completing undergraduate degree requirements and graduate college students within six months of completing graduate degree requirements, to apply to sit for the FG exam. The amendments also allow individuals who have passed the FG exam, completed the required geological science course work, and obtained a baccalaureate or higher degree to apply for the designation of Geologist-in-Training (GIT).*

Part I  
General

**18VAC145-40-10. Definitions.**

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

"Board" means the Board for Professional Soil Scientists, Wetland Professionals, and Geologists.

"Geologist" means a person engaged in the public practice of geology.

"Geologist-in-Training (GIT)" means an individual who has completed the academic requirements specified in this chapter and has passed the Fundamentals of Geology examination, but has not met all requirements to qualify as a Virginia certified professional geologist.

"Geology" means the science dealing with (i) the earth and its history in general; (ii) the investigation, prediction, evaluation, and location of materials and structures which compose the earth; (iii) the natural processes that cause changes in the earth; and (iv) the application of knowledge of the earth, its processes, and its constituent rocks, minerals, liquids, gases and other natural materials.

"Practice of geology" means the performance of any service or work for the general public wherein the principles and methods of geology are applied.

"Qualified geologist" means an uncertified person who possesses all the qualifications specified in § 54.1-2208.2 of the Code of Virginia for certification.

"Related geological science degree" means a degree that shall include, but not be limited to, a degree in economic geology or petroleum geology.

"Responsible charge" means the direct control and supervision of the practice of geology.

"Supervision" means quality control review of all significant data collection, interpretation and conclusions.

"Virginia certified professional geologist" means a person who possesses all qualifications specified in this chapter for certification and whose competence has been attested by the board through certification.

**18VAC145-40-20. Fees.**

All fees for application, examination, renewal, and reinstatement shall be established by the board pursuant to §

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54.1-201 of the Code of Virginia. All fees are nonrefundable and shall not be prorated.

1. The application fee for certification shall be \$40.
2. The fee for renewal of certification shall be \$35.
3. The application fee for the Geologist-in-Training (GIT) designation shall be \$20.
- ~~3.~~ 4. The fee for examination or reexamination is subject to contracted charges to the department by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.
4. 5. The penalty fee for late renewal shall be \$25 in addition to the renewal fee.
- ~~5.~~ 6. The reinstatement fee shall be \$40.

## **18VAC145-40-83. Qualifications for the Fundamentals of Geology (FG) examination.**

The board may approve applicants to sit for the Fundamentals of Geology (FG) examination without having met the experience requirements of 18VAC145-40-70. The applicant shall submit an application on forms provided by the board, pay the fee established in 18VAC145-40-20, and satisfy one of the following requirements:

1. Hold a baccalaureate or higher degree from an accredited college or university with a major in geology, engineering geology, geological engineering, or a related geological science and provide an official college transcript that demonstrates satisfactory completion of the degree program.
2. Hold a baccalaureate or higher degree from an accredited college or university with a major other than geology, engineering geology, geological engineering, or a related geological science and satisfactorily completed at least 30 semester hours (or the equivalent) of geological science courses including, but not limited to, the following subjects:
  - a. Stratigraphy;
  - b. Structural geology;
  - c. Mineralogy;
  - d. Paleontology;
  - e. Petrology;
  - f. Geomorphology; and
  - g. Field geology.

At least 12 of the 30 semester hours of geological science courses must have been completed in four of the seven subjects listed in this subsection. The applicant shall provide an official college transcript and written documentation that demonstrates the courses satisfactorily completed are equivalent to those required by this section.

3. Be enrolled in an undergraduate geology, engineering geology, geological engineering, or a related geological science curriculum of at least four years at an accredited college or university and be within 12 months of completing undergraduate degree requirements. The applicant shall provide an official college transcript that demonstrates satisfactory completion of course work.

4. Be enrolled in a graduate geology, engineering geology, geological engineering, or a related geological science curriculum at an accredited college or university and be within six months of completing graduate degree requirements. The applicant shall provide an official college transcript that demonstrates satisfactory completion of course work.

## **18VAC145-40-85. Qualifications for Geologist-in-Training (GIT) designation.**

A. To be eligible to obtain the GIT designation, each applicant shall:

1. Make application on forms provided by the board;
2. Be of ethical character;
3. Have achieved a passing score on a board-approved Fundamentals of Geology examination;
4. Hold a baccalaureate or higher degree from an accredited college or university with a major in geology, engineering geology, geological engineering, or a related geological science; or
5. Hold a baccalaureate or higher degree from an accredited college or university with a major other than geology, engineering geology, geological engineering, or a related geological science and have satisfactorily completed at least 30 semester hours (or the equivalent) of geological science courses including, but not limited to, the following subjects: stratigraphy, structural geology, mineralogy, paleontology, petrology, geomorphology, and field geology. At least 12 of the 30 semester hours of geological science courses must have been completed in four of the seven subjects listed in this subsection.

B. Prior to obtaining the designation of GIT, an applicant who qualified to sit for a board-approved Fundamentals of Geology examination under subdivision 3 or 4 of 18VAC145-40-83 and passed the examination must provide an official college transcript that demonstrates satisfactory completion of the degree program.

C. The designation of GIT will remain valid until the individual meets all requirements for certification as a Virginia certified professional geologist.

D. The designation of GIT does not give an individual the authority to practice as a certified professional geologist. An individual may not practice as a certified professional geologist in the Commonwealth of Virginia until his competence has been attested by the board through certification.

**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 of a form with a hyperlink to access it. 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 (18VAC145-40)

Certification Application, 28CERT (rev. 6/00).

[Geologist-in-Training Designation Application \(rev. 10/12\).](#)

Experience Log, 28EXP (rev. 1/05).

VA.R. Doc. No. R13-2994; Filed October 4, 2012, 4:42 p.m.



## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Final Regulation

**Title of Regulation:** **22VAC40-25. Auxiliary Grants Program (amending 22VAC40-25-10 through 22VAC40-25-70; adding 22VAC40-25-15).**

**Statutory Authority:** §§ 63.2-217 and 63.2-800 of the Code of Virginia.

**Effective Date:** December 5, 2012.

**Agency Contact:** Karin Clark, Regulatory Coordinator, Department of Social Services, 801 East Main Street, Room 1507, Richmond, VA 23219, telephone (804) 726-7017, FAX (804) 726-7015, TTY (800) 828-1120, or email [karin.clark@dss.virginia.gov](mailto:karin.clark@dss.virginia.gov).

**Summary:**

*The changes to the regulation include (i) removing the requirement that assisted living facilities (ALFs) accepting individuals with an auxiliary grant (AG) submit an annual audit report to the Department of Social Services and replacing it with a requirement for an annual AG certification; (ii) adding a Virginia residency requirement for AG eligibility; (iii) clarifying ALFs participation in the AG Program and the submission of the provider agreement; (iv) amending the assessment process for emergency ALF placements; (v) clarifying procedures for ALF providers regarding resident discharges from facilities; and (vi) using person-centered language throughout the text.*

*Three changes are made to the proposed regulation. In 22VAC40-25-20, language addressing the assessment of private pay individuals prior to admission to an ALF was removed because this text was confusing and conflicted with other regulations. 22VAC40-25-15, which addresses the residency requirement, was clarified. The requirement*

*that individuals applying for an AG grant must provide verification of Virginia residency was changed so that individuals may be required to provide verification of Virginia residency. Additionally, the length of time that a close relative has to have resided in Virginia before his family member could apply for an AG was reduced from 180 days to 90 days.*

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

**22VAC40-25-10. Definitions.**

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

"Adult foster care (AFC)" means a locally optional program that provides room and board, supervision, and special services to an adult who has a physical or mental health need. Adult foster care may be provided for up to three adults by any one provider who is approved by the local department of social services.

~~"Applicant" means an adult currently residing or planning to reside in an assisted living facility or in adult foster care and who has applied for financial assistance under the Auxiliary Grants Program.~~

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the ~~uniform assessment instrument~~ Uniform Assessment Instrument.

"Assisted living facility (ALF)" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for

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persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

Assuming responsibility for the well-being of individuals residing in an ALF, either directly or through contracted agents, is considered "general supervision and oversight."

~~"Audit report" is an annual report prepared by the assisted living facility's private auditor. The auditor shall determine that the financial statements of the auditee are presented fairly and in conformity with generally accepted accounting principles.~~

"Auxiliary Grants (AG) Program" means a state and locally funded assistance program to supplement income of ~~a~~ an individual receiving Supplemental Security Income (SSI) recipient or adult who would be eligible for SSI except for excess income, who resides in an assisted living facility ALF or in ~~adult foster care AFC~~ with an approved established rate.

"Certification" means a form provided by the department and prepared by the ALF annually certifying that the ALF has properly managed the personal funds and personal needs allowances of individuals residing in the ALF and is in compliance with program regulations and appropriate licensing regulations.

"Department" means the Virginia Department of Social Services.

"Established rate" means the ~~auxiliary grant~~ rate as set forth in the appropriation act or as set forth to meet federal maintenance of effort requirements.

~~"Newly licensed assisted living facility" means a facility that has been licensed for 12 months or less.~~

~~"Other operating expense" means expenses incurred by the provider for activities that are not directly related to the care of residents.~~

~~"Other operating revenue" means income earned by the provider for activities that are not directly related to the care of residents.~~

~~"Operating costs" means the allowable expenses incurred by a provider for activities directly related to the care of residents.~~

"Personal needs allowance" means an amount of money reserved for meeting the adult's personal needs when computing the amount of the ~~auxiliary grant~~ AG payment.

"Personal representative" means the person representing or standing in the place of the recipient individual for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, next-of-kin, descendent, trustee, or other person expressly named by the recipient individual as his agent.

"Personal toiletries" means hygiene items provided to the individual by the ALF or AFC home including deodorant, razor, shaving cream, shampoo, soap, toothbrush, and toothpaste.

"Program" means the Auxiliary Grant Program.

"Provider" means an ~~assisted living facility ALF~~ that is licensed by the Department of Social Services or an ~~adult foster care AFC~~ provider that is approved by a local department of social services.

"Provider agreement" means a document that the ~~assisted living facility ALF~~ must complete and submit to the department when requesting to be licensed as an ~~assisted living facility provider~~ and approved for admitting auxiliary grant recipients individuals receiving AG.

"Qualified assessor" means an individual who is authorized by 22VAC40-745 to perform an assessment, reassessment, or change in level of care for an ~~applicant to or resident of individual applying for AG or residing in an assisted living facility ALF.~~

"Rate" means the approved auxiliary grant established rate.

~~"Recipient" means an adult approved to receive financial assistance under the Auxiliary Grants Program when residing in a licensed assisted living facility or an approved adult foster care provider with an approved rate.~~

"Residential living care" means a level of service provided by an ~~assisted living facility ALF~~ for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the ~~uniform assessment instrument~~ Uniform Assessment Instrument (UAI).

~~"Uniform assessment instrument~~ Assessment Instrument (UAI)" means the department-designated assessment form. It is used to record assessment information for determining the level of service that is needed.

~~"Virginia Department of Medical Assistance Services (DMAS)" means the single state agency designated to administer the Medical Assistance Program in Virginia.~~

## 22VAC40-25-15. Residency requirement.

A. Individuals applying for AG must have resided in Virginia voluntarily for a minimum of 90 days with the intent to remain.

1. Individuals applying for AG must submit a written statement of intent to remain in Virginia on a form provided by the department.



2. Individuals applying for AG also [ ~~must~~ may be required to ] provide verification of Virginia residency using one of the following documents:

- a. Postmarked letters;
- b. Public utility records or credit accounts;
- c. Voter registration records;
- d. Home or apartment lease;
- e. Real property records;
- f. Medical bills; or
- g. State or federal tax records.

**B. Exceptions to the 90-day residency requirement.**

1. Individuals who have moved to Virginia to join a close relative who has lived in Virginia for at least [ 180 90 ] days. A close relative is limited to the individual's parent, grandparent, grandchild, brother, sister, spouse, or child. The close relative shall furnish verification of kinship at the time of application using one of the following documents:

- a. Birth certificate;
- b. Proof of marriage; or
- c. Notarized affidavit.

2. The close relative shall furnish proof of residency as specified in subdivision A 2 of this section.

**C. Virginia locality of residence.**

1. An individual who is a resident of Virginia shall apply for AG in the locality in which he resides.

2. The Virginia locality where the individual last resided prior to entering a Virginia-based institution, including but not limited to a nursing home, intermediate care facility, correctional facility, rehabilitation center, psychiatric facility, or medical facility, is the individual's place of residence for purposes of applying for AG.

**22VAC40-25-20. Assessment.**

A. In order to receive payment from the ~~Auxiliary Grants Program~~ program for care in an ~~assisted living facility ALF~~ or in ~~adult foster care AFC~~, ~~applicants~~ an individual applying for AG shall have been assessed by a qualified assessor using the ~~uniform assessment instrument UAI~~ and determined to need residential or assisted living care or ~~adult foster care AFC~~.

B. As a condition of eligibility for the ~~Auxiliary Grants Program~~ program, a ~~uniform assessment instrument UAI~~ shall be completed on a ~~recipient an individual~~ prior to admission, except for an emergency placement as documented and approved by a Virginia adult protective services worker [ ~~or when an individual residing in an ALF who was formerly private pay needs to apply for AG~~ ], at least once annually, and whenever there is a significant change in the individual's level of care, and a determination is made that the individual needs residential or assisted living care in an ~~assisted living facility ALF~~ or ~~adult foster care AFC~~.

C. The ~~assisted living facility ALF~~ or ~~adult foster care AFC~~ provider ~~are~~ is prohibited from charging a security deposit or any other form of compensation for providing a room and services to the ~~recipient individual~~. The collection or receipt of money, gift, donation or other consideration from or on behalf of a ~~recipient an individual~~ for any services provided is prohibited.

**22VAC40-25-30. Basic services.**

The rate established under the ~~Auxiliary Grants Program~~ program shall cover the following services:

1. Room and board.

- a. Provision of a furnished room;
- b. Housekeeping services based on the needs of the ~~recipient individual~~;
- c. Meals and snacks provided in accordance with 22VAC40-72 including, but not limited to food service, nutrition, number and timing of meals, observance of religious dietary practices, special diets, menus for meals and snacks, and emergency food and water. A minimum of three well-balanced meals shall be provided each day. When a diet is prescribed for a ~~resident individual~~ by his physician, it shall be prepared and served according to the physician's orders. Basic and bedtime snacks shall be made available for all ~~residents individuals~~ desiring them and shall be listed on the daily menu. Unless otherwise ordered in writing by the ~~resident's individual's~~ physician, the daily menu, including snacks, for each ~~resident individual~~ shall meet the guidelines of the U.S. Department of Agriculture's Food Guide Pyramid, taking into consideration the age, sex, and activity of the resident. Second servings shall be provided, if requested, at no additional charge. At least one meal each day shall include a hot main dish; ~~and~~
- d. Clean bed linens and towels as needed by the ~~recipient individual~~ and at least once a week.

2. Maintenance and care.

- a. Minimal assistance with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails, arranging for haircuts as needed, and care of needs associated with menstruation or occasional bladder or bowel incontinence;
- b. Medication administration as required by licensing regulations including insulin injections;
- c. Provision of ~~generic~~ personal toiletries including soap ~~and~~ toilet paper;
- d. Minimal assistance with the following:
  - (1) Care of personal possessions;
  - (2) Care of personal funds if requested by the ~~recipient individual~~ and provider policy allows this practice, and ~~are~~ in compliance with 22VAC40-72-440 through

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# Regulations

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~~22VAC40-72-460~~ 22VAC40-72-140 and 22VAC40-72-150, Standards for Licensed Assisted Living Facilities;

- (3) Use of the telephone;
  - (4) Arranging transportation;
  - (5) Obtaining necessary personal items and clothing;
  - (6) Making and keeping appointments; and
  - (7) Correspondence;
- e. Securing health care and transportation when needed for medical treatment;
  - f. Providing social and recreational activities; and
  - g. General supervision for safety.

## **22VAC40-25-40. Personal needs allowance.**

A. The personal needs allowance is included in the monthly ~~auxiliary grant~~ AG payment to the ~~resident individual~~ and must be used by the ~~auxiliary grant recipient individual~~ for personal items. These funds shall not be commingled with the funds of the provider and shall be maintained in a separate bank account. The personal needs allowance ~~for the recipient~~ shall not be charged by the provider for any item or service not requested by the ~~recipient individual~~. The provider shall not require an ~~auxiliary grants recipient individual~~ or his personal representative to request any item or service as a condition of admission or continued stay. The provider must inform the ~~recipient individual~~ or his personal representative of a charge for any requested item or service not covered under the ~~auxiliary grant~~ AG and the amount of the charge. The personal needs allowance is expected to cover the cost of the following items and services:

1. Clothing;
2. Personal toiletries not included in those to be provided by the provider or if the ~~recipient individual~~ requests a specific type or brand of ~~toiletries~~ toiletry;
3. Personal items including tobacco products, sodas, and snacks beyond those required in subdivision 1 c of 22VAC40-25-30;
4. Hair care services;
5. Over-the-counter medication, medical copayments and deductibles, insurance premiums;
6. Other needs such as postage stamps, dry cleaning, laundry, direct bank charges, personal transportation, and long distance telephone calls;
7. Personal telephone, television, or radio;
8. Social events and entertainment offered outside the scope of the activities program; and
9. Other items agreed upon by both parties except those listed in subsection B of this section.

B. The personal needs allowance shall not be encumbered by the following:

1. Recreational activities required by licensing regulations (including any transportation costs of those activities);

2. Administration of accounts (bookkeeping, account statements);
3. Debts owed the provider for basic services as outlined by regulations; or
4. Provider laundry charges in excess of \$10 per month.

## **22VAC40-25-45. Conditions of participation in the Auxiliary Grants Program program.**

A. Provider agreement for ~~assisted living facilities~~ ALF.

1. As a condition of participation in the ~~Auxiliary Grants Program program~~, the ~~assisted living facility~~ ALF provider is required to complete and submit to the department a signed provider agreement as stipulated below. The agreement is to be submitted ~~with the application to be a licensed assisted living facility~~ prior to the ALF accepting AG payment for qualified individuals. A copy of the ALF's current license must be submitted with the provider agreement.

2. The ~~assisted living facility~~ ALF provider shall agree to the following conditions in the provider agreement to participate in the ~~Auxiliary Grants Program program~~:

- a. Provide services in accordance with all laws, regulations, policies, and procedures that govern the provision of services in the facility;
- b. Submit an annual ~~financial audit certification form~~ by June 30 October 1 of each year;
- c. Care for ~~auxiliary grant recipients~~ individuals with AG in accordance with the requirements herein at the current established rate;
- d. Refrain from charging the ~~recipient individual~~, his family, or his authorized personal representative a security deposit or any other form of compensation as a condition of admission or continued stay in the facility;
- e. Accept the ~~auxiliary grant payment~~ established rate as payment in full for services rendered, ~~except as permitted herein~~;
- f. Account for the ~~resident's~~ personal needs ~~allowance~~ allowances in a separate bank account and apart from other facility funds and issue a monthly statement to each individual regarding his account balance;
- ~~g. Provide the local department of social services a 60-day written notice when a recipient is to be discharged from the facility;~~
- ~~h. g.~~ Provide a 60-day written notice to the ~~department~~ regional licensing office in the event of the facility's closure or ownership change; ~~and~~
- ~~h.~~ Provide written notification of the date and place of an individual's discharge or the date of an individual's death to the local department of social services determining the individual's AG eligibility and to the qualified assessor within 10 days of the individual's discharge or death; and

i. Return to the local department of social services ~~determining the individual's AG eligibility, all auxiliary grant AG funds received after the death or discharge date of an auxiliary grant recipient individual in the facility.~~

B. As a condition of participation in the ~~Auxiliary Grants Program program~~, the ~~adult foster care AFC~~ provider shall be approved by a local department of social services and comply with the requirements set forth in ~~22VAC40-770 22VAC40-771~~.

#### **22VAC40-25-50. Establishment of rate.**

A. ~~Submission of an audit report to the department is required for an assisted living facility to accept residents who receive an auxiliary grant.~~

B. ~~The rate shall be valid unless the assisted living facility is required to submit a new audit report as a result of (i) significant operational changes as defined by department policy, (ii) the assisted living facility changes ownership, (iii) the assisted living facility changes location, or (iv) the adult foster care provider is no longer approved by the local department of social services.~~

C. ~~The auxiliary grant established rate for recipients individuals authorized to reside in an assisted living facility ALF or in adult foster care AFC is the established rate as set forth in the appropriation act, or as set forth by changes in the federal maintenance of effort formula. The AG payment is determined by adding the rate plus the personal needs allowance minus the recipient's individual's countable income. The effective date is the date of the individual's approval for AG by the local department of social services for an auxiliary grant.~~

D. ~~Assisted living facilities that have been in licensed operation in excess of 12 months shall submit an annual audited financial report by June 30 for the preceding calendar year. In lieu of an audited financial report, facilities that are licensed for 19 or fewer beds may submit an audited report that includes only the following: validation that resident funds are held separately from any other funds of the facility; number of resident beds occupied during the reporting period; operating revenue and expenses; and average monthly cost per resident. The audit report shall be reviewed by the department. The approved rate shall be the established rate as set forth in the appropriation act or as set forth by changes in the federal maintenance of effort formula. The approved rate will be retroactive to the first month of the calendar year. If a provider fails to submit an annual audit report for a new calendar year, the provider will not be authorized to accept new auxiliary grant recipients.~~

#### **22VAC40-25-60. Reimbursement.**

A. ~~Any moneys in excess of the provider's established rate contributed toward the cost of care pending public pay AG eligibility determination shall be reimbursed to the recipient individual or contributing party by the assisted living facility ALF or adult foster care AFC provider once eligibility for~~

~~public pay AG is established and that payment received. The auxiliary grants payment shall be made payable to the recipient individual, who will then reimburse the provider for care. If the recipient individual is not capable of managing his finances, his personal representative is responsible for reimbursing the provider.~~

B. ~~In the event an assisted living facility ALF is closed or sold, the facility shall provide verification that all recipient funds, including auxiliary grants funds, have been transferred and shall obtain a signed receipt from the new owner or new facility prorate the rate up to the date of the individual's discharge and return the balance to the local department of social services that determined the individual's eligibility for the grant. If the facility maintained the individual's personal needs allowance, the facility shall provide a final accounting of the individual's personal needs allowance account within 60 days of the individual's discharge. Verification of the accounting and of the reimbursement to the individual shall be mailed to the case management agency responsible for the individual's annual reassessment. In the event of a recipient's the individual's death or discharge, the provider shall give to the resident's individual's personal representative a final accounting of the recipient's individual's funds within 30 60 calendar days of the event. All auxiliary grants AG funds received after the death or discharge date shall be returned to the local department of social services responsible for determining the individual's AG eligibility as soon as practicable. Providers who do not comply with the requirements of this regulation may be subject to adverse action.~~

#### **22VAC40-25-70. Audits Certification.**

A. ~~ALFs shall submit an annual certification form by October 1 of each year for the preceding state fiscal year. The certification shall include the following: identifying information about the ALF, census information including a list of individuals who resided in the facility and received AG during the reporting period, and personal needs allowance accounting information. If a provider fails to submit an annual certification form, the provider will not be authorized to accept additional individuals with AG.~~

A. B. ~~All financial information reported by an assisted living facility ALF on the annual audit report shall be reconcilable to the residence's general ledger system or similar records. The audit shall account separately for the personal needs allowance of auxiliary grant recipients. All reports are subject to audit by the department certification form shall be subject to audit by the department. Financial information that is not reconcilable to the provider's general ledger or similar records could result in retroactive adjustment of the rate and establishment of a liability to the provider. Records shall be retained for three years after the end of the reporting period or until audited by the department, whichever is first.~~

B. C. ~~All records maintained by an adult foster care AFC provider, as required by 22VAC40-770 22VAC40-771, shall~~

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# Regulations

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be made available to the department or the approving local department of social services upon request. All records are subject to audit by the department. Financial information that is not reconcilable to the provider's records could result in ~~retroactive adjustment of the rate and~~ establishment of a liability to the provider. Records shall be retained for three years after the end of the reporting period or until audited by the department, whichever is first.

**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 (22VAC40-25)

[ ~~[Auxiliary Grant Program Provider Agreement, 032-02-0747-00-eng \(rev. 5/09\)](#)~~;

~~[Auxiliary Grant Certification, 032-02-0745-01-eng \(rev. 4/09\)](#)~~;

[Auxiliary Grant Program Provider Agreement, 032-02-0747-01-eng \(rev. 6/12\)](#).

[Auxiliary Grant Certification 032-02-0747-04 eng \(rev. 4/12\)](#).

[Statement of Virginia Residency and Intent to Remain in Virginia, 032-02-0749-00-eng \(eff. 12/12\)](#). ]

VA.R. Doc. No. R09-1327; Filed October 9, 2012, 9:04 a.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 51 (2012)

### **Allocation of the Remaining Portion of the Commonwealth's Share of the Calendar Year 2009 and 2010 National Limitation for Qualified School Construction Bonds Under the American Recovery and Reinvestment Act of 2009**

The American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 123 Stat. 355 (2009)) was enacted on February 17, 2009 ("ARRA"). ARRA added Section 54F to the Internal Revenue Code of 1986, as amended ("IRC"), to provide for the issuance of qualified school construction bonds ("QSCBs"). QSCBs are tax credit bonds that may be issued to finance the construction, rehabilitation, or repair of a public school facility or for qualifying public school facility land acquisitions ("Qualified Projects"). QSCBs were originally designed as taxable bonds providing the QSCB holder with a federal tax credit in lieu of interest. In the Hiring Incentives to Restore Employment Act (Pub. L. No. 111-147, 124 Stat. 71 (2010)), enacted March 18, 2010, Congress provided a direct payment subsidy option whereby an issuer of QSCBs could elect to receive a subsidy payment from the federal government on each interest payment date intended to be equal to the amount of coupon interest payable on such date.

One of the conditions for the valid issuance of QSCBs is the receipt of an allocation of the national limitation under IRC Section 54F(c) sufficient to cover the maximum face amount of the QSCBs to be issued (a "Volume Cap Allocation"). IRC Section 54F created a national limitation of \$11 billion for each of the calendar years 2009 and 2010, with a provision allowing carryforwards of any unused limitation amounts to calendar years after 2010. The U.S. Secretary of the Treasury made allocations of the calendar year 2009 and 2010 national limitation amounts to the states and certain "large local education agencies" in accordance the formulae set forth in IRC Section 54F. Pursuant to Notice 2009-35 of the Internal Revenue Service (IRB 2009-17, dated April 27, 2009), the share of the calendar year 2009 national limitation allocated to the Commonwealth of Virginia (the "Commonwealth" or "Virginia") was \$191,077,000 (the "2009 Commonwealth Share") and, pursuant to Notice 2010-17 (IRB 2010-14, dated March 17, 2010), the share of the calendar year 2010 national limitation allocated to the Commonwealth was \$172,249,000 (the "2010 Commonwealth Share").

IRC Section 54F(d)(1) also provides that the national limitation amount allocated to a state for any calendar year shall be allocated by a "state agency" to qualified issuers within the state. The General Assembly has provided no specific guidance on how such allocations are to be made in Virginia.

Reference is made to Executive Order 34 (2011), issued June 10, 2011 ("Executive Order 34"), and Executive Order 42 (2011), issued November 22, 2011 ("Executive Order 42"),

for the prior applications of the 2009 and 2010 Commonwealth Shares and the determination of the basis on which a portion of the below-described allocations are being made.

As of the date of this Executive Order, the Volume Cap Allocation remaining (the "Carryforward Amount") from the 2010 Commonwealth Share is \$21,252,015.50 and there is no Volume Cap Allocation remaining from the 2009 Commonwealth Share.

As of the date of this Executive Order, \$16,910,000 of the Carryforward Amount has been allocated pursuant to Executive Order 42 and Executive Order 34. It was anticipated in such Executive Orders that the Virginia Public School Authority ("VPSA") would provide another opportunity for such localities to participate in a future sale of QSCBs by VPSA. VPSA has postponed issuing another series of QSCBs for these localities in order to provide the Virginia Department of Education ("VDOE") with an opportunity to allocate the remaining \$4,342,015.50 of Carryforward Amount so that all of the Carryforward Amount could be issued in the next series of QSCBs issued by VPSA.

On March 20, 2012, the Virginia Department of Education ("VDOE") surveyed the localities with projects on the First Priority Waiting List for assistance from the Literary Fund ("FPWL") to determine which FPWL localities were interested in pursuing, and could qualify for, QSCB financing through a VPSA pooled QSCB issue in the late summer of 2012.

VPSA is scheduled to issue the next series of QSCBs in the fall of 2012 (the "2012-1 QSCBs").

On March 2, 2011, VDOE announced the allocation of the then remaining 2009 and 2010 Commonwealth Shares to fully or partially fund 41 new construction, renovation, and expansion application-based projects in 33 school divisions. Such announcement will be referred to below as the "VDOE Announcement." VDOE has advised me that Richmond County, Virginia, and Buena Vista, Virginia, received QSCB allocations pursuant to the VDOE Announcement. VDOE has also advised me that pursuant to the authorization in Executive Order No. 42, VDOE reallocated some of the Volume Cap Allocation waived by the awarded localities to Gloucester County and Louisa County, to address emergencies in certain school divisions arising from 5.8 magnitude earthquake that occurred on August 23, 2011, Hurricane Irene, and other bonafide emergency situations significantly affecting the conditions of a public school building. These allocations from Executive Order 42 and Executive Order 34 expired June 30, 2012, before VPSA was able to have their next QSCBs sale. Furthermore, VDOE has determined which FPWL localities are interested in pursuing, and have qualifying projects for, QSCB financing.

# Governor

The VDOE has advised me of these qualifying projects and maximum face amounts of QSCBs for each such project proposed to be included in the 2012-1 QSCBs. Such projects and the localities in which they are located will be referred to below respectively as the "Awarded Projects" and the "Awarded Localities."

Accordingly, by virtue of the powers invested in me by Article V of the Constitution of Virginia and § 2.2-103 of the Code of Virginia as Governor of the Commonwealth of Virginia, I hereby (i) reissue to VPSA the Volume Cap Allocation previously-issued pursuant to Executive Order 42 and Executive Order 34 for the purpose of issuing QSCBs for the benefit of Buena Vista, Gloucester County, Louisa County, and Richmond County, as listed below in an aggregate face amount up to the respective maximum face amount listed below and (ii) provide a Volume Cap Allocation to VPSA pursuant to IRC Section 54F(d)(1) from the Carryforward Amount in an amount sufficient for VPSA to issue QSCBs for the benefit of Caroline County, Richmond County, and Smyth County listed below in an aggregate face amount up to the respective maximum face amount listed below. Although it is anticipated that the Awarded Localities will participate in VPSA's 2012-1 QSCBs sale, if any Awarded Locality determines not to participate in VPSA's 2012-1 QSCBs sale or determines not to utilize the maximum amount of its Volume Cap Allocation, in either case such determination being made by such date set forth by VPSA, such portion of the Volume Cap Allocation not to be used by such Awarded Locality will be deemed waived and VDOE is authorized, at its discretion, to reallocate such Volume Cap Allocation to any other Awarded Locality participating in VPSA's 2012-1 QSCBs sale. The first priority use of the sale and investment proceeds of such QSCBs (the "Local Available Project Proceeds") shall be to finance qualifying costs of the respective Awarded Projects, as listed below.

Caroline County	Construction of a new Bowling Green Elementary School	1,085,504.00
Richmond County	Additions and renovations to the existing Rappahannock High School	1,085,504.00
Smyth County	Construction of a new elementary school and renovations to Marion Primary School	2,171,007.50

An Awarded Locality must give first priority to the application of its Local Available Project Proceeds to complete the scope of work described in the approved project application for its Awarded Project.

VDOE is directed to establish a procedure to ensure that the Local Available Project Proceeds are used to finance public school projects within an Awarded Locality ("Additional Projects") to the extent such proceeds are in excess of the amounts needed to complete the scope of work on the locality's Awarded Project. Such Additional Projects (i) must be projects that will qualify for QSCB financing under the applicable provisions of federal and Virginia law, (ii) must be able to utilize the unspent Local Available Project Proceeds within the three years after the issue date of the respective QSCBs and (iii) should be evaluated against the following criteria: consolidation projects, projects eliminating overcrowding, projects replacing facilities more than 35 years old, and projects creating school-wide, high-speed computer networks.

By December 31, 2012, VPSA shall provide to the Superintendent of Public Instruction the completed Internal Revenue Service reporting form or forms (then in effect for the QSCBs) for those QSCBs issued pursuant to the Volume Cap Allocations made to VPSA pursuant to this order. Any portion of such Volume Cap Allocations not used by December 31, 2012, will expire and be deemed waived by the VPSA, and I will direct VDOE to establish procedures for reallocating the waived Volume Cap Allocations.

I hereby authorize the Superintendent of Public Instruction to provide certificates of compliance with IRC Section 54F(c) as may be requested by VPSA.

This Executive Order shall be effective as of October 4, 2012, without any further act or filing.

Given under my hand and under the Seal of the Commonwealth of Virginia this 4th day of October, 2012.

/s/ Robert F. McDonnell  
Governor

The Awarded Localities and Awarded Projects:		
Awarded Locality	Awarded Project	Maximum Face Amount
Re-issued Allocations		
Buena Vista	Renovation of Parry McCluer Middle School	\$510,000.00
Gloucester County	Rebuilding Page Middle School	6,000,000.00
Louisa County	Repairing or rebuilding schools in Louisa County	5,400,000.00
Richmond County	Additions and renovations to the existing Rappahannock High School	5,000,000.00
FPWL localities		

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**EXECUTIVE ORDER NUMBER 52 (2012)****State Fraud, Waste, and Abuse Hotline**Importance of the Initiative

Efficiency and economy in government and wise stewardship of taxpayer dollars demand constant vigilance to prevent fraud, waste, and abuse in the operation of state government.

The State Fraud, Waste, and Abuse Hotline (formerly known as the State Employee Fraud, Waste, and Abuse Hotline) was previously available only to state employees. Because of its usefulness in helping to ensure efficiency in state government, the hotline will now be expanded and available to all citizens of the Commonwealth.

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Chapter 1 of Title 2.2 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct the State Inspector General to continue the anonymous State Fraud, Waste, and Abuse Hotline (hereinafter referred to as the "Hotline") to encourage the state's employees and its citizens to report situations where fraud, waste, or abuse may be occurring in Virginia's executive branch agencies and institutions, including institutions of higher education.

All citizens of the Commonwealth, including state employees, now have the opportunity to report possible instances of fraud, waste, or abuse anonymously and without fear of retribution by using the Hotline. The State Inspector General shall be responsible for administering the Hotline. Through the Hotline, the State Inspector General shall:

- Provide assistance to Executive Branch agency heads in fulfilling their responsibilities for maintaining appropriate internal controls to protect against fraud, waste, and abuse.
- Make available to state employees and all citizens of the Commonwealth a variety of means to report fraud, waste, and abuse in the Commonwealth's government business, one of which will be an anonymous toll-free telephone number, and also including, but not limited to, any other communications through the Governor's office, Cabinet Secretaries, agency heads, U.S. Mail, fax, and the Internet.
- Make appropriate efforts to publicize the availability of the hotline and ways of accessing it.
- Implement a process for handling allegations of fraud, waste, and abuse received via the Hotline.
- Deliver ongoing training to state agency heads and managers on prevention of waste, fraud, and abuse.
- Ensure that instances of potential criminal conduct are referred forthwith to the appropriate law enforcement agency.

The State Inspector General shall e-mail all State employees at least annually to advise them of the Hotline and other means of reporting such problems.

The State Inspector General, through the Executive Branch's network of internal auditing programs and agency fraud, waste, and abuse coordinators, shall ensure that investigation and resolution activities are undertaken in response to allegations received through the Hotline. The State Inspector General may allow an internal auditing program at an executive branch agency to contract with a private firm in order to perform the investigations in a timely manner. Any such private firm shall comply with the applicable policies and procedures and the work must be supervised and approved by the contracting internal auditing program.

The State Inspector General shall undertake investigation and resolution activities in the most cost-effective manner possible. Responsibility for investigation or resolution activities shall be assigned to other investigative staffs when appropriate to avoid unnecessary duplication. Executive Branch agencies responsible for promulgating central administrative (e.g., personnel) policies will provide input on the interpretation of the policies applicable to investigations in order to ensure consistent and proper application of those policies so that appropriate conclusions are reached and recommendations made.

The State Inspector General shall review the reported corrective actions taken to rectify an actual fraud, waste, or abuse identified. If corrective actions are deemed insufficient, then the State Inspector General will conduct such follow-up as may be necessary to ensure that acceptable corrective actions are developed.

The State Inspector General shall conduct follow-up reviews to ensure that corrective action has been implemented. The results of such reviews shall be reported to the Governor's Chief of Staff and to the relevant cabinet secretary.

All executive branch agencies of the Commonwealth shall cooperate with and assist the State Inspector General and all investigators to the fullest extent. During the course of a Hotline investigation, investigators will have access to electronic and paper files, records, and documents, as well as personnel, facilities, property, and any other things necessary to conduct an investigation (Code of Virginia 2.2-310). This includes access to electronic and paper files maintained by the Virginia Information Technologies Agency (VITA) for other executive branch agencies as well as access to administrative investigative reports generated by an agency's in-house investigative unit that are germane to the hotline investigations.

Under no circumstances shall anyone directly or indirectly interfere with a Hotline investigation, or induce or coerce others not to cooperate with investigators. Any attempt to directly or indirectly interfere with a Hotline investigation is

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# Governor

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also prohibited and is subject to appropriate disciplinary action under the Standards of Conduct promulgated by the Department of Human Resource Management.

Under no circumstances shall anyone, directly or indirectly, attempt to identify or retaliate against someone suspected of calling or cooperating with the Hotline. This includes threatening to effect any reprisal; or taking, or directing others to take, or recommending, processing, or approving, any personnel action, or any other retaliatory actions, or attempts to do the same. Any such actions will be subject to appropriate disciplinary actions under the Standards of Conduct.

The Governor's Chief of Staff shall be responsible for addressing any instances of alleged interference with an investigation or retaliation against employees using the Hotline.

This Executive Order rescinds Executive Order Number Fifteen (2010), State Employee Fraud, Waste, and Abuse Hotline.

#### Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in full force and effect unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 9th day of October 2012.

/s/ Robert F. McDonnell  
Governor



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# GENERAL NOTICES/ERRATA

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## BOARD OF AGRICULTURE AND CONSUMER SERVICES

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services is conducting a periodic review of:

2VAC5-60, Rules and Regulations Governing the Operation of Livestock Markets

2VAC5-120, Rules and Regulations Governing the Recordkeeping by Virginia Cattle Dealers for the Control or Eradication of Brucellosis of Cattle

2VAC5-195, Prevention and Control of Avian Influenza in the Live-Bird Marketing System

The review of each 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 each regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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 November 5, 2012, and ends on November 26, 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 Charles Broaddus, DVM, Program Manager, P.O. Box 1163, Richmond, VA, 23218, telephone (804)786-4560, FAX (804) 371-2380, or email [charles.broaddus@vdacs.virginia.gov](mailto:charles.broaddus@vdacs.virginia.gov).

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

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services is conducting a periodic review of:

2VAC5-325, Regulations Governing Pine Shoot Beetle

2VAC5-390, Rules and Regulations for the Enforcement of the Virginia Seed Law

2VAC5-410, Rules and Regulations for the Enforcement of the Virginia Agricultural Liming Materials Law

2VAC5-450, Rules and Regulations Relating to the Virginia Plants and Plant Products Inspection Law

2VAC5-610, Rules Governing the Solicitation of Contributions

2VAC5-675, Regulations Governing the Pesticide Fees Charged By the Department of Agriculture and Consumer Services

The review of each 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 each regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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.

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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 Erin Williams, Policy and Planning Coordinator, P.O. Box 1163, Richmond, VA, 23218, telephone (804) 786-1308, FAX (804) 371-7479, or email [erin.williams@vdacs.virginia.gov](mailto:erin.williams@vdacs.virginia.gov).

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

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services is conducting a periodic review of:

# General Notices/Errata

Title	Agency Contact
2VAC5-20, Standards for Classification of Real Estate as Devoted to Agricultural Use and to Horticultural Use Under the Virginia Land Use Assessment Law	Roy E. Seward, Director, Office of Policy, Planning, and Research, P.O. Box 1163, Richmond, VA, 23218, telephone (804) 786-3535, FAX (804) 371-2945, or email roy.seward@vdacs.virginia.gov
2VAC5-130, Rules and Regulations Governing Laboratory Fees for Services Rendered or Performed	Joseph P. Garvin, Program Manager, P.O. Box 1163, Richmond, VA, 23218, telephone (804) 786-9202, FAX (804) 371-2380, or email joseph.garvin@vdacs.virginia.gov
2VAC5-220, Virginia Horse Breeder Incentive Program	Andrea Heid, Equine Marketing Specialist, P.O. Box 1163, Richmond, VA, 23218, telephone (804) 786-5842, FAX (804) 371-7786, or email andrea.heid@vdacs.virginia.gov
2VAC5-300, Rules and Regulations for the Enforcement of the Virginia Seed Potato Inspection Law	Thomas H. Smith, Agriculture and Consumer Services Supervisor, P.O. Box 1163, Richmond, VA, 23218, telephone (804) 786-3548, FAX (804) 371-7785, or email thomas.smith@vdacs.virginia.gov
2VAC5-520, Rules and Regulations Governing Testing of Milk for Milkfat, Protein, and Lactose Content By Automated Instrument Methods	John A. Beers, Program Supervisor, P.O. Box 1163, Richmond, VA, 23218, telephone (804) 786-1452, FAX (804) 371-7792, or email john.beers@vdacs.virginia.gov

The review of each 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 each regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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 November 5, 2012, and ends on November 26, 2012.

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

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

## STATE AIR POLLUTION CONTROL BOARD

### Proposed Section 111(d)/129 Plan

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed Commonwealth of Virginia § 111(d)/129 plan. Section 111(d)/129 plans are developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to meet the ambient air quality standards for designated pollutants promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the plan to EPA in accordance with the requirements of the federal Clean Air Act.

Regulations affected: The regulations of the board affected by this action are as follows: Documents incorporated by reference (9VAC5-20-21 of 9VAC5-20 (General Provisions)); and Emission Standards for Sewage Sludge Incineration Units, Article 55 (9VAC5-40-8200 et seq.) of 9VAC5-40 (Existing Stationary Sources).

Purpose of notice: DEQ is seeking comment on the overall plan and on the issue of whether any regulations included in the plan should be submitted to EPA as part of the plan.

Public comment period: November 5, 2012, to December 6, 2012.

Public hearing: A public hearing will be held in Seventh Floor Conference Room, Department of Environmental Quality, 629 East Main Street, Richmond, VA, at 9 a.m. on December 5, 2012, to accept comments concerning the proposed plan. Using the procedures explained below, DEQ will also accept written comments through December 6, 2012.

Public comment stage: The public comment period and hearing are being conducted to satisfy the public participation requirements of federal regulations of 40 CFR 60.23(c) and (d). The regulations included in this plan have been adopted by the State Air Pollution Control Board in accordance with the Code of Virginia and with public participation as required by the Code of Virginia, the federal Clean Air Act, and the Code of Federal Regulations. Because the regulations have

been adopted, DEQ is accepting comment only on the issues cited above and not on the content of the regulations.

Description of proposal: EPA established designated pollutant emission guidelines for sewage sludge incinerators in the Federal Register of March 21, 2011 (76 FR 15372). In order to implement the guidelines, it was necessary for Virginia to develop and adopt a state regulation containing those limits. In addition to the regulations, the proposed plan contains an inventory of emissions from the affected facilities, a list of authorities being retained by EPA, and other supporting documentation.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations and not any provision of state law. The proposal will be submitted as § 111(d)/129 plan under §§ 111(d) and 129 of the federal Clean Air Act in accordance with 40 CFR 60.23(c) and (d). It is planned to submit all provisions of the proposal as a Commonwealth of Virginia § 111(d)/129 plan with the exception of state-only enforceable provisions, which are specifically identified in the plan.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. All materials received are part of the public record.

To review plan documents: The proposal is available on the DEQ Air Public Notices for Plans website: <http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx>.

The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070,
- 2) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,
- 3) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,
- 4) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and
- 5) Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street

P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TDD (804) 698-4021, or email [karen.sabasteanski@deq.virginia.gov](mailto:karen.sabasteanski@deq.virginia.gov).

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

#### **Notice of Public Comment Period**

Pursuant to Governor McDonnell's regulatory reform initiative, the Department of Professional and Occupational Regulation is conducting a review of the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulation:

18VAC10-20, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations

The regulation may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Kathleen (Kate) R. Nobsch, Executive Director, APELSCIDLA Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov), telephone (804) 367-8514, or FAX (866) 465-6206.

### **BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS**

#### **Notice of Public Comment Period**

Pursuant to Governor McDonnell's regulatory reform initiative, the Department of Professional and Occupational Regulation is conducting a review of the Board for Asbestos, Lead, and Home Inspectors regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulations:

18VAC15-20, Virginia Asbestos Licensing Regulations

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18VAC15-30, Virginia Lead-Based Paint Activities Regulations

18VAC15-40, Virginia Certified Home Inspectors Regulations

The regulations may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [ALHI@dpor.virginia.gov](mailto:ALHI@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Trisha L. Henshaw, Executive Director, Board for Asbestos, Lead, and Home Inspectors, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email [alhi@dpor.virginia.gov](mailto:alhi@dpor.virginia.gov), telephone (804) 367-0362, or FAX (866) 350-5354.

### **AUCTIONEERS BOARD**

#### **Notice of Public Comment Period**

Pursuant to Governor McDonnell's regulatory reform initiative, the Department of Professional and Occupational Regulation is conducting a review of the Auctioneers Board regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulation:

18VAC25-21, Regulations of the Virginia Auctioneers Board

The regulation may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [auctioneers@dpor.virginia.gov](mailto:auctioneers@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Kathleen (Kate) R. Nobsch, Executive Director, Auctioneers Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email [auctioneers@dpor.virginia.gov](mailto:auctioneers@dpor.virginia.gov), telephone (804) 367-8514, or FAX (866) 465-6206.

### **BOARD FOR BARBERS AND COSMETOLOGY**

#### **Notice of Public Comment Period**

Pursuant to Governor McDonnell's regulatory reform initiative, the Department of Professional and Occupational Regulation is conducting a review of the Board for Barbers and Cosmetology regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulations:

18VAC41-20, Barbering and Cosmetology Regulations

18VAC41-40, Wax Technician Regulations

18VAC41-50, Tattooing Regulations

18VAC41-60, Body-Piercing Regulations

18VAC41-70, Esthetics Regulations

The regulations may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [barbercosmo@dpor.virginia.gov](mailto:barbercosmo@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Demetrios J. Melis, Executive Director, Board for Barbers and Cosmetology, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email [barbercosmo@dpor.virginia.gov](mailto:barbercosmo@dpor.virginia.gov), telephone (804) 367-8590, or FAX (866) 245-9693.

### **BOARD FOR BRANCH PILOTS**

#### **Notice of Public Comment Period**

Pursuant to Governor McDonnell's regulatory reform initiative, the Department of Professional and Occupational Regulation is conducting a review of the Board for Branch Pilots regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulation:

18VAC45-21, Board for Branch Pilots Regulations

The regulation may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [branchpilots@dpor.virginia.gov](mailto:branchpilots@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Kathleen (Kate) R. Nobsch, Executive Director, Board for Branch Pilots, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email [branchpilots@dpor.virginia.gov](mailto:branchpilots@dpor.virginia.gov), telephone (804) 367-8514, or FAX (866) 465-6206.

### **CEMETERY BOARD**

#### **Notice of Public Comment Period**

Pursuant to Governor McDonnell's regulatory reform initiative, the Department of Professional and Occupational Regulation is conducting a review of the Cemetery Boards

regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulation:

18VAC47-20, Cemetery Board Rules and Regulations

The regulation may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [cemetery@dpor.virginia.gov](mailto:cemetery@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Christine Martine, Executive Director, Cemetery Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email [cemetery@dpor.virginia.gov](mailto:cemetery@dpor.virginia.gov), telephone (804) 367-8552, or FAX (866) 350-7849.

## COMMON INTEREST COMMUNITY BOARD

### Notice of Public Comment Period

Pursuant to Governor McDonnell's regulatory reform initiative, the Department of Professional and Occupational Regulation is conducting a review of the Common Interest Community Board regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulations:

18VAC48-20, Condominium Regulations

18VAC48-40, Time-Share Regulations

18VAC48-50, Common Interest Community Manager Regulations

18VAC48-60, Common Interest Community Board Management Information Fund Regulations

18VAC48-70, Common Interest Community Ombudsman Regulations

The regulations may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [CIC@dpor.virginia.gov](mailto:CIC@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Trisha L. Henshaw, Executive Director, Common Interest Community Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA

23233, email [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov), telephone (804) 367-0362, or FAX (866) 490-2723.

## BOARD FOR CONTRACTORS

### Notice of Public Comment Period

Pursuant to Governor McDonnell's regulatory reform initiative, the Department of Professional and Occupational Regulation is conducting a review of the Board for Contractors regulations currently in place to: (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulations:

18VAC50-22, Board for Contractors Regulations

18VAC50-30, Individual License and Certification Regulations

The regulations may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Eric L. Olson, Executive Director, Board for Contractors, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov), telephone (804) 367-2785, or FAX (866) 430-1033.

## BOARD OF COUNSELING

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Counseling is conducting a periodic review of:

18VAC115-15, Regulations Governing Delegation to an Agency Subordinate

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

18VAC115-30, Regulations Governing the Certification of Substance Abuse Counselors

18VAC115-40, Regulations Governing the Certification of Rehabilitation Providers

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

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

The review is part of the Governor's Regulatory Reform Project with the goal of:

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- a. Repealing regulations that are unnecessary or no longer in use;
- b. Reducing unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and
- c. Identifying statutes that require unnecessary or overly burdensome regulations.

Further, the Board is seeking comment on whether each regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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 November 5, 2012 and ends on December 5, 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 Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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.

### **FAIR HOUSING BOARD**

#### **Notice of Public Comment Period**

Pursuant to Governor McDonnell's regulatory reform initiative, the Department of Professional and Occupational Regulation is conducting a review of the Fair Housing Boards regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulation:

18VAC62-20, Fair Housing Certification Regulations

The regulation may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [FHCertification@dpor.virginia.gov](mailto:FHCertification@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Christine Martine, Executive Director, Fair Housing Board, Department of Professional and Occupational Regulation,

9960 Mayland Drive, Suite 400, Richmond, VA 23233, email [fhcertification@dpor.virginia.gov](mailto:fhcertainment@dpor.virginia.gov), telephone (804) 367-8552, or FAX (866) 350-7849.

### **BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

#### **Notice of Periodic Review**

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Funeral Directors and Embalmers is conducting a periodic review of:

18VAC65-20, Regulations of the Board of Funeral Directors & Embalmers

18VAC65-30, Regulations Governing Preneed Funeral Planning

18VAC65-40, Regulations Governing the Resident Trainee Program

The review is part of the Governor's Regulatory Reform Project with the goal of:

- a. Repealing regulations that are unnecessary or no longer in use;
- b. Reducing unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and
- c. Identifying statutes that require unnecessary or overly burdensome regulations.

Further, the Board is seeking comment on whether each regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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 November 5, 2012 and ends on December 5, 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 Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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 HEALTH PROFESSIONS

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Health Professions is conducting a periodic review of:

18VAC76-10, Regulations Governing the Health Practitioners' Monitoring Program for the Department of Health Professions

18VAC76-20, Regulations Governing the Prescription Monitoring Program

18VAC76-40, Regulations Governing Emergency Contact Information

The review is part of the Governor's Regulatory Reform Project with the goal of:

- a. Repealing regulations that are unnecessary or no longer in use;
- b. Reducing unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and
- c. Identifying statutes that require unnecessary or overly burdensome regulations.

Further, the Department is seeking comment on whether each regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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 November 5, 2012 and ends on December 5, 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 Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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

## BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

### Notice of Public Comment Period

Pursuant to Governor McDonnell's regulatory reform initiative, the Department of Professional and Occupational

Regulation is conducting a review of the Board for Hearing Aid Specialists and Opticians regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulations:

18VAC80-20, Board for Hearing Aid Specialists Regulations

18VAC80-30, Opticians Regulations

The regulations may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [hearingaidspec@dpor.virginia.gov](mailto:hearingaidspec@dpor.virginia.gov) or [opticians@dpor.virginia.gov](mailto:opticians@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Demetrios J. Melis, Executive Director, Board for Hearing Aid Specialists and Opticians, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email [hearingaidspec@dpor.virginia.gov](mailto:hearingaidspec@dpor.virginia.gov) or [opticians@dpor.virginia.gov](mailto:opticians@dpor.virginia.gov), telephone (804) 367-8590, or FAX (866) 245-9693.

## STATE LOTTERY DEPARTMENT

### Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on October 15, 2012. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

#### Director's Order Number One Hundred Four (12)

Virginia's Instant Game Lottery 1376 "Cashing Through The Snow" Final Rules for Game Operation (effective October 12, 2012)

#### Director's Order Number One Hundred Five (12)

Virginia's Instant Game Lottery 1378 "Gift Tree" Final Rules for Game Operation (effective October 12, 2012)

#### Director's Order Number One Hundred Eight (12)

Virginia's Instant Game Lottery 1383 "White Ice 9'S" Final Rules for Game Operation (effective October 15, 2012)

#### Director's Order Number One Hundred Nine (12)

"Food Lion Catalina Coupon Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (effective October 15, 2012)

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## Director's Order Number One Hundred Ten (12)

Virginia's Instant Game Lottery 1367 "\$150 Grand" Final Rules for Game Operation (effective October 15, 2012)

## Director's Order Number One Hundred Eleven (12)

Virginia's Instant Game Lottery 1362 "Hot Card" Final Rules for Game Operation (effective October 15, 2012)

### **BOARD OF MEDICINE**

#### **Notice of Periodic Review**

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Medicine is conducting a periodic review of:

18VAC85-15, Regulations Governing Delegation to an Agency Subordinate

18VAC85-40, Regulations Governing the Practice of Respiratory Care

18VAC85-50, Regulations Governing the Practice of Physician Assistants

18VAC85-80, Regulations Governing the Licensure of Occupational Therapists

18VAC85-101, Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited

18VAC85-110, Regulations for Licensed Acupuncturists

18VAC85-120, Regulations Governing the Licensure of Athletic Trainers

18VAC85-130, Regulations Governing the Practice of Licensed Midwives

The review is part of the Governor's Regulatory Reform Project with the goal of:

- a. Repealing regulations that are unnecessary or no longer in use;
- b. Reducing unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and
- c. Identifying statutes that require unnecessary or overly burdensome regulations.

Further, the Board is seeking comment on whether each regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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 November 5, 2012, and ends on December 5, 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 Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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

### **STATE MILK COMMISSION**

#### **Notice of Period Review**

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services is conducting a periodic review of 2VAC15-20, Regulations for the Control and Supervision of Virginia's Milk Industry.

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 November 5, 2012, and ends on November 26, 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 Rodney L. Phillips, Administrator, Milk Commission, P.O. Box 1163, Richmond, VA, 23218, Richmond, VA, 23218, telephone (804) 786-2013, FAX (804) 786-3779, or email [rodney.phillips@vdacs.virginia.gov](mailto:rodney.phillips@vdacs.virginia.gov).

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



**BOARD OF NURSING**

**Notice of Periodic Review**

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Nursing is conducting a periodic review of:

18VAC90-15, Regulations Governing Delegation to an Agency Subordinate

18VAC90-20, Regulations Governing the Practice of Nursing

18VAC90-25, Regulations Governing Certified Nurse Aides

18VAC90-50, Regulations Governing the Certification of Massage Therapists

18VAC90-60, Regulations Governing the Registration of Medication Aides

The review is part of the Governor's Regulatory Reform Project with the goal of:

- a. Repealing regulations that are unnecessary or no longer in use;
- b. Reducing unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and
- c. Identifying statutes that require unnecessary or overly burdensome regulations.

Further, the Board is seeking comment on whether each regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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 November 5, 2012, and ends on December 5, 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 Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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

**BOARD OF OPTOMETRY**

**Notice of Periodic Review**

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Optometry is conducting a periodic review of 18VAC105-20, Regulations Governing the Practice of Optometry.

The review is part of the Governor's Regulatory Reform Project with the goal of:

- a. Repealing regulations that are unnecessary or no longer in use;
- b. Reducing unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and
- c. Identifying statutes that require unnecessary or overly burdensome regulations.

Further, the Board is seeking comment on 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 November 5, 2012, and ends on December 5, 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 Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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

**BOARD OF PHARMACY**

**Notice of Periodic Review**

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Pharmacy is conducting a periodic review of:

18VAC110-20, Virginia Board of Pharmacy Regulations

18VAC110-30, Regulations for Practitioners of the Healing Arts to Sell Controlled Substances

18VAC110-40, Regulations Governing Collaborative Practice Agreements

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## General Notices/Errata

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18VAC110-50, Regulations Governing Wholesale Distributors, Manufacturers and Warehousemen

The review is part of the Governor's Regulatory Reform Project with the goal of:

- a. Repealing regulations that are unnecessary or no longer in use;
- b. Reducing unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and
- c. Identifying statutes that require unnecessary or overly burdensome regulations.

Further, the Board is seeking comment on whether each regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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 November 5, 2012, and ends on December 5, 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 Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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

### **BOARD PHYSICAL THERAPY Notice of Periodic Review**

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Physical Therapy is conducting a periodic review of 18VAC112-20, Regulations Governing the Practice of Physical Therapy.

The review is part of the Governor's Regulatory Reform Project with the goal of:

- a. Repealing regulations that are unnecessary or no longer in use;
- b. Reducing unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and
- c. Identifying statutes that require unnecessary or overly burdensome regulations.

Further, the Board is seeking comment on 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 November 5, 2012, and ends on December 5, 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 Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, FAX (804) 527-4434, email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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 PROFESSIONAL AND OCCUPATIONAL REGULATION**

#### **Notice of Public Comment Period**

Pursuant to Governor McDonnell's regulatory reform initiative, the Department is conducting a review of the Department's polygraph examiner regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulation:

18VAC120-30, Regulations Governing Polygraph Examiners

The regulation may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [polygraph@dpor.virginia.gov](mailto:polygraph@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Eric L. Olson, Executive Director, Polygraph Examiners Advisory Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-6166, FAX (866) 430-1033, or email [polygraph@dpor.virginia.gov](mailto:polygraph@dpor.virginia.gov).

## Notice of Public Comment Period

Pursuant to Governor McDonnell's regulatory reform initiative, the Department is conducting a review of the Department's professional boxing, wrestling, and mixed martial arts regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulation:

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

The regulation may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [Boxing@dpor.virginia.gov](mailto:Boxing@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Kathleen (Kate) R. Nosbisch, Executive Director, Professional Boxing, Wrestling, and Martial Arts Advisory Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email [boxing@dpor.virginia.gov](mailto:boxing@dpor.virginia.gov), telephone (804) 367-8514, or FAX (866) 465-6206.

## BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS

### Notice of Public Comment Period

Pursuant to Governor McDonnell's regulatory reform initiative, the Department of Professional and Occupational Regulation is conducting a review of the Board for Professional Soil Scientists, Wetland Professionals, and Geologists regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulations:

18VAC145-20, Professional Soil Scientists Regulations

18VAC145-30, Regulations Governing Certified Professional Wetland Delineators

18VAC145-40, Regulations for the Geology Certification Program

The regulations may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [BPSSandWP@dpor.virginia.gov](mailto:BPSSandWP@dpor.virginia.gov). Comments must include the commenter's name and address

(physical or email). Comments or questions should be sent to Kathleen (Kate) R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email [bpssandwp@dpor.virginia.gov](mailto:bpssandwp@dpor.virginia.gov), telephone (804) 367-8514, or FAX (866) 465-6206.

## BOARD OF PSYCHOLOGY

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Psychology is conducting a periodic review of:

18VAC125-15, Regulations Governing Delegation to an Agency Subordinate

18VAC125-30, Regulations Governing the Certification of Sex Offender Treatment Providers

The review is part of the Governor's Regulatory Reform Project with the goal of:

- a. Repealing regulations that are unnecessary or no longer in use;
- b. Reducing unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and
- c. Identifying statutes that require unnecessary or overly burdensome regulations.

Further, the Board is seeking comment on whether each regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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 November 5, 2012, and ends on December 5, 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 Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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.

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## General Notices/Errata

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### REAL ESTATE APPRAISER BOARD

#### Notice of Public Comment Period

Pursuant to Governor McDonnell's regulatory reform initiative, the Department of Professional and Occupational Regulation is conducting a review of the Real Estate Appraiser Boards regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulation:

18VAC130-20, Real Estate Appraiser Board Rules and Regulations

The regulation may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [reappraisers@dpor.virginia.gov](mailto:reappraisers@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Christine Martine, Executive Director, Real Estate Appraiser Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email [reappraisers@dpor.virginia.gov](mailto:reappraisers@dpor.virginia.gov), telephone (804) 367-8552, or FAX (866) 350-7849.

### REAL ESTATE BOARD

#### Notice of Public Comment Period

Pursuant to Governor McDonnell's regulatory reform initiative, the Department of Professional and Occupational Regulation is conducting a review of the Real Estate Boards regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulations:

18VAC135-20, Virginia Real Estate Board Licensing Regulations

18VAC135-50, Fair Housing Regulations

The regulations may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [REBoard@dpor.virginia.gov](mailto:REBoard@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Christine Martine, Executive Director, Real Estate Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email

[reboard@dpor.virginia.gov](mailto:reboard@dpor.virginia.gov), telephone (804) 367-8552, or FAX (866) 350-7849.

### BOARD OF SOCIAL WORK

#### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Social Work is conducting a periodic review of 18VAC140-20, Regulations Governing the Practice of Social Work.

The review is part of the Governor's Regulatory Reform Project with the goal of:

- a. Repealing regulations that are unnecessary or no longer in use;
- b. Reducing unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and
- c. Identifying statutes that require unnecessary or overly burdensome regulations.

Further, the Board is seeking comment on 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 November 5, 2012, and ends on December 5, 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 Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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

### BOARD OF VETERINARY MEDICINE

#### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Veterinary Medicine is conducting a periodic review of 18VAC150-20, Regulations Governing the Practice of Veterinary Medicine.

The review is part of the Governor's Regulatory Reform Project with the goal of:

- a. Repealing regulations that are unnecessary or no longer in use;
- b. Reducing unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and
- c. Identifying statutes that require unnecessary or overly burdensome regulations.

Further, the Board is seeking comment on 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 November 5, 2012, and ends on December 5, 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 Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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

## **BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS**

### **Notice of Public Comment Period**

Pursuant to Governor McDonnell's regulatory reform initiative, the Department of Professional and Occupational Regulation is conducting a review of the Board for Waste Management Facility Operators regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The department invites public comment on these issues specific to the following regulation:

18VAC155-20, Waste Management Facility Operators Regulations

The regulation may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [wastemgt@dpor.virginia.gov](mailto:wastemgt@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Eric L.

Olson, Executive Director, Board for Waste Management Facility Operators, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email [wastemgt@dpor.virginia.gov](mailto:wastemgt@dpor.virginia.gov), telephone (804) 367-2785, or FAX (866) 430-1033.

## **STATE WATER CONTROL BOARD**

### **General Notice of Intent to Provide Section 401 Water Quality Certification of Norfolk District Corps of Engineers Regional Permit 22**

Pursuant to Virginia Water Protection Permit Regulation (9VAC25-210-130 H), the State Water Control Board (Board) is giving notice of its intent to provide § 401 Water Quality Certification for activities authorized by the above referenced U.S. Army Corps of Engineers (USACE) Norfolk District Regional Permit after considering public comment for a 30-day period starting October 16, 2012.

On September 26, 2012, the U.S. Army Corps of Engineers (USACE) Norfolk District published a notice of its proposed reissuance and modification of the Regional Permit 22 (08-RP-22) that is scheduled to expire on August 14, 2013. RP-22 authorizes certain activities within the Virginia portion of Lake Gaston. These activities include construction and other actions on piers, docks, boathouses, bulkheads, riprap, boat slips, channels, aerial power lines, and utility lines. The notice and proposed 12-RP-22 can be found at: <http://www.nao.usace.army.mil/Media/PublicNotices/tabid/3060/Article/4441/proposed-reissuance-and-modification-of-the-norfolk-district-regional-permit-22.aspx>.

The proposed modification to the RP-22 is intended to better streamline the process for applicants. Whereas all activities in 08-RP-22 required notification to the USACE, 12-RP-22 allows certain activities to be non-reporting to the USACE so long as Dominion North Carolina Power has issued a permit.

The State Water Control Board hereby proposes unconditional § 401 Water Quality Certification for 12-RP-22.

The Board can only issue final § 401 Certification of a nationwide or regional USACE permit if the permit meets the requirements of the VWP regulation and after advertising and accepting public comment for 30 days on its intent to provide certification.

The State Water Control Board will issue its final § 401 Water Quality Certification for activities authorized by the above referenced U.S. Army Corps of Engineers (USACE) Norfolk District permits at the end of the 30 day comment period and after any comments received are considered. Written comments, including those by email, must be received no later than 11:59 p.m. on November 15, 2012, and should be submitted to David L. Davis at the address given below. Only those comments received within this period will be considered by the Board. Written

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## General Notices/Errata

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comments shall include the name, address, and telephone number of the writer, and shall contain a complete, concise statement of the factual basis for comments.

Contact Information: David L. Davis, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4105, FAX (804) 698-4032, TDD (804) 698-4021, or email [dave.davis@deq.virginia.gov](mailto:dave.davis@deq.virginia.gov).

### **BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS**

#### **Notice of Public Comment Period**

Pursuant to Governor McDonnell's regulatory reform initiative, the Department of Professional and Occupational Regulation is conducting a review of the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals regulations currently in place to (i) repeal regulations that are unnecessary or no longer in use and (ii) reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups.

The Department invites public comment on these issues specific to the following regulation:

18VAC160-20, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations

The regulation may be found at [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

Written comments will be received until 5 p.m. on Wednesday, December 5, 2012, and may be sent to the address below or [waterwasteoper@dpor.virginia.gov](mailto:waterwasteoper@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email). Comments or questions should be sent to Trisha L. Henshaw, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email [waterwasteoper@dpor.virginia.gov](mailto:waterwasteoper@dpor.virginia.gov), telephone (804) 367-0362, or FAX (866) 350-5354.

### **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](mailto: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.

## **ERRATA**

### **MARINE RESOURCES COMMISSION**

Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest.**

Publication: 29:3 VA.R. 344-355 October 8, 2012.

Change to Final Regulation:

Page 352, 4VAC20-720-20, definition of "York River Area Rotation Area 1" line 4, delete "Marker"," and insert "Marker "8","

Page 352, 4VAC20-720-30, line 1, delete "Marine Resources Commissioner of Marine Resources" and insert "Commissioner of the Marine Resources Commission"

Page 352, 4VAC20-720-35, line 1, delete "Marine Resources Commissioner of the Marine Resources Commission" and insert "Commissioner of the Marine Resources Commission"

VA.R. Doc. No. R13-3351; October 16, 2012

### **STATE BOARD OF EDUCATION**

Titles of Regulations: **8VAC20-670. Regulations Governing the Operation of Private Day Schools for Students with Disabilities.**

**8VAC20-671. Regulations Governing the Operation of Private Schools for Students with Disabilities.**

Publication: 29:4 VA.R. 828-853 October 22, 2012.

Change to Summary:

Page 830, line 1, change "Chapter 803" to "Chapter 873"

VA.R. Doc. No. R11-2536; October 23, 2012

### **STATE AIR POLLUTION CONTROL BOARD**

Titles of Regulations: **9VAC5-50. New and Modified Stationary Sources (Rev. H05).**

**9VAC5-80. Permits for Stationary Sources (Rev. H05).**

Publication: 29:3 VA.R. 431-463 October 8, 2012.

Change to Final Regulation:

Page 445, 9VAC5-80-1110 C, definition of Modification, at the end of subdivision 6, strike "; or" and at the end of subdivision 7, strike the period and insert "; or"

VA.R. Doc. No. R06-106; October 12, 2012

