



# VIRGINIA

## REGISTER OF REGULATIONS

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

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

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

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

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **29:5 VA.R. 1075-1192 November 5, 2012**, refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

*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. Talver**; **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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### April 2013 through April 2014

| <u>Volume: Issue</u> | <u>Material Submitted By Noon*</u>   | <u>Will Be Published On</u> |
|----------------------|--------------------------------------|-----------------------------|
| 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           |
| 30:7                 | November 13, 2013                    | December 2, 2013            |
| 30:8                 | November 26, 2013 ( <b>Tuesday</b> ) | December 16, 2013           |
| 30:9                 | December 11, 2013                    | December 30, 2013           |
| 30:10                | December 23, 2013 ( <b>Monday</b> )  | January 13, 2014            |
| 30:11                | January 8, 2014                      | January 27, 2014            |
| 30:12                | January 22, 2014                     | February 10, 2014           |
| 30:13                | February 5, 2014                     | February 24, 2014           |
| 30:14                | February 19, 2014                    | March 10, 2014              |
| 30:15                | March 5, 2014                        | March 24, 2014              |
| 30:16                | March 19, 2014                       | April 7, 2014               |
| 30:17                | April 2, 2014                        | April 21, 2014              |

\*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 DENTISTRY

#### Agency Decision

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

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

Name of Petitioner: American Academy of Dental Hygiene.

Nature of Petitioner's Request: To amend 18VAC60-20-50 by adding the American Academy of Dental Hygiene to the list of approved sponsors for continuing education.

Agency's Decision: Granted.

Statement of Reason for Decision: The Board of Dentistry approved an amendment to the listing of approved continuing education providers by a fast-track rulemaking action.

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).

VA.R. Doc. No. R13-13; Filed March 25, 2013, 10:18 a.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### CRIMINAL JUSTICE SERVICES BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board intends to consider promulgating **6VAC20-280, Rules Relating to Compulsory Minimum Training Standards for Law-Enforcement Field Training Officers**. The purpose of the proposed action is to develop regulations establishing minimum training standards and qualifications for certification and recertification for law-enforcement officers serving as field training officers.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Comment Deadline: May 22, 2013.

Agency Contact: Stephanie Morton, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23229, telephone (804) 786-8003, or email [stephanie.morton@dcjs.virginia.gov](mailto:stephanie.morton@dcjs.virginia.gov).

VA.R. Doc. No. R13-2896; Filed April 1, 2013, 11:12 a.m.

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

Statutory Authority: § 54.1-501 of the Code of Virginia.

Public Comment Deadline: May 22, 2013.

Agency Contact: Trisha Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email [alhi@dpor.virginia.gov](mailto:alhi@dpor.virginia.gov).

VA.R. Doc. No. R13-3645; Filed March 26, 2013, 9:29 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to consider amending **18VAC15-30, Virginia Lead-Based Paint Activities Regulations**. The purpose of the proposed action is to allow a licensee or an accredited lead training provider to renew a license or accredited lead training program up to 12 months after the expiration of the license or accreditation without penalty of reapplying as a new applicant. The board may identify additional areas for amendment or elimination of regulations in accordance with the Governor's Regulatory Reform Initiative.

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

Statutory Authority: § 54.1-501 of the Code of Virginia.

Public Comment Deadline: May 22, 2013.

Agency Contact: Trisha Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email [alhi@dpor.virginia.gov](mailto:alhi@dpor.virginia.gov).

VA.R. Doc. No. R13-3644; Filed March 26, 2013, 9:28 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to consider amending **18VAC15-40, Virginia Certified Home Inspectors Regulations**. The purpose of the proposed action is to remove the requirement that applicants whose certificates have been expired for more than two years retake the examination. The board may identify additional areas for amendment or elimination of regulations in accordance with the Governor's Regulatory Reform Initiative.

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

Statutory Authority: § 54.1-501 of the Code of Virginia.

Public Comment Deadline: May 22, 2013.

Agency Contact: Trisha L. Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors,

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to consider amending **18VAC15-20, Virginia Asbestos Licensing Regulations**. The purpose of the proposed action is to (i) allow a licensee or an accredited asbestos training provider to renew a license or accredited asbestos training program up to 12 months after the expiration of the license or accreditation without penalty of reapplying as a new applicant; (ii) allow for more than 24 hours for training providers to submit course participant lists following course completion; and (iii) remove the requirement of two instructors for all initial accredited asbestos training programs, except for initial worker accredited asbestos training programs. The board is seeking to identify additional areas for amendment or elimination of regulations in accordance with the Governor's Regulatory Reform Initiative.

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# Notices of Intended Regulatory Action

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9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 350-5354, or email [alhi@dpor.virginia.gov](mailto:alhi@dpor.virginia.gov).

VA.R. Doc. No. R13-3643; Filed March 26, 2013, 9:17 a.m.

## COMMON INTEREST COMMUNITY BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Common Interest Community Board intends to consider amending **18VAC48-40, Time-Share Regulations**. The purpose of the proposed action is to conduct a general review of the regulations to ensure that the regulations complement the current Virginia Real Estate Time-Share Act, provide minimal burdens on regulants while still protecting the public, and reflect current procedures and policies of the Department of Professional and Occupational Regulation. Amendments will also establish registration requirements and procedures for time-share resellers pursuant to § 55-394.3 of the Code of Virginia (Chapter 751 of the 2012 Acts of Assembly).

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

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Public Comment Deadline: May 22, 2013.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email [CIC@dpor.virginia.gov](mailto:CIC@dpor.virginia.gov).

VA.R. Doc. No. R13-3613; Filed March 26, 2013, 9:29 a.m.

## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Professional and Occupational Regulation intends to consider amending **18VAC120-40, Professional Boxing and Wrestling Event Regulations**. The purpose of the proposed action is to amend the regulation relating to (i) wrestling event conduct standards; (ii) requirements for approval of ringside physicians; (iii) equipment to be provided to wrestling promoters; (iv) application for a license to conduct a wrestling event; and (v) duties of locker room inspectors, timekeepers, and referees.

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

Statutory Authority: § 54.1-831 of the Code of Virginia.

Public Comment Deadline: May 22, 2013.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233,

telephone (804) 367-8514, FAX (866) 465-6206, or email [boxing@dpor.virginia.gov](mailto:boxing@dpor.virginia.gov).

VA.R. Doc. No. R13-3614; Filed March 26, 2013, 9:27 a.m.

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## TITLE 22. SOCIAL SERVICES

### DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department for Aging and Rehabilitative Services intends to consider amending **22VAC30-20, Provision of Vocational Rehabilitation Services**. The purpose of the proposed action is to focus on a general, but comprehensive, review of the vocational rehabilitation regulations in response to the Governor's Regulatory Reform Initiative. The amendments will eliminate unnecessary or no longer used regulations and eliminate unnecessary requirements regarding timeframes and approvals for services as well as "caps" on the cost of service provision. These changes conform the regulations to current practices and policies that have evolved over the years to better serve vocational rehabilitation consumers.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 51.5-14 of the Code of Virginia.

Public Comment Deadline: May 22, 2013.

Agency Contact: Vanessa S. Rakestraw, Ph.D., Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7663, TTY (800) 464-9950, or email [vanessa.rakestraw@dars.virginia.gov](mailto:vanessa.rakestraw@dars.virginia.gov).

VA.R. Doc. No. R13-3609; Filed March 22, 2013, 11:03 a.m.

## STATE BOARD OF SOCIAL SERVICES

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-705, Child Protective Services**, and repealing **22VAC40-700, Child Protective Services Central Registry Information**, and **22VAC40-720, Child Protective Services Release of Information to Family Advocacy Representatives of the United States Armed Forces**. The purpose of the proposed action is to complete a comprehensive review of 22VAC40-705, including a review of any impact on small business, and incorporate into it the contents of 22VAC40-700 and 22VAC40-720, which are being repealed as part of this action. In addition, amendments will address recent Code of

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## Notices of Intended Regulatory Action

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Virginia changes and any other changes identified as necessary during the public comment forums.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 63.2-217 of the Code of Virginia.

Public Comment Deadline: May 22, 2013.

Agency Contact: Mary Walter, CPS Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7569, FAX (804) 726-7499, or email [mary.walter@dss.virginia.gov](mailto:mary.walter@dss.virginia.gov).

V.A.R. Doc. No. R13-3636; Filed March 21, 2013, 3:54 p.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

### DEPARTMENT OF GENERAL SERVICES

#### Final Regulation

**REGISTRAR'S NOTICE:** The Department of General Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Department of General Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 1VAC30-120. Federal Property and Administrative Services Act of 1949, As Amended (amending 1VAC30-120-20 through 1VAC30-120-140, 1VAC30-120-160).

**Statutory Authority:** § 2.2-1123 of the Code of Virginia.

**Effective Date:** May 22, 2013.

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

#### **Summary:**

*This action updates the chapter by (i) correcting citations to state and federal law and regulation, (ii) correcting the address and description of the distribution center facilities, and (iii) increasing the threshold dollar requirement from \$3,000 to \$5,000 for items that must have a separate inventory card and be inventoried at least two times each year.*

#### **1VAC30-120-20. Designation of state agency.**

A. ~~The Section 2.2-1123 of the Code of Virginia § 2.1-445-1 effective July 1, 1984 designated~~ designates the Department of General Services, Division of Purchases and Supply, as the official agency of the Commonwealth of Virginia to administer the State Plan of Operation throughout the Commonwealth pursuant to the provisions of ~~the Federal Property and Administrative Services Act of 1949, as amended, 40 USC § 549, FMR 102-37, GSA federal General Services Administration~~ regulations, and this plan.

B. The activity, in the Division of Purchases and Supply, to administer the State Plan of Operation is the Virginia Federal Property Agency, ~~hereinafter referred to as the~~ ("State Agency"). The State Agency will administer all phases of the operation including acquiring, storing, and distributing

~~Federal~~ federal property to eligible public and nonprofit agencies, establish regulations and procedures, assess service charges, maintain property accounting systems, and as required, execute certifications and agreements pertaining to this ~~Act~~ chapter and 40 USC § 549 with eligible agencies, institutions, and organizations of the Commonwealth, other ~~States~~ states, and agencies of the ~~Federal~~ federal government. Financial accounting is maintained by the Bureau of Fiscal Services of the Department of General Services.

C. Under the general administration of the ~~Administrator~~ Director of State Surplus Property, the State Agency is directed and supervised by the ~~Manager~~ manager who is responsible for all phases of the operation. The manager has an assigned staff including clerical, screeners, distribution centers, and driver personnel. In addition, the ~~Manager~~ manager cooperates with the State state surplus property activity. The State Agency is a special fund activity paying all expenses from service charge revenues.

D. Two distribution center facilities are operated. The Richmond center is State Agency owned and includes a ~~43,000~~ 55,000 square foot warehouse within a fenced storage area on a 10-acre site located at 1910 Darbytown Road, Richmond, Virginia. ~~The 12,000 square foot warehouse addition is rented to the state surplus property activity. Although the warehouse and outside storage spaces are presently satisfactory, additional outside space is available for future expansions.~~ The second center is a rented ~~14,000~~ 45,000 square foot ~~warehouse located in Ivanhoe retail facility located at 800 East Main Street, Wytheville, Virginia,~~ warehouse located in Ivanhoe retail facility located at 800 East Main Street, Wytheville, Virginia, for the southwest services. Both distribution centers are co-located with state surplus property offices and facility costs are equitably shared.

E. The managers of federal and state surplus property activities operate under ~~an Administrator~~ the Director of State Surplus Property with the next higher authority as the ~~Division Assistant Director for Public Marketing and Support of Procurement Services.~~

#### **1VAC30-120-30. Inventory control and accounting system.**

##### A. Property ~~Accountability~~ accountability.

1. Accountability records will be maintained on all federal property transferred to the State Agency, recording receipts, issues, balances, date, and document number. This documentation is by one or more federal stock groups.

2. A separate inventory card will be maintained for all items with an original acquisition cost of ~~\$3000~~ \$5,000 or more and passenger motor vehicles. The inventory records

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# Regulations

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are separate from the records of items of less than ~~\$3000~~ \$5,000.

## B. Receiving and ~~Verifying Property~~ verifying property.

1. When property is received, a physical inspection and count is made and checked against the approved ~~Federal~~ federal Form SF-123 or available shipping documents. Receiving notations will be made on the document.

2. When differences are discovered, an overage and shortage report will be prepared and submitted to the ~~GSA~~ federal General Services Administration (GSA) regional office under the provisions ~~FPMR 101-44.115 FMR 102-37.70 and 41 FMR102-37.350~~. In cases of an overage of \$500 or more, or estimated per line item, it will be listed on a SF-123 and submitted to the GSA regional office.

3. Property items received and issued are posted to the inventory card. Posted transactions show date, document number, receipts, issues, and balance. It refers to the identified receiving and issue document and therefore provides the item history.

4. A verification of property on hand will be accomplished each year with a physical inventory. A written list identifying the items is prepared and checked with the inventory card. Inventory differences ~~which that~~ cannot be accounted for by the distribution center supervisor will be reported to the State Agency manager and adjustments may be made only with the manager's written approval. All reasonable efforts to reconcile the differences will be made before adjustments are approved. A verification of items with an acquisition cost of ~~\$3000~~ \$5,000 or more and passenger motor vehicles will be made at least two times each year.

5. All property distributed by the distribution center is issued on the form "Distribution Document and Invoice" Exhibit 1, 1VAC30-120-150. Property picked up directly from a holding agency by a donee is issued on the form, "Surplus Property Transfer Document" Exhibit 2, 1VAC30-120-150.

## C. Fiscal ~~Accounting System~~ accounting system.

1. The State Agency will accept payment for services only in the form of checks, warrants, or ~~Interdepartmental Transfer Invoices~~ interdepartmental transfer invoices, drawn or issued by, and in the name of, the approved donee. All receipts are deposited with the Treasurer of Virginia to the account of the Special Fund. All disbursements are made by the Treasurer from the account on receipt of invoices properly certified to the State Comptroller. In addition, the State Agency has an approved petty cash fund.

2. The fiscal accounting system is acceptable to the Department of General Services (DGS), Division of Purchases and Supply, and approved by the State Comptroller, along with other DGS fiscal systems. The system is composed of a chart of accounts, a donee jacket

type account receivable subsidiary ledger, receipts ledger which accounts for all cash received, and a general ledger which accounts for all assets, liabilities, and expenses. An accrual statement of profit and loss and a balance sheet is prepared at the close of each month.

3. The fiscal accounting records are maintained as a separate Special Fund by the Department's Bureau of Fiscal Services accounting for all revenues, disbursements, assets, and liabilities.

## 1VAC30-120-40. Return of donated property.

A. Conditions and ~~Donee Reporting Procedure~~ donee reporting procedure. Property that is still usable as determined by the State Agency but not placed in use within one year from date of acquisition or ceases to be used during the 12 or 18 month use restriction period thereafter shall be reported to the State Agency for disposition instructions. The report in writing shall give item identifying data, condition, reasons for nonutilization, and recommended action.

B. Disposition ~~Instructions~~ instructions. The State Agency will review the donee report and if it is determined the donee has not conformed to the terms and conditions as stated on the donation document, Exhibits 1 or 2 of 1VAC30-120-150, it will authorize in writing a procedure deemed appropriate for the best utilization or disposal of the item. The authorization may include:

1. Return the item to the State Agency distribution center at donee expense and with no reimbursement of service charges.
2. Transfer item to another donee, ~~SASP~~ state agency for surplus property (SASP), or federal agency.
3. Authorize sale if there are no other requirements.
4. Authorize cannibalization or secondary utilization.
5. Authorize scrapping.
6. Amend, modify, or grant releases on terms and conditions in conformance with ~~GSA Regulations~~ federal General Services Administration regulations.

## C. Dissemination of ~~Requirements~~ requirements to ~~Donees~~ donees.

1. A flyer will be prepared and mailed approximately four times a year to each eligible donee. The flyer is basically a promotional item listing of property on hand. In addition, it will contain news items of the program, including basic requirements of 1VAC30-120-40 and 1VAC30-120-60.

2. Announcements concerning the responsibilities of donees on the requirements referred to in this section will be given by State Agency personnel at meetings, seminars, workshops, correspondence, special notices, and utilization and compliance surveys.

## 1VAC30-120-50. Financing and service charges.

A. Policy ~~Statement~~ statement. The Virginia Federal Property Agency is classified as a Special Fund activity and the Agency Manager is responsible for the management of the

fund. There are no appropriations and service charges are the principle source of revenue to cover the costs of operation. Sales/compliance proceeds, transportation services, and gifts may produce additional revenue. Service charges are assessed for all property transactions and services. It is the policy of the agency that service charges shall be fair, equitable, and minimal, but established to maintain a financially sound agency. All operating costs are included in this Special Fund activity including but not limited to all employee costs, screening, transportation, maintenance, utilities, administration and accounting, supplies, equipment, packing and handling, compliance and utilization, insurance, fund operation, capital maintenance, and outlay.

B. Factors in ~~Establishing Charges~~ establishing charges. To establish item service charges a number of factors are used. Included are circumstances of expenses and revenues, property acquisition cost, condition and usability, general or special availability, need, demand, accumulated use experiences, storage and display, administrative and screening, freight and deliveries. Additional factors pertain to current expenses, property repair or reutilization, special packing and handling, disposal, and compliance and utilization services.

C. Method of ~~Establishing Charges~~ establishing charges.

1. ~~General Guide The Code of Virginia § 2.1 445.1 Section 2.2-1123 of the Code of Virginia provides that the Division~~ division may collect service charges sufficient to defray the costs of carrying out this program. The policies, factors, and item acquisition costs covered in ~~VAC30-420-50 of this section~~ determine charges assessed. Any period of time may result in fluctuations in the amount of property received, acquisition costs, and economic changes and status. Adjustments to variable changes are necessary to revise service charges. The total of the service charges for all property donated by the agency during any given fiscal year shall not exceed ~~20 percent~~ 20% of the original government acquisition cost of the property during that year.

| General Guide for Item Service Charges |                  |
|--|------------------|
| Charge Percentage of Acquisition Cost  | Acquisition Cost |
| 0-35                                   | \$0-3,000        |
| 0-30                                   | 3,001-10,000     |
| 0-25                                   | 10,001-above     |

2. Factors given in subsections A, B, and C of this section account for the service charge rates.

3. Unusual or additional expenses will be added to the usual service charges and may include, but not limited to, property rehabilitation, overseas property returns, unusual transportation, and special handling or extraordinary charges.

4. The computation guide for computing service charges will be reviewed periodically, which may be as frequently as each month, to evaluate the income-expense status. When warranted, changes in the guide will be made to conform to the provisions in the ~~FPMR 101.44.202(d)~~ FMR 102-37.275.

D. ~~Reduced Charges~~ charges for ~~Direct Pickup~~ direct pickup. When property is screened or picked up directly from a holding agency by a donee, the service charge will be reduced on a pro-rata basis for the specific services not rendered by the State Agency such as screening, transportation, and warehousing costs. The charges will be reduced ~~10-25%~~ 10% to 25% of the normal or usual service charges when the donee performs the partial over-all services. In general, the remaining factors will apply in establishing service charges because such transactions must also bear a part of the total operating costs.

E. Use of ~~Funds~~ funds. Revenue derived from service charges as well as from other sources such as sales, compliance action, gifts, and appropriations may be used to cover all direct and indirect costs of the agency including personnel, capital purchases and improvements for office and distribution center facilities, property rehabilitation, equipment purchases and maintenance. The current state budget major classifications cover Personal Services, Contractual Services, Supplies and Materials, Transfer Payments, Continuous Charges, Property and Improvements, Equipment, Plant and Improvements. The classifications may be changed, added, or deleted. Capital Outlay plans and expenditures must receive approvals in accordance with the Commonwealth of Virginia requirements. The integrity of the special fund is assured in that the funds shall be used only in the operation of the agency and the promotion of the program.

F. Working ~~Capital Reserve Fund~~ capital reserve fund. A financial reserve fund may be accumulated and maintained in an amount not to exceed the total agency expenses for prior year, plus an inflation factor, and current activity cost pace. Funds in excess of the above may be accumulated provided the agency has written plans for increased needs such as maintenance costs, capital outlay for new facilities, expansion, repairs or remodeling, new programs, equipment purchases, and personnel costs. If funds should accumulate in excess of that described above, service charges will be reduced to lower the special fund to the authorized level. Proceeds from any facility sale will be deposited to the fund and subject to the provisions of this paragraph.

G. Accumulated ~~Funds~~ funds. Funds from service charges or from other sources accumulated prior to October 17, 1977, are to be used for the continuance of agency operation for the benefits of all participating donees.

H. Deposits and ~~Investments~~ investments. All funds derived from service charges or other sources are deposited with the Treasurer of Virginia. The ~~Federal Property~~ State Agency is not authorized to invest funds.

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## **1VAC30-120-60. Terms and conditions on donable property.**

A. Certification by ~~Donee~~ donee on all ~~Donated Property~~ donated property. The donee authorized representative certifies and agrees to all the terms, conditions, reservations, and restrictions included on the issue documents shown as exhibits in 1VAC30-120-150.

1. Distribution Document and Invoice; Exhibit 1
2. Surplus Property Transfer Document; Exhibit 2

B. Additional ~~Certification~~ certification by ~~Donee~~ donee for ~~Donation~~ donation of ~~Aircraft~~ aircraft and ~~Vessels~~ vessels.

1. Combat-Type Aircraft Conditional Transfer Document; Exhibit 3;
2. Non-Combat-Type Aircraft Conditional Transfer Document; Exhibit 4;
3. Vessel Conditional Transfer Document; Exhibit 5.

C. Amendment and ~~Release~~ release of ~~Terms~~ terms and ~~Conditions~~ conditions.

1. The State Agency may amend, modify, or grant releases of any term, condition, or restriction it has imposed on donated items in accordance with the standards prescribed in Exhibit 3, 1VAC30-120-150, in this plan provided that the conditions pertinent to each situation have been affirmatively demonstrated to the prior satisfaction of the State Agency and made a matter of record.

2. Pursuant to ~~FPMR 101-44.208(h)~~ FMR 102-37.465(1) the State Agency may grant approval to the donee to cannibalize or accomplish secondary utilization of an item which is subject to the terms, conditions, reservations, or restrictions as listed on the Distribution Document and Invoice, Exhibit 1. The State Agency may issue an item for the purposes of cannibalization or secondary utilization with approval for such action marked on the Distribution Document and Invoice. If a donee finds that it cannot use the donated item for the purposes for which acquired, and therefore wishes to cannibalize it or accomplish secondary utilization, a written request for an approval must be submitted to the State Agency. The request shall give item identification, condition, and proposed use. The State Agency will respond in writing and may grant approval when it is determined that such action appears to be the best utilization of the item.

3. Standards to amend or grant releases. In accordance with ~~1VAC30-120-60~~ this section of the plan of operation, the State Agency may amend or grant releases during the period of restriction from the terms, conditions, reservations, or restrictions it has imposed on donated property; in accordance with the following standards provided that the conditions pertinent to each situation have been affirmatively demonstrated to the prior satisfaction of the State Agency, and have been made a matter of record:

a. Secondary utilization or cannibalization. Secondary utilization or cannibalization may be accomplished provided that:

- ~~1-~~ (1) Disassembly of the item for use of its component parts for secondary use or repair and maintenance of a similar item has greater potential benefit than utilization of the item in its existing form;
- ~~2-~~ (2) Items approved for disassembly or cannibalization will remain under the period of restriction imposed by the transfer document pending completion of the proposed secondary use or cannibalization; and
- ~~3-~~ (3) A written report of such action is made by the donee to the State Agency, including a list of all components resulting from the secondary utilization or cannibalization ~~which~~ that have a single item acquisition cost of ~~\$3000~~ \$3,000 or more. These components will remain under the restrictions imposed by the transfer document. Components with a single item acquisition cost of less than ~~\$3000~~ \$3,000 will be released from the restrictions imposed by the transfer document. However, these components will continue to be used or be otherwise disposed of in accordance with applicable law and regulations.

b. Trade-in of an item on a similar replacement. An item of donated personal property may be traded in or used as whole or part payment for another like item of property provided:

- ~~1-~~ (1) The item being traded in is not, when the request is made, in compliance status for violation of the terms, conditions, reservations, or restrictions placed on it;
- ~~2-~~ (2) The item being traded in has been used by the donee for eligible purposes for at least ~~6~~ six months from the date of being placed in use, and it has been demonstrated that the trade-in will result in increased utilization value to the donee;
- ~~3-~~ (3) The trade-in is on a one-for-one basis only, i.e., one donated item being traded for one like item having similar use potential;
- ~~4-~~ (4) The item being acquired has an estimated market value at least equal to the estimated market value of the item being traded in; and
- ~~5-~~ (5) The item acquired is made subject to the period of restriction remaining on the item traded in.

c. Abrogation. Except in cases involving the failure to use or the misuse of donated property, abrogation of restrictions imposed by the State Agency in the transfer instrument may be authorized upon payment to the State Agency of an amount representing the fair market value at the time of donation less a credit for the time the property was used for the purpose for which donated, during the period of restriction, and provided that the State Agency determines that such action will not result in a windfall revenue to the donee, and provided further

that the property has been used for at least 12 months from the date of being placed in use.

d. Revision of the acquisition cost. The acquisition cost of an item may be revised provided that the request therefore is made in writing by the donee, and it is determined by the State Agency that the listed acquisition cost is unrealistic in view of its research and development costs, its incompleteness due to missing parts, or its generally deteriorated condition.

e. Destruction and abandonment. A donated item of personal property may be destroyed or abandoned by a donee when it is determined that the item has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. The determination shall be based on a finding made in writing by the State Agency and the State Agency shall prescribe the means and methods whereby the property shall be destroyed or abandoned.

f. Enforcement of compliance. The enforcement of the terms and conditions, reservations and restrictions imposed by the State Agency, of donated property, or the remedy of breaches of such terms and conditions, may be satisfied:

~~1-~~ (1) When payment is made to the State Agency of any and all fair rental values due and payable for any unauthorized use of donated property;

~~2-~~ (2) When payment is made to the State Agency of either the fair market value or gross proceeds of sale, whichever is in the best interest of the State state, for the unauthorized disposal or destruction of donated property; or

~~3-~~ (3) When donated property is recovered by the State Agency accountability and distribution of such property is the responsibility of the State Agency.

g. Reduction in the period of restriction. Provided an item of donated property is not in compliance status, a reduction in the period of restriction may be authorized when a revised standard covering the period of restriction is promulgated by the State Agency.

h. Limitations. These provisions are not applicable to:

~~1-~~ (1) Donated military-type aircraft; or other items of property on which GSA federal General Services Administration has imposed special handling condition or use limitations; or

~~2-~~ (2) Property which was not placed in use for the purposes for which acquired within one year from the date the property was placed in use, and continued in use for one year from the date the property was placed in use, except with respect to secondary use or cannibalization as provided in ~~FPMR 101-44.208(h)~~ FMR 102-37.465(c).

D. The State Agency may impose reasonable terms, conditions, reservations, and restrictions on the use of

donable property items other than those with a unit acquisition cost of \$3,000 or more, and passenger vehicles.

**1VAC30-120-70. Nonutilized donable property.**

A. State Agency ~~Policy policy~~. The State Agency will dispose of property in its possession ~~which that~~ cannot be utilized by donees in the State state, and the property will be disposed of in accordance with the provisions of ~~FPMR 101-44.205~~ FMR 102.37-290 through FMR 102-37.320.

B. Transfers to ~~Other State Agencies~~ other state agencies. Property will be offered to other State Agencies state agencies by circulating a property list or verbal notification. Visits by representatives of other state agencies to inspect and select unneeded property is encouraged. Transfers of property will be accomplished by processing SF 123 by the requesting state submitted through the GSA federal General Services Administration (GSA) office subject to disapproval within 30 days.

C. Report ~~Unneeded Usable Property~~ unneeded usable property. The State Agency may report at anytime unneeded usable property, which is not required for transfer to another state, to the GSA regional office for redistribution or other disposal. The property shall be identified, marked as to ~~Federal~~ federal utilization potential, and reimbursement claims.

D. Disposition. GSA will notify the State Agency of the ~~Disposition~~ disposition to be taken and generally this will be a reutilization transfer or report for sale. With approval of the regional office, property to be sold may be turned in to the GSA Sales Center sales center or a designated ~~DoD Property Disposal Office~~ Department of Defense property disposal office. Generally scrap metal will be sold on State Agency site. Reimbursement may be claimed in accordance with GSA Regulations regulations.

E. Destruction or ~~Abandonment~~ abandonment. When the State Agency finds that it has property in its possession that is unusable by donees in the Commonwealth or other states and otherwise is determined to have no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale, the State Agency will proceed promptly with the destruction or abandonment of such property subject to the disapproval of GSA within 30 days of notice to it by the State Agency.

**1VAC30-120-80. Fair and equitable distribution.**

A. Policy. The State Agency is responsible for the fair and equitable distribution of allocated surplus property to all eligible donees in Virginia. The distribution plan is based on needs and an evaluation of the relative needs, resources, and utilization ability of all the eligible agencies and institutions. Due consideration and assistance will be offered the more needy recipients.

B. Determination. Relative needs, resources, and utilization abilities will be determined by reviewing donee property requests and justifications, emergency status, program and

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project priorities as given by responsible authorities, and consulting with advisory persons and bodies such as public and private institutions, ~~Office Virginia Departments of Emergency Services, State Departments of Management, Planning and Budget, Professional and Occupational Regulation, Education, Health, and Social Services, and the Virginia Employment Commission.~~ When the Governor declares a state of emergency, the ~~State Office Department of Emergency Services Management~~ may direct priorities of property issues. A general ranking or index number obtained from the Department of Planning and Budget will be used as a factor to determine the relative needs and resources of the cities and counties. To determine relative needs and resources of the nonprofit health and education institutions, the State Agency will seek aid from bodies such as the Council of Independent Colleges in Virginia, the Virginia Hospital ~~and Healthcare Association,~~ and the ~~Arc of Virginia Association for Retarded Children.~~ Key individuals such as purchasing officials, and local administrators of eligible donees will be consulted.

C. Application. In general, the need, resources, and utilization abilities; determination will apply to major items and special categories of equipment and material. Examples may be: vehicles, construction equipment, materials handling equipment, machine tools, generators, ADP equipment, complicated scientific equipment, vessels, and aircraft.

D. Requests by donees. Authorized representatives of donee institutions are invited to submit a listing of all needed items in the categories, but not limited to, as provided in ~~paragraph subsection C of this section.~~ Virginia ~~Agency agency~~ screeners will be guided in their search and selection of property according to the known want lists.

Authorized donee representatives may also submit to the State Agency requests for specific identified items located anywhere in the United States. Donee representatives may meet with agency screeners at federal installations to inspect specific items to determine if suitable for their needs. Property selected and approved for donation may be picked up directly by the donee if so requested.

E. Property ~~Assignments assignments~~ to ~~Donees donees.~~ Assignments of equipment as it becomes available will be made by the State Agency as provided in subsections B and C ~~of this section.~~

The State Agency will submit applications to ~~GSA federal General Services Administration~~ for specific identified property requested by donees and arrange for direct pickup by the donee from the holding agency when so requested ~~and/or or~~ practicable. Direct pickup may also be arranged, when economical, for needed items but not specifically identified.

The majority of miscellaneous items, including many major items, will be screened and selected by Virginia agency screeners at federal installations for application and shipment to the ~~Federal Property State Agency~~ warehouse-distribution centers. Major items as described in subsection C ~~of this~~

~~section~~ will be offered to donees conforming to subsection B ~~of this section.~~

Miscellaneous items, not including major items, will be available at the ~~State Agency~~ distribution center on a supermarket plan, ~~first-come first-come, first-served first-served~~ basis. Major items located at the center, offered to donees according to requests but not picked up, will be available to any eligible donee on the ~~first-come first-come, first-served first-served~~ basis. Appointments to visit the distribution center are not required and authorized representatives may make such visits to inspect and select property on any ~~State state~~ work day.

## **1VAC30-120-90. Eligibility.**

### A. General.

1. Public ~~Agencies agencies.~~ Surplus personal property may be donated through the State Agency to any public agency in the Commonwealth of Virginia, or political subdivision thereof, including any unit of local government or economic development district; or any department, agency, instrumentality thereof, including instrumentalities created by compact or other agreement between states or political subdivisions, multijurisdictional substate districts established by or pursuant to state law, or any Indian tribe, band, group, pueblo, or community located on a state reservation. Surplus property acquired must be used by the public agency to carry out or to promote for the residents of a given political area one or more public purposes such as conservation, economic development, education, parks and recreation, public health, public safety, and emergency services.

2. Nonprofit ~~Educational educational or Public Health Institutions public health institutions.~~ Surplus personal property may also be donated to nonprofit educational or health institutions as determined under ~~Section § 501 of the Internal Revenue Code of 1954 1986~~ such as: medical institutions, hospitals, clinics, health centers, nursing homes, schools, colleges, universities, schools for the mentally retarded and physically handicapped, child care centers, educational radio and television stations, museums, libraries, and programs for Older Americans as described in ~~FPMR 101-44.200 FMR 102-37.380(c).~~ Surplus property acquired must be used by the eligible nonprofit educational or public health institutions or organizations for the primary functions for which the activity receives donable property and not for a nonrelated or commercial purpose.

B. Determination of ~~Eligibility eligibility.~~ The ~~Federal Property State Agency~~ is responsible for the determination that an applicant is eligible as a public agency or a nonprofit educational or public health institution or organization to participate in the program and receive donations of surplus personal property. Approvals shall be granted only when an applicant meets the provisions and criteria for approval as stated in ~~the Law 40 USC § 549 and FPMR 101-44.207 FMR~~

102-37.385. The eligibility status of each eligible entity is updated every three years after the initial approval. Reference is made to subsection D of this section. Eligibility files for skilled nursing homes; intermediate care facilities; alcohol and drug abuse centers; programs for older individuals; and other programs that are certified, approved and licensed annually, must be updated every year.

C. Eligibility ~~Procedures~~ procedures.

1. An agency, institution, or organization interested in receiving ~~Federal~~ federal surplus property must establish eligibility by requesting an eligibility application form, complete the requested information, and mail the entire application material to the State Agency.
2. The State Agency will review the application and notify the applicant of approval, disapproval, or the need of additional required information.

D. Information to be ~~Included~~ included in the ~~Application~~ application for ~~Eligibility~~ eligibility.

1. Legal name, address, telephone number;
2. Status of applicant:
  - a. Public Agency: to designate the type such as state agency, city, county, town, multijurisdictional authority, college, university, school, school systems, hospital, clinic, health center, Indian reservation, or aging center;
  - b. Nonprofit educational institution: to designate type such as college, university, kindergarten, elementary, high school, vocational, technical, special, mentally retarded or physically handicapped, rehabilitation, child care, aging, museum, and library;
  - c. Nonprofit health institutions: designate type such as medical institution, hospitals, clinics, health centers, skilled nursing homes.
3. Prepare a public or nonprofit agency application. If nonprofit, include as evidence, a copy of the tax exemption under ~~Section §~~ 501 of the Internal Revenue Code of ~~1954~~ 1986.
4. Concise description of the applicants public program such as naming departments, services or activities, plants, facilities, and staff. If a nonprofit health or educational institution provide concise descriptions of the specific offerings, services, plants, facilities, and staff so State Agency can determine eligibility qualifications and definitions of eligible entities.
5. Evidence of approval, accreditation, or licensing. If such evidence is lacking, a letter of evaluation from appropriate program authority such as county, city, state department, college or university, or school system, may be submitted in lieu of such evidence.
6. The Nondiscrimination Assurance, Exhibit 6 of 1VAC30-120-150, is executed by the donee authorized representative as a requirement for approval of the

eligibility application, and prior to acquiring surplus property.

Assurance of Compliance with GSA Regulations under the nondiscrimination regulations issued under Title VI of the Civil Rights Act of 1964 (42 USC § 2000d through 2000d-4), Section 606 of Title VI of the Federal Property and Administrative Services Act of 1949, as amended 40 USC § 122), Section 504 of the Rehabilitation Act of 1973 (29 USC § 794), as amended, Title IX of the Education Amendments of 1972 20 USC §§ 1681 through 1688, as amended, and Section 303 of the Age Discrimination Act of 1975 (42 USC §§ 6101 through 6107).

7. Application to be signed by the administrative head or other responsible official of the applicant who has authority to act for the applicant in all matters pertaining to ~~Federal~~ federal surplus property including the eligibility application, acquisition of ~~Federal~~ federal surplus property, obligation of necessary funds, execute documents, certification to terms, conditions and restrictions, use, and disposal of the property.

8. Supplementary information may be requested as to relative needs, resources, and utilization abilities, to aid the State Agency in the fair and equitable distribution of available property.

9. When an eligibility approval is granted a donee, the administrative head or other responsible official, will be requested to designate a person to handle and be responsible for all affairs pertaining to federal surplus property. This person may authorize one or more additional persons who may select and sign for property for the eligible recipient. Signatures of all authorized persons will be on file in the State Agency.

E. Conditional ~~Eligibility~~ eligibility. In certain cases newly organized activities may not have commenced operations or completed construction of their facilities, or may not yet have been approved, accredited, or licensed as may be required to qualify as eligible donees. In other cases there may be no specific authority which can approve, accredit, or license the applicant as required for qualification. In these cases the State Agency may accept letters from public authorities, either local or ~~State~~ state, which the State Agency deems competent such as ~~the~~ a board of health or a board of education that the applicant otherwise meets the standards prescribed for approved, accredited, or licensed institutions and organizations. In the case of educational activities, letters from accredited or approved institutions that students from the applicant institution have been and are being accepted may be deemed sufficient by the State Agency.

**1VAC30-120-100. Compliance and utilization.**

A. Donated items ~~Subject~~ subject to ~~Compliance~~ compliance and ~~Utilization~~ utilization reviews ~~utilization~~ reviews on ~~Terms~~ terms and ~~Conditions~~ conditions (1VAC30-120-60):

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1. Items with a unit acquisition cost of ~~\$3000~~ \$3,000 or more and any passenger motor vehicle;
2. Items ~~which that~~ require special handling conditions or use limitations as imposed by GSA federal General Services Administration (GSA) per ~~FPMR 101-44.108 FMR 102-37, Subpart E~~;
3. Statutory requirement that all items of donated property acquired by the donee be placed into use within one year of acquisition and thereafter used for 12 months, or 18 months if the acquisition cost was ~~\$3000~~ \$3,000 or more or a passenger motor vehicle;
4. Items with a unit acquisition cost of less than ~~\$3000~~ \$3,000 ~~which that~~ may be subject to stock piling as determined by the State Agency;
5. Any property where there is alleged fraud, theft, misuse, or non-authorized disposal.

## B. Reviews.

1. The State Agency will conduct compliance and utilization reviews at least once during the period of use restriction for items as described in subdivisions A- 1 and 2 of this section.
2. The review may be accomplished by a questionnaire letter or by a visit to observe the property utilization. Staff members of the State Agency will visit donees to the extent of capabilities in time and costs. In addition to merely surveying compliance and utilization, visits will be constructive and helpful to the donees. Information will be offered on terms and restrictions; item utilization potential, procedures and special opportunities in acquiring property, and invitation for comments on program improvement.
3. Reports of the review will be a part of the donee item file. The mail questionnaire form will serve as a report. Persons making a review through visitations will also make an item report on utilization, condition, and transfer or disposal recommendation.

## C. Compliance ~~Actions~~ actions.

1. When the utilization survey shows an item is in eligible use, the report will be so noted and no further action plan is required.
2. Deficiencies in utilization may include but are not limited to nonuse or misuse; ineligible use such as loan, rental, or gift; unauthorized cannibalization, disposal or sale; failure to use property in the prescribed time frame; fraud; or theft.
3. When deficiencies are discovered, the State Agency will move to remedy the specific case. This will include action to place the item or items into use for the prescribed time frame, transfer to another donee or state agency, return to the State Agency, approve destruction, abandonment, cannibalization, or report to GSA for reutilization or sale.
4. The State Agency will initiate an appropriate investigation of any alleged fraud in the acquisition of

donable property and the ~~FBI~~ Federal Bureau of Investigation (FBI) and GSA will be immediately notified of the allegations and the status of the investigation. The State Agency investigator will prepare a report of the circumstances and findings of the case and it shall be available to all authorized persons.

5. Alleged or reported thefts of surplus property in the custody of the State Agency will be immediately investigated and the details and circumstances reported to the local ~~law-enforcement~~ law-enforcement officials, the local FBI, and the ~~Regional~~ regional GSA office.

6. The State Agency will initiate an appropriate investigation of all alleged misuse of donated property and notify GSA of the allegations immediately.

7. The State Agency will take necessary actions to investigate cases of alleged fraud, misuse, or theft and assist GSA or other responsible ~~Federal federal~~ or State state agencies in investigating such cases upon request.

8. The State Agency may enforce compliance action during the period of restriction by requiring payment from the donee under the following circumstances and terms ~~listed below~~:

- a. Recover the fair value of the property if it has been disposed of improperly.
- b. Recover the fair rental value if the property was used in an unauthorized manner.
- c. In enforcing compliance with the terms and conditions imposed on donated property, the State Agency shall coordinate with GSA prior to undertaking the sale of, or making demand for payment of the fair value or fair rental value of donated property subject to any special handling condition or use limitation imposed by GSA, or of donated property ~~which that~~ had not been placed into use by the donee within ~~+~~ one year for the purposes for which acquired or used by the donees for those purposes for ~~+~~ one year thereafter. Funds derived by the State Agency in the enforcement of compliance will be remitted to GSA involving a breach of restrictions imposed by GSA. The State Agency may retain the funds for the breach of restrictions imposed by the State Agency.

D. Suspension of ~~Donations~~ donations. The State Agency may suspend donations of property to a donee for noncompliance cases or nonpayment of service charges.

## **1VAC30-120-110. Consultation with advisory bodies and public and private groups.**

A. General ~~Policy~~ policy. The State Agency will consult advisory bodies and public and private groups, as a matter of general policy as well as in special circumstances, to assist in determining fair and equitable distribution of property based on relative needs, resources, utilization abilities, stated needs, and emergency status of donees. ~~Reference is made to~~ See Fair and Equitable Distribution, 1VAC30-120-80.

B. Implementation. The State Agency will be in contact with advisory bodies and groups such as Departments of the State Government, the Virginia Municipal League, the Virginia Association of Counties, the Virginia Foundation for Independent Colleges, the Association of Virginia Colleges, the Virginia Hospital and Healthcare Association, the Catholic Diocese Department of Schools, purchasing groups, and political subdivision administrators. Contacts will be person-to-person such as telephone, visits, or correspondence; attendance at meetings and conferences, and general distribution of information with flyers. Expressions of need, and general and specific requirements, will be solicited from the above groups on behalf of all eligible public and private agencies. When expressions of need and interest are received, GSA federal General Services Administration will be advised of such requirements, including requirements for specific items of property.

**1VAC30-120-120. Audit.**

A. State Agency. At the close of each month a Profit and Loss Statement and Balance Sheet is prepared. Expenditures, receipts, and cash balances are verified each month with the State Comptroller by ~~D.G.S.~~ the Department of General Services, Bureau of Fiscal Services.

B. Internal ~~Audit~~ audit. Personnel of the Department of General Services will conduct an internal audit of State Agency operations and financial affairs. It will be made every two years and, when practicable, will be on the external audit off year.

C. External ~~Audit~~ audit. The State Auditor of Public Accounts will audit the State Agency at least every two years. The audit will include a review of the conformance of the State Agency with the provisions of the State Plan of Operation and the requirements of ~~41 CFR 101-44~~ FMR 102-37.345 through 102-37.355. The State Agency will submit a copy of the audit report to the GSA federal General Services Administration (GSA) regional office and will report all corrective actions taken with respect to any exceptions or violations indicated in the audit report. The State Auditor of Public Accounts operates under the authority of the ~~Legislative Branch~~ legislative branch of ~~Government~~ government. The State Agency operates under the ~~Executive Branch~~ executive branch of ~~Government~~ government, Secretary of Administration and Finance, Department of General Services, Division of Purchases and Supply. Refer to Exhibit 7 of 1VAC30-120-150, Organization of the Virginia State Government.

D. Additional Audits and Reviews.

1. GSA representatives may visit the State Agency to coordinate program activities and review the State Agency operations.
2. GSA may, for appropriate reasons, conduct its own audit of the State Agency following due notice to the Governor of the Commonwealth of the reasons for such audit.

3. All records of the State Agency, including financial, will be available for inspection by GSA, ~~GAO~~ General Accounting Office, or other authorized federal activities.

**1VAC30-120-130. Cooperative agreements.**

A. The State Agency will enter into or review, or revise cooperative agreements with GSA federal General Services Administration (GSA) or other federal agencies pursuant to the provisions ~~Virginia Code § 2-1 445.1 of § 2.2-1123 of the Code of Virginia~~, Section 203(n) of the Federal Property and Administrative Services Act of 1949, as amended, and ~~FPMR 101-44.206~~ FMR 102-37.325. The agreements may include but not limited to:

1. Use of donable property by the State Agency;
2. Overseas property;
3. Use of ~~Federal~~ federal facilities and services; and
4. ~~Inter-State~~ Inter-state.

B. Cooperative agreements entered into between GSA and the State Agency may be terminated by either party upon 60 days written notice to the other party. Termination of an agreement between a federal agency designated by GSA and a state agency, and interstate cooperative distribution agreements, shall be mutually agreed to by the parties.

C. The State Agency may enter into such other cooperative agreements with eligible agencies in the State as may be deemed necessary or advisable.

**1VAC30-120-140. Liquidation.**

The State Agency will submit a liquidation plan to GSA federal General Services Administration prior to the actual termination of State Agency activities in accordance with the specific requirements of ~~FPMR 101-44.202(e)(14)~~ FMR 102-37.365 through 102-37.370. The plan will include:

1. Reasons for the liquidation;
2. A schedule for liquidating the agency and the estimated date of termination;
3. Method of disposing of surplus property on hand, consistent with the provisions of ~~FPMR § 101-44.205~~ FMR 102-37, Subpart D;
4. Method of disposing of the agency's physical and financial assets; and
5. Retention of all available books and records of the State Agency for a two-year period following liquidation.

**1VAC30-120-160. Records.**

All official records of the State Agency will be retained for more than ~~3~~ three years, except:

1. Records involving property subject to restrictions for more than ~~2~~ two years will be kept for ~~4~~ one year beyond the specific period of restriction.
2. Records involving property in compliance status at the end of the period of restriction will be kept for at least ~~4~~ one year after the case is closed.

VA.R. Doc. No. R13-1622; Filed March 14, 2013, 4:44 p.m.

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Emergency Regulation

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

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

Effective Dates: April 1, 2013, through May 1, 2013.

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

Summary:

*This emergency chapter establishes licensing requirements for the harvesting of horseshoe crabs by hand and exemptions from these requirements. This emergency chapter also establishes commercial fisheries management measures for horseshoe crabs, including an annual commercial quota for horseshoe crabs that comply with the provisions of the Interstate Fishery Management Plan for Horseshoe Crab.*

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

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

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

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

D. The commercial quota of horseshoe crab for 2013 shall be 172,828 horseshoe crabs. Additional quantities of horseshoe crab may be transferred to Virginia by other jurisdictions, in accordance with the provisions of Addendum I to the Atlantic States Marine Fisheries Commission Fishery Management Plan for Horseshoe Crab, April 2000, provided that the combined total of the commercial quota and transfer from other jurisdictions shall not exceed 355,000 horseshoe crabs. It shall be unlawful for any person to harvest from Virginia waters, or to land in Virginia, any horseshoe crab for commercial purposes after any calendar-year commercial

quota of horseshoe crab has been attained and announced as such.

E. It shall be unlawful for any person to harvest or land horseshoe crabs during any calendar year, from waters east of the COLREGS line by any gear after 81,331 male horseshoe crabs have been landed and announced as such, to also include the following provisions:

1. It shall be unlawful for any person to harvest or land any female horseshoe crabs from waters east of the COLREGS line.

2. It shall be unlawful for any person to harvest or land any amount of horseshoe crabs from waters east of the COLREGS line by any gear, except for trawl or dredge gear.

F. For the purposes of this regulation, no horseshoe crab shall be considered a male horseshoe crab unless it possesses at least one modified, hook-like appendage as its first pair of walking legs.

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

1. It shall be unlawful for any person who holds a valid unrestricted horseshoe crab endorsement license, as described in 4VAC20-900-21 C, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,500, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-21 C and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 1,250.

2. It shall be unlawful for any person who holds a valid restricted horseshoe crab endorsement license, as described in 4VAC20-900-21 D, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,000, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-21 D, and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 500. The harvest of horseshoe crabs, described in this subdivision, shall be restricted to using only crab dredge.

3. It shall be unlawful for a horseshoe crab bycatch permittee to possess aboard any vessel more than 500 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 500 per day except as described in subdivision 4 of this subsection. When it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person with a horseshoe crab bycatch permit to possess aboard any vessel more than 250 horseshoe crabs or for any vessel to land

any number of horseshoe crabs in excess of 250 per day except as described in subdivision 4 of this subsection.

4. It shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 1,000 horseshoe crabs per day. When it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 500 horseshoe crabs per day.

5. It shall be unlawful for any registered commercial fisherman or seafood landing licensee who does not possess a horseshoe crab endorsement license or a horseshoe crab bycatch permit to possess any horseshoe crabs.

6. It shall be unlawful for any person who possesses a horseshoe crab endorsement license or a horseshoe crab bycatch permit to harvest horseshoe crabs by gill net, except as described in this subdivision.

a. Horseshoe crabs shall only be harvested from a gill net, daily, between the hours of sunrise and sunset.

b. It shall be unlawful for any person to land horseshoe crabs caught by a gill net in excess of 250 horseshoe crabs per day.

c. It shall be unlawful for any person to harvest or possess horseshoe crabs taken by any gill net that has a stretched mesh measure equal to or greater than six inches unless the twine size is equal to or greater than 0.81 millimeters in diameter (0.031 inches) and that person possesses a valid Coastal Area Striped Bass Permit or a Black Drum Harvesting and Selling Permit.

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

I. When it is projected and announced that 65,065 of the commercial quota, as described in subsection E of this section, has been taken from waters east of the COLREGS line, the limitations on the possession and landing of male horseshoe crabs are as follows:

1. It shall be unlawful for any person who possesses a valid unrestricted horseshoe crab endorsement license to possess aboard any vessel in waters east of the COLREGS Line or to land more than 1,250 male horseshoe crabs per day.

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

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

4. It shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel, east of the COLREGS Line, to possess or land more than 500 male horseshoe crabs per day.

VA.R. Doc. No. R13-3647; Filed March 29, 2013, 3:09 p.m.

**Final Regulation**

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

**Title of Regulation:** **4VAC20-1270. Pertaining to Atlantic Menhaden (adding 4VAC20-1270-10 through 4VAC20-1270-70).**

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

**Effective Date:** April 1, 2013.

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

**Summary:**

*This regulation implements specific emergency legislative requirements enacted by the 2013 Acts of Assembly to comply with requirements established by Amendment 2 to the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan for Atlantic Menhaden for 2013 through 2014. Virginia law has been amended to respond to an ASMFC-mandated 20% reduction of the 2013 and 2014 total allowable landings of menhaden. The commission is required to establish regulations pertaining to menhaden to comply with these amendments.*

**CHAPTER 1270**

**PERTAINING TO ATLANTIC MENHADEN**

**4VAC20-1270-10. Purpose.**

The purpose of this chapter is to comply with the Interstate Fishery Management Plan for Atlantic menhaden, including the mandated 20% reduction in total allowable commercial landings of Atlantic menhaden from the average of the 2009 through 2011 landings.

**4VAC20-1270-20. Definitions.**

"Nonpurse seine menhaden bait sector" means those vessels that do not utilize a purse seine net to harvest menhaden and land menhaden only for use as bait in other fisheries.

"Purse seine menhaden bait sector" means those vessels that utilize a purse seine net to land menhaden only for use as bait in other fisheries.

"Purse seine menhaden reduction sector" means those vessels that utilize a purse seine net to land menhaden only at

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a qualified menhaden processing factory as described by § 28.2-400.3 of the Code of Virginia.

## **4VAC20-1270-30. Total allowable landings for menhaden; allocation, accountability, and overages.**

A. Section 28.2-400.2 of the Code of Virginia establishes the total allowable commercial landings for menhaden in 2013 and 2014 in metric tons equivalent to 318,067,167 pounds, and that total amount of allowable landings shall be allocated as quotas among three sectors of the menhaden fishery, as described below, pursuant to § 28.2-400.3 of the Code of Virginia. The purse seine menhaden reduction sector is allocated a quota of 286,396,768 pounds of allowable menhaden landings; the purse seine menhaden bait sector a 26,648,870 pound quota of allowable menhaden landings; and the nonpurse seine menhaden bait sector a 5,021,529 pound quota of allowable menhaden landings.

B. Any menhaden landings on and after January 1, 2013, count towards that particular sector's 2013 commercial quota.

C. Any overages of a sector's commercial quota shall be deducted from the following year's quota for that sector.

## **4VAC20-1270-40. Purse seine menhaden bait sector; limited entry criteria; individual transferable quota system.**

A. To qualify for limited entry to the purse seine menhaden bait sector, the applicant must:

1. Have held a purse seine license in 2011 and landed menhaden in Virginia in 2009, 2010, and 2011, while using purse seine gear to harvest menhaden in one of those three years; and
2. Provide the commission receipts and landings reports or other requested reports as proof of landings and gear usage to demonstrate that the criteria described in subdivision 1 of this subsection have been met.

B. The commission shall establish an individual transferable quota (ITQ) system for each purse seine menhaden bait licensee that meets the limited entry requirements in subsection A of this section. The quota for this sector will be allocated according to each qualified licensee's rounded percentage share of the average of the 2007 through 2011 menhaden landings.

C. Each licensee qualified under the ITQ system may transfer quota to another licensee's ITQ upon approval of the commissioner.

## **4VAC20-1270-50. Nonpurse seine menhaden bait sector quota; allocation and bycatch provisions.**

A. For 2013 and 2014, the nonpurse seine commercial bait sector's allocation shall be by gear type as follows:

- |              |                      |
|--------------|----------------------|
| 1. Cast net: | <u>1,930 pounds.</u> |
| 2. Dredge:   | <u>3,069 pounds.</u> |
| 3. Fyke net: | <u>2,115 pounds.</u> |

4. Gill net: 1,521,108 pounds.

5. Hook and line: 234 pounds.

6. Pot: 2,064 pounds.

7. Pound net: 3,412,020 pounds.

8. Seine: 20,103 pounds.

9. Trawl: 58,847 pounds.

10. Trot line: 39 pounds.

B. Pursuant to § 28.2-400.4 of the Code of Virginia, once the commissioner announces the date of closure for the nonpurse seine bait fishery, any person licensed in the nonpurse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per day.

## **4VAC20-1270-60. Reporting requirements by menhaden fishery sector.**

A. Each licensee of any purse seine vessel that harvests menhaden must submit a Captain's Daily Fishing Report to the commission on each nonweekend or nonholiday day that either purse seine sector is open for harvest. The Captain's Daily Fishing Report is produced by the National Marine Fisheries Service and provides preliminary estimates of harvest. Pursuant to § 28.2-204 of the Code of Virginia, those same licensees must submit to the commission actual weekly harvest reports that include vessel name and exact weight of menhaden landed, in pounds, by Wednesday of the following week. Once 97% of either purse seine sector's quota is projected and announced to have been met, each licensee of that purse seine sector must provide daily harvest totals to the commission's Interactive Voice Recording System.

B. The nonpurse seine menhaden commercial bait sector shall submit daily reports according to the schedule and reporting requirements established by 4VAC20-610-10, Pertaining to Commercial Fishing and Mandatory Harvest Reporting.

C. When the commissioner announces that 90% of the nonpurse seine menhaden bait quota has been reached, each harvester of this sector is required to report his previous 10 days of landings to the commission's Interactive Voice Recording System and must continue to report his additional landings every 10 days until it is announced that the nonpurse seine bait quota has been attained. More frequent reporting is permissible. The commission may also implement other harvest conservation measures such as trip limits.

## **4VAC20-1270-70. Penalty.**

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

**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 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 (4VAC20-1270)

[Captain's Daily Fishing Report \(rev. 2010\).](#)

VA.R. Doc. No. R13-3649; Filed March 29, 2013, 3:30 p.m.

## VIRGINIA SOIL AND WATER CONSERVATION BOARD

### Final 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 of the Code of Virginia; (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 of the Code of Virginia, 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.

**Effective Date:** July 1, 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 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. of the Code of Virginia) 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 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 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 General Permit requires the operator to evaluate program compliance, the appropriateness of identified BMPs, and progress towards achieving the identified measurable goals, and to submit annual reports. The 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. Requiring operators to identify surface waters listed in the current Virginia 305(b)/303(d) Water Quality Integrated Report;*
- 4. 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;*
- 5. Rewriting the Special Conditions in Section I of the General Permit to stipulate detailed strategies and processes for both the current permit cycle and for reapplication for the next permit cycle;*

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6. Clarifying and expanding minimum criteria within the General Permit associated with the six minimum control measures; and

7. 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 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 (4VAC50-90) 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 state permit that is only responsible for state 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 state permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a state permit. A notice of intent to terminate a state permit, and a notice of intent to deny a state permit are types of draft state permits. A denial of a request for modification, revocation and reissuance, or

termination is not a draft state permit. A proposed state permit is not a draft state 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 Agency" or "EPA" means the United States Environmental Protection Agency.

"Existing state permit" means for the purposes of this chapter a state permit issued by the board and currently held by a state 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 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.

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"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 state 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 state permit (other than the state 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.

"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 or the state permit, the VSMP, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or 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 clearing, grading, or excavation, except that the term shall not include those exemptions specified in § 10.1-603.8 of the Code of Virginia.

"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.

"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 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 state 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.

[ "Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls

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that are technologically available and economically practicable. ]

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing state 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 state permit modification or amendment does not substantially alter state permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

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

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

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

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a state 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 state 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 state 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 VPDES or state 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 state permit issued by the board to a state permit applicant that does not currently hold and has never held a state 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, 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 Act and this chapter. 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 state permit or VSMP authority 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" or "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of general permit coverage has been provided where applicable.

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

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including a federal, state, or local entity as applicable, 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

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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 VSMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the first item being 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 state permit" means a state 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 state permit is not a draft state 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 practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that

could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity. For VSMP authorities this requires the use of a person who holds a certificate of competency from the board in the area of project inspection for ESC and project inspection for SWM or combined administrator for ESC and combined administrator for SWM as defined in 4VAC50-50-10 or a combination of ESC and SWM qualifications from these two areas.

"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 state permit" means, for the purposes of this chapter, an existing state 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 state 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~~ 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 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 state permit.

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

"State permit" means an approval to conduct a land-disturbing activity issued by the board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the board for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Act and this chapter. State permit does not include any state permit that has not yet been the subject of final board action, such as a draft state permit or a proposed state permit.

"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.

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"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.

"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 VSMP or this chapter.

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges ~~from the construction site~~. ~~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.

"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~~ may be ] implemented [ in multiple phases ] 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 state 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 Erosion and Sediment Control Program" or "VESCP" means a program approved by the board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in the Erosion and Sediment Control Act and its attendant regulations, and evaluation consistent with the requirements of the Erosion and Sediment Control Act and its attendant regulations.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an authority approved by the board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

"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 a program approved by the board after September 13, 2011, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in the Act and associated regulations, and evaluation consistent with the requirements of the SWM Act and associated regulations.

"Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved by the board after September 13, 2011, to operate a Virginia Stormwater Management Program or, until such approval is given, the department. An authority may include a locality; state entity, including the department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 10.1-603.5 of the Code of Virginia, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. Prior to approval, the board must find that the ordinances adopted by the locality's VSMP authority are consistent with the Act and this chapter including the General Permit for Discharges of Stormwater from Construction Activities (Part XIV (4VAC50-60-1100 et seq.) of this chapter).

"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

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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 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 state 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 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 state permit.

A. This 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 state permit for their discharge of stormwater. If the board determines that a small MS4 needs a state 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 state 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 state 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 state 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 state 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 covered ] 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 submits a complete and accurate registration statement in accordance with 4VAC50-60-1230 that is accepted by the board, submits any fees required by 4VAC50-60-700 et seq. (Part XIII), and complies with the requirements of 4VAC50-60-1240 ].

B. The operator [ shall is ] 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 state 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 state 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 state 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. In the event the operator is unable to meet certain conditions of this permit due to circumstances beyond the operator's control, [ the operator shall submit ] a written explanation of the circumstances that prevented state permit compliance shall be submitted to the department in the annual report. Circumstances beyond the control of the operator [ may ] include [ but are not limited to ] 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 state permit conditions. The board will determine, at its sole discretion, whether the reported information will result in an enforcement action.

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

~~E.~~ F. Pursuant to [ ~~40 CFR Part 122.34 (e) (2001) 4VAC50-60-400 D 3~~ ], 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 state 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 general permit~~ comply with this state permit unless a [ VPDES 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 general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

[ I. Continuation of permit coverage. Any operator that was authorized to discharge under the state permit issued in 2008 and that submits a complete registration statement in accordance with Section III M of 4VAC50-60-1240 is authorized to continue to discharge under the terms of the 2008 state permit until such time as the board either:

1. Issues coverage to the operator under this state permit;
- or
2. Notifies the operator that the discharge is not eligible for coverage under this state permit. ]

## **4VAC50-60-1230. State 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 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 general permit, operators of ~~regulated~~ small MS4s shall submit a new registration statement at least 90 days before the expiration date of the existing state 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 state 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)) 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~~ 2010 ] 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>~~ <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment.aspx> ];
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 [ any ] other documents necessary for best management practice implementation [ , upon which the operator expects to rely for such 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 [ for BMPs ] 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 [ ~~the department.~~ ]

~~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 state 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 state 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 State 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 of small MS4s that are applying for initial coverage under this general permit, the schedule to develop

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and implement the MS4 Program Plan shall be submitted with the completed registration statement. ]

For operators [ ~~who that~~ ] 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**

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

**[ Table 1: Schedule of MS4 Program Plan Updates Required in this Permit**

| <u>Program Update Requirement</u>   | <u>Permit Reference</u> | <u>Update Completed By</u>             |
|---|-------------------------|--|
| <u>Public Education Outreach Plan (Minimum Control Measure 1 – Public Education and Outreach on Stormwater Impacts)</u> | <u>Section II B 1</u>   | <u>12 months after permit coverage</u> |
| <u>Illicit Discharge Procedures - (Minimum Control Measure 3 – Illicit Discharge Detection and Elimination)</u>         | <u>Section II B 3</u>   |  |

|  |                                 |  |
|--|---------------------------------|--|
| <u>Individual Residential Lot Special Criteria (Minimum Control Measure 5 – Post-Construction Stormwater Management in New Development and Development on Prior Developed Lands)</u>                 | <u>Section II B 5 c (1) (d)</u> |  |
| <u>Operator-Owned Stormwater Management Inspection Procedures (Minimum Control Measure 5 – Post-Construction Stormwater Management in New Development and Development on Prior Developed Lands)</u>  | <u>Section II B 5</u>           |  |
| <u>Identification of Locations Requiring SWPPPs (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)</u>  | <u>Section II B 6 b</u>         |  |
| <u>Nutrient Management Plan (NMP) Locations - (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)</u>  | <u>Section II B 6 c (1) (a)</u> |  |
| <u>Training Schedule and Program - (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)</u>   | <u>Section II B 6</u>           |  |
| <u>Updated TMDL Action Plans (TMDLs approved before July of 2008) – (Special Conditions for Approved Total Maximum Daily Loads (TMDL) Other Than Chesapeake Bay)</u>                                 | <u>Section I B</u>              |  |
| <u>Chesapeake Bay TMDL Action Plan – (Special Condition for Chesapeake Bay TMDL)</u>   | <u>Section I C</u>              | <u>24 months after permit coverage</u> |
| <u>Stormwater Management Progressive Compliance and Enforcement – (Minimum Control Measure 4 - Construction Site Stormwater Runoff Control)</u>  | <u>Section II B 5</u>           |  |
| <u>Daily Good Housekeeping Procedures (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)</u>  | <u>Section II B 6 a</u>         |  |
| <u>Other TMDL Action Plans for applicable TMDLs approved between July 2008 and June 2013 - (Special Conditions for Approved Total Maximum Daily Loads (TMDL) Other Than Chesapeake Bay)</u>          | <u>Section I B</u>              | <u>36 months after permit coverage</u> |
| <u>Outfall Map Completed - (Minimum Control Measure 3 – Illicit Discharge Detection and Elimination) – Applicable to new boundaries identified as "urbanized" areas in the 2010 Decennial Census</u> | <u>Section II B 3 a (3)</u>     | <u>48 months after permit coverage</u> |
| <u>SWPPP Implementation - (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)</u>  | <u>Section II B 6 b (3)</u>     |  |
| <u>NMP Implementation - (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)</u>  | <u>Section II B 6 c (1) (b)</u> | <u>60 months after permit coverage</u> |
| *Updates should be submitted with the appropriate annual report. ]   |                                 |  |

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## SECTION I DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

A. Coverage under this state permit. During the period beginning with the date of coverage under this general permit and lasting until the expiration and reissuance of this state permit, the operator is authorized to discharge in accordance with this state permit from the small municipal separate storm sewer system identified in the registration statement into surface waters [ within the boundaries of the Commonwealth of Virginia and consistent with 4VAC50-60-1230 ].

~~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.~~

~~e. 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.

e. 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 [ to reduce the pollutant discharge in a manner consistent with the assumptions and requirements of the specific TMDL wasteload is demonstrated in accordance with subdivision 2 e of this subsection ]. These TMDL Actions Plans shall identify the best management practices and other [ ~~implementation steps~~ interim milestone activities ] 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 [ § 9 ], 2008.

b. In accordance with Table 1 in this section, the operator shall update the MS4 Program Plan to incorporate [ approvable TMDL ] Action Plans that identify the best management practices and other [ ~~implementation steps~~ interim milestone activities ] that will be implemented during the remaining term of this permit for pollutants identified in TMDL wasteload allocations approved either on or after July [ § 9 ], 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 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.~~

c. Unless specifically denied in writing by the department, TMDL Action Plans and updates developed

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in accordance with this section become effective and enforceable 90 days after the date received by the department. ]

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 each applicable ] WLA:

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 its ] 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 [ significant sources of pollutant(s) from ] 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 purposes ] of this assessment, [ a ] significant [ source is identified as facilities of concern source of pollutant(s) from a facility of concern means a discharge ] where the [ expected ] pollutant [ discharge loading ] is [ expected to be ] greater than [ that the ] average [ expected existing discharge pollutant loading ] for the land use identified in the TMDL. [ ( ) For example, [ the discharge of bacteria a significant source of pollutant from a facility of concern for a bacteria TMDL ] 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, [ representative and adequate ] 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 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 [ and in accordance with the ] associated schedule identified in this state permit.

b. [ The On an annual basis, 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.

[ 7. For planning purposes, the operator shall include an estimated end date for achieving the applicable wasteload allocations as part of its reapplication package due in accordance with Section III M. ]

C. Special condition for the Chesapeake Bay TMDL. [ The Commonwealth in its Phase I and Phase II Chesapeake Bay TMDL Watershed Implementation Plans (WIP) committed to a phased approach for MS4s, affording MS4 operators up to three full five-year permit cycles to implement necessary reductions. This permit is consistent with the Chesapeake Bay TMDL and the Virginia Phase I and II WIPs to meet the Level 2 (L2) scoping run for existing developed lands as it represents an implementation of 5.0% of L2 as specified in the 2010 Phase I WIP. Conditions of future permits will be consistent with the TMDL or WIP conditions in place at the time of permit issuance. ]

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 [ served served ] by the MS4 as of June 30, 2009.

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

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

"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~~ to the department for its review and acceptance an approvable ] Chesapeake Bay TMDL Action Plan [ ~~that includes~~. Unless specifically denied in writing by the department, this plan becomes effective and enforceable 90 days after the date received by the department. The plan shall include: ]

(1) A review of the [ ~~baseline~~ current MS4 ] program implemented as a requirement of this state permit

including a review of the existing legal authorities [ and the operator's ability to ensure compliance with this special condition ];

(2) The identification of any new or modified legal authorities such as ordinances, state and other permits, orders, [ ~~contracts~~ specific contract language, ] 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~~ 2009 ], based on the 2009 progress run. The operator shall utilize the [ ~~appropriate versions~~ applicable versions ] of [ ~~Table 2~~ Tables 2 a-d ] 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 [ Edge of Stream (EOS) ] loading rate;

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

[ \*Based on Chesapeake Bay Program Watershed Model Phase 5.3.2 ]

| <u>Subsource</u>                  | <u>Pollutant</u>              | <u>Total Existing Acres Served by MS4 (6/30/09)</u> | <u>2009 EOS Loading Rate (lbs/ [ æ acre ] )</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**

[ \*Based on Chesapeake Bay Program Watershed Model Phase 5.3.2 ]

| <u>Subsource</u>                  | <u>Pollutant</u> | <u>Total Existing Acres Served by MS4 (6/30/09)</u> | <u>2009 EOS Loading Rate (lbs/ [ æ acre ] )</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>                                    |  |

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|                                   |                               |  |                 |  |
|-----------------------------------|-------------------------------|--|-----------------|--|
| <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**  
 [ \*Based on Chesapeake Bay Program Watershed Model Phase 5.3.2 ]

| <u>Subsource</u>                  | <u>Pollutant</u>              | <u>Total Existing Acres Served by MS4 (6/30/09)</u> | <u>2009 EOS Loading Rate (lbs/ [ æ acre ] )</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>                                     |  |
| <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**  
 [ \*Based on Chesapeake Bay Program Watershed Model Phase 5.3.2 ]

| <u>Subsource</u>                  | <u>Pollutant</u>              | <u>Total Existing Acres Served by MS4 (6/30/09)</u> | <u>2009 EOS Loading Rate (lbs/ [ æ acre ] )</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~~ A determination of the total pollutant load reductions necessary ] to reduce the annual POC loads from existing sources [ ~~to the L2 implementation level~~ ] utilizing the [ ~~appropriate version applicable versions~~ ] of [ ~~Table 3 Tables 3 a-d~~ ] in this section based on the river basin to which the MS4 discharges. This shall be calculated by multiplying the total existing acres [ ~~service served~~ ] 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 by the first permit cycle required reduction in loading rate~~ ]. [ For the purposes of this determination, the operator shall utilize those existing acres identified by the 2000 U.S. Census Bureau urbanized area and served by the MS4. ]

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

[ \*Based on Chesapeake Bay Program Watershed Model Phase 5.3.2 ]

| <u>Subsource</u>           | <u>Pollutant</u>       | <u>Total Existing Acres Served by MS4 ( [ 7/1/09 6/30/09 ] )</u> | <u>First Permit Cycle [ Requiring Reduction in Loading Rate (lbs/ [ æ acre ] )</u> | <u>Total Reduction Required First Permit Cycle (lbs)</u> |
|----------------------------|------------------------|--|--|--|
| Regulated Urban Impervious | Nitrogen               |  | 0.04   |  |
| Regulated Urban Pervious   |                        |  | 0.02   |  |
| Regulated Urban Impervious | Phosphorus             |  | 0.01   |  |
| Regulated Urban Pervious   |                        |  | 0.002  |  |
| Regulated Urban Impervious | Total Suspended Solids |  | 6.67   |  |
| Regulated Urban Pervious   |                        |  | 0.44   |  |

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

[ \*Based on Chesapeake Bay Program Watershed Model Phase 5.3.2 ]

| <u>Subsource</u>           | <u>Pollutant</u>       | <u>Total Existing Acres Served by MS4 ( [ 7/1/09 6/30/09 ] )</u> | <u>First Permit Cycle [ Requiring Reduction in Loading Rate (lbs/ [ æ acre ] )</u> | <u>Total Reduction Required First Permit Cycle (lbs)</u> |
|----------------------------|------------------------|--|--|--|
| Regulated Urban Impervious | Nitrogen               |  | 0.08   |  |
| Regulated Urban Pervious   |                        |  | 0.03   |  |
| Regulated Urban Impervious | Phosphorus             |  | 0.01   |  |
| Regulated Urban Pervious   |                        |  | 0.001  |  |
| Regulated Urban Impervious | Total Suspended Solids |  | 11.71  |  |
| Regulated Urban Pervious   |                        |  | 0.77   |  |

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

[ \*Based on Chesapeake Bay Program Watershed Model Phase 5.3.2 ]

| <u>Subsource</u>           | <u>Pollutant</u> | <u>Total Existing Acres Served by MS4 ( [ 7/1/09 6/30/09 ] )</u> | <u>First Permit Cycle [ Requiring Reduction in Loading Rate (lbs/ [ æ acre ] )</u> | <u>Total Reduction Required First Permit Cycle (lbs)</u> |
|----------------------------|------------------|--|--|--|
| Regulated Urban Impervious | Nitrogen         |  | 0.04   |  |
| Regulated Urban Pervious   |                  |  | 0.02   |  |
| Regulated Urban Impervious | Phosphorus       |  | 0.01   |  |

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|                            |                        |  |       |  |
|----------------------------|------------------------|--|-------|--|
| Regulated Urban Pervious   |                        |  | 0.002 |  |
| Regulated Urban Impervious | Total Suspended Solids |  | 4.24  |  |
| Regulated Urban Pervious   |                        |  | 0.25  |  |

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

[ \*Based on Chesapeake Bay Program Watershed Model Phase 5.3.2 ]

| <u>Subsource</u>           | <u>Pollutant</u>       | <u>Total Existing Acres Served by MS4 ( [ 7/1/09 6/30/09 ] )</u> | <u>First Permit Cycle [ Requiring Required ] Reduction in Loading Rate (lbs/ [ æ acre ] )</u> | <u>Total Reduction Required First Permit Cycle (lbs)</u> |
|----------------------------|------------------------|--|---|--|
| Regulated Urban Impervious | Nitrogen               |  | 0.03  |  |
| Regulated Urban Pervious   |                        |  | 0.02  |  |
| Regulated Urban Impervious | Phosphorus             |  | 0.01  |  |
| Regulated Urban Pervious   |                        |  | 0.002   |  |
| Regulated Urban Impervious | Total Suspended Solids |  | 4.60  |  |
| Regulated Urban Pervious   |                        |  | 0.32  |  |

(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, such as management practices and retrofit programs that will be utilized to meet the required reductions included in subdivision 2 a (5) of this subsection, and a schedule to achieve those reductions. The schedule should include annual benchmarks to demonstrate the ongoing progress in meeting those reductions ];

(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 [ or greater ] 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 [ as grandfathered in accordance with 4VAC50-60-48, ] that disturb [ greater than ] one acre [ or greater ] that begin construction after July 1, 2014, where the project [ utilized utilizes ] 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.

**Table 4: Ratio of Phosphorus Loading Rate to Nitrogen and Total Suspended Solids Loading Rates for Chesapeake Bay Basins**

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

(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~~ Implementation] 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 provided any necessary baseline reduction is not included toward meeting the required reduction in this permit.~~]

(2) Utilization of stream restoration projects [, provided that the credit applied to the required POC load reduction is prorated based on the ratio of regulated urban acres to total drainage acres upstream of the restored area];

(3) Establishment of a memorandum of understanding (MOU) with other MS4 operators that discharge to the same or adjacent eight digit hydrologic unit [ within the same basin ] 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 [ §§ 10.1-603.8:1 and § 10.1-603.15:1 [ et seq. ] 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 [ ; and ]

[ (6) Any BMPs installed after June 30, 2009, as part of a retrofit program may be applied towards meeting the required load reductions provided any necessary baseline reductions are not included. ]

3. Chesapeake Bay TMDL Action Plan implementation. The operator shall implement the TMDL Action Plan [ ~~to the maximum extent practicable and demonstrate according to the schedule therein. Compliance with this requirement represents~~ ] adequate progress for this state permit term towards [ ~~the long term compliance targets for TMDL wasteload allocations achieving TMDL wasteload allocations consistent with the assumptions and requirements of the TMDL~~ ]. 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~~ the ] 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 [ with the appropriate annual report ].

b. Each subsequent annual report shall [ ~~included~~ include ] 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~~ solids ].

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

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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% required ] reduction in this state permit and a schedule of implementation to ensure [ a the ] 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, as follows:

(1) The existing pollutant of concern loads by an additional seven times the required reductions in loading rates using the applicable Table 3 for sources included in the 2000 U.S. Census Bureau urbanized areas;

(2) The existing pollutant of concerns loads by an additional eight times the required reductions in loading rates using the applicable Table 3 for expanded sources identified in the U.S. Census Bureau 2010 urbanized areas;

(3) An additional 35% reduction in new sources developed between 2009 and 2014 and for which the land use cover condition was greater than 16%; and

(4) Accounts for any modifications to the applicable loading rate provided to the operator as a result of TMDL modification. ]

## 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 [ its attendant ] 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 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.~~

~~[ NOTE regarding minimum control measures for public education and outreach on stormwater impacts and public involvement/participation: "Public" is not defined in this permit. However, the department concurs with the following EPA statement, which was published in the Federal Register, Volume 64, No. 235, page 68,750 on December 8, 1999, regarding "public" and its applicability to MS4 programs: "EPA acknowledges that federal and state facilities are different from municipalities. EPA believes, however, that the minimum measures are flexible enough that they can be implemented by these facilities. As an example, DOD commentators asked about how to interpret the term "public" for military installations when implementing the public education measure. EPA agrees with the suggested interpretation of "public" for DOD facilities as "the resident and employee population within the fence line of the facility." The department recommends that nontraditional MS4 operators, such as state and federal entities and local school districts, utilize this statement as guidance when determining their applicable "public" for compliance with this permit. ]~~

~~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 provided with the completed registration statement ].

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 by~~ that contribute to ] 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 operators~~ ]; 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 1 in this section.

g. The operator shall include [ ~~in the annual report~~ ] the following [ information in each annual report submitted to the department during this permit term ]:

(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:

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~~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.

(a) Maintain an updated MS4 Program Plan. Any required updates to the MS4 Program Plan shall be completed at a minimum of once a year and shall be updated in conjunction with the annual report. The operator shall post copies of each MS4 program plan on its webpage at a minimum of once a year and within 30 days of submittal of the annual report to the department. ]

(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~~ applying ] 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~~ it considered the comments received ] in the development of [ ~~the its~~ ] MS4 Program Plan. [ ~~Public notice shall be given~~ The operator shall give public notice ] 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 [ e.g., stream cleanups; hazardous waste cleanup days; and meetings

with watershed associations, environmental advisory committees, and other environmental organizations that operate within proximity to the operator's small MS4 ]. 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 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;

c. 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 intereconnected 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 I 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~~ 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~~ in ] the Virginia [ ~~2012~~ 2010 ] 303(d)/305(b) [ ~~list~~ Water Quality Assessment Integrated Report ]; 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 [ , or ordinance ]. 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 [ , implement, ] and [ ~~implement~~ update, when appropriate, ] written procedures to detect, identify, and address [ ~~unauthorized~~ ] 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~~ criteria ] 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.

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(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 [ ~~VPDES~~ VPDES ] or state permit [ ~~are natural flow and~~ ] require no further action [ under this permit ]:

(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~~ to ] 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. d.] 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. e.] 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 with the completed registration statement ]:~~

[ ~~g. f.] 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~~ actions necessitated by the ] 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~~ suspected ] 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 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 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 state 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;~~

~~e. 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~~ this category of ] 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~~ department-approved annual ] 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.

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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 a~~ ] 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 a 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~~ require ] 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~~ by ] 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 [ and is consistent with 4VAC50-30 ].

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 during inspection~~ ] 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~~ each party's ] 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~~ number of acres disturbed ];

(3) Total number of inspections [ ~~performed~~ conducted ]; and

(4) A summary of the enforcement actions taken [ , including the total number and type of enforcement actions taken during the reporting period ].

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 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 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 state 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 [ , as defined in § 10.1-2101 of the Code of 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 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 Authority ] prior to land disturbance. [ The expected implementation date of this requirement is July 1, 2014; as per In accordance with ] § 10.1-603.3 M of the Code of Virginia, [ VSMPs VSMPs ] shall become effective

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July 1, 2014, unless otherwise specified by [ state law or 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 [ or his designee ] 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~~ months ] of coverage under this permit, the operator shall develop and implement these alternative strategies [ and include them in the MS4 Program Plan ].

(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 I 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 [ (MM/YYYY) (MM/YYYY) ]. If the date is not known, the operator shall use June [ 30, ] 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~~ in ] the [ 2012 2010 ] § 305(b)/303(d) Water Quality Assessment [ Integrate

Integrated ] Report to which the stormwater management facility discharges;

(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~~ operator's most recent inspection of the stormwater management facility ] .

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~~ The operator shall submit 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~~ electronic database or spreadsheet ], 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.efm>.~~

~~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~~ waste ] 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 [ ~~VPDES~~ VPDES ] 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

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waste handling and transfer facilities, and ~~[(viii) (ix)]~~ vehicle storage and maintenance yards.

(2) Within 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 discharging pollutants ]~~. ~~[ Municipal high-priority facilities that have a high potential for discharging pollutants are those facilities identified in subsection (1) above that are not covered under a separate VPDES permit and which any of the following materials or activities occur and are expected to have exposure to stormwater resulting from rain, snow, snowmelt or runoff ]~~;

(a) ~~[ Using, storing or cleaning machinery or equipment (except adequately maintained vehicles), and areas Areas ]~~ where residuals from using, storing or cleaning machinery or equipment remain and are exposed to stormwater;

(b) Materials or residuals on the ground or in stormwater inlets from ~~[ spill spills ]~~ or leaks;

(c) Material handling equipment (except adequately maintained vehicles);

(d) Materials or products ~~[ that would be expected to be mobilized in stormwater runoff ]~~ during loading/unloading or transporting activities (e.g., ~~[ rock, ]~~ salt, fill dirt);

(e) Materials or products stored outdoors (except final products intended for outside use where exposure to stormwater does not result in the discharge of pollutants);

(f) Materials ~~[ or products that would be expected to be mobilized in stormwater runoff ]~~ contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

(g) Waste material except waste in covered, non-leaking containers (e.g., dumpsters);

(h) Application or disposal of process wastewater (unless otherwise permitted); or ~~[ ]~~

(i) Particulate matter or visible deposits of residuals from roof stacks, vents or both not otherwise regulated (i.e., under an air quality control permit) and evident in the stormwater ~~[ outflow runoff ]~~.

(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 in subdivision 2 of this subsection ]~~. ~~[ The operator shall complete ]~~ SWPPP development and implementation shall be completed within ~~[ four years 48 months ]~~ of coverage under this state permit. Facilities covered under a separate ~~[ VPDES VPDES ]~~ 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 ~~[ e d ]~~;

(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 to accurately reflect any discharge, ]~~ 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 ]~~ For each such discharge, release, or spill, the SWPPP must include the following information: date of incident; material discharged, released, or spilled; and quantity discharged, released or spilled ~~]; 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 Turf and landscape ]~~ management.

(1) The operator shall implement ~~[ turf and landscape ]~~ nutrient management plans that have been developed by a certified ~~[ turf and landscape ]~~ 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 ~~[ turf and landscape ]~~ nutrient management plans on all lands where nutrients are applied to a contiguous area of more than one acre. The following measurable ~~[ goals outcomes ]~~ are established for the implementation of ~~[ turf and landscape ]~~ nutrient management plans: (i) within 24 months of permit

coverage, not less than 15% of all identified acres will be covered by [ turf and landscape ] nutrient management plans; (ii) within 36 months of permit coverage, not less than 40% of all identified acres will be covered by [ turf and landscape ] nutrient management plans; and (iii) within 48 months of permit coverage, not less than 75% of all identified acres will be covered by [ turf and landscape ] 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 [ turf and landscape ] nutrient management plans in accordance with this statutory requirement.

(2) Operators shall annually track the following:

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

(b) The acreage of lands upon which [ turf and landscape ] 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 [ and document ] the [ relevant applicable ] employees [ or positions ] to receive [ each type of ] 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 applicable ] field personnel in the recognition and reporting of illicit discharges.

(2) The operator shall provide biennial training to [ relevant applicable ] 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 applicable ] employees in good housekeeping and pollution 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 who apply ] pesticides and herbicides are properly trained or certified in accordance with the [ ~~Virginian~~ Virginia ] Pesticide Control Act (§ [ ~~3.1-249.27~~ 3.2-3900 ] et seq. of the Code of Virginia).

(5) The operator shall ensure that employees and contractors [ employed serving ] 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~~ applicable ] 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 applicable ] 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~~ At a minimum, 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~~ identifies ] those facilities that have a high potential [ ~~of~~ for ] 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 [ a ] 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 [ turf and landscape ] nutrient management plan, the [ turf and landscape ] nutrient management plan shall be

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part of the MS4 Program Plan. The MS4 Program Plan shall include the location in which the individual [ turf and landscape ] nutrient management plan is located; and (4) The annual written training plan for the next reporting cycle.

g. [ Reporting Annual 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 [ turf and landscape ] nutrient management plans that includes:

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

(b) The acreage of lands upon which [ turf and landscape ] 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 state 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 state 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 state 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 state permit ~~obligations~~ requirements.

If the operator is relying on another governmental entity regulated under 4VAC50-60-380 to satisfy all of the state 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 state 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 2010 ] § 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 state 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 [ of that year ]. The reports shall include:

a. Background Information.

(1) The name and state 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 state 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 state 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 [ contained in Section I ],

~~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.~~

1. [ ~~Modifications~~ Program 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 meet~~ ] 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 [ be made in writing to the department and signed in accordance with 4VAC50-60-370, and ] include the following:

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

(2) Expectations [ ~~on~~ regarding ] 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; [ and ]

(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~~ ]

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[ (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 STATE 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 state 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 state permit, and records of all data used to complete the registration statement for this state 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 state permit with the annual report unless another reporting schedule is specified elsewhere in this state 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 state permit more frequently than required by this state 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 state 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 state 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 state permit or to determine compliance with this state 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 state 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 state 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 state 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.

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#http://deq.virginia.gov/Programs/PollutionResponsePreparedness.aspx> ] 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

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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 state 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 state 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 state 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 state 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 state permit. Any state permit noncompliance constitutes a violation of the Virginia Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this

state permit may constitute a violation of the Virginia Stormwater Management Act but not the Clean Water Act. State permit noncompliance is grounds for enforcement action; for state permit termination, revocation and reissuance, or modification; or denial of a state 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 state 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 state permit after the expiration date of this state permit, the operator shall submit a new registration statement at least 90 days before the expiration date of the existing state 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 state permit.

N. Effect of a state permit. This state 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 state 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 state permit conditions on "bypassing" (Section III U), and "upset" (Section III V) nothing in this state permit shall be construed to relieve the operator from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this state 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 state 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 state 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 state permit that 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 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 state 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.

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## V. Upset.

1. An upset, as defined in 4VAC50-60-10, constitutes an affirmative defense to an action brought for noncompliance with technology based state 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 state permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this state permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this state permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring state 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. State permit actions. State permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the operator for a state permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any state permit condition.

## Y. Transfer of state permits.

1. State permits are not transferable to any person except after notice to the department. Except as provided in Section III Y 2, a state permit may be transferred by the operator to a new owner or operator only if the state 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 state 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 state 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 state 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 state permit are severable, and if any provision of this state permit or the application of any provision of this state permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this state 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); ]~~

~~Department of Conservation and Recreation Construction Activity Operator Permit Fee Form, DCR 199-213 (09/12).~~

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

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

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

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

~~[ 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/getnstep.pdf>, or may be ordered from National Service Center for Environmental Publications, telephone 1-800-490-9198.~~

~~Municipal Stormwater Program Evaluation Guidance, EPA-833-R-07-003, January 2007 (field test version), U.S. Environmental Protection Agency, Office of Wastewater Management, available on the Internet at [http://cfpub.epa.gov/npdes/docs.cfm?program\\_id=6&view=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.~~

~~[ Virginia Water Quality Assessment 305(b)/303(d) Integrated Report, December 2010, Virginia Department of Environmental Quality and Virginia Department of Conservation & Recreation. ]~~

VA.R. Doc. No. R12-3136; Filed April 3, 2013, 9:48 a.m.

## TITLE 5. CORPORATIONS

### STATE CORPORATION COMMISSION

#### Proposed Regulation

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

**Title of Regulation:** **5VAC5-30. Uniform Commercial Code Filing Rules (amending 5VAC5-30-20 through 5VAC5-30-70).**

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

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

**Public Comment Deadline:** May 14, 2013.

**Agency Contact:** Joel Peck, Clerk of the Commission, State Corporation Commission, 1300 E. Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9733, FAX (804) 371-9912, or email [joel.peck@scc.virginia.gov](mailto:joel.peck@scc.virginia.gov).

#### Summary:

*These proposed revisions include technical amendments, such as changing "correction statement" to "information statement," changing "filing officer" to "filing office," amending a website address, and clarifying the grounds to refuse a Uniform Commercial Code (UCC) record for filing. Additionally, proposed amendments allow UCC search requests to be delivered by electronic delivery method provided and authorized by the filing office. Further, proposed amendments allow the filing office to accept payment via electronic funds under National Automated Clearing House Association (NACHA) rules for remitters, as well as allow a filing office to void a filing if the filing fee payment is dishonored, declined, refused, reversed, charged back, returned unpaid, or otherwise rejected for any reason and the remitter fails to submit a valid payment for the filing fee and any penalties after notice by the filing office. The proposed revisions also substitute current UCC forms with updated forms adopted by the International Association of Commercial Administrators.*

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# Regulations

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AT RICHMOND, APRIL 2, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2013-00007

Ex Parte: In the matter of Adopting  
a Revision to the Rules Governing UCC Filings

## ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 8.9A-526 of Virginia's Uniform Commercial Code – Secured Transactions, § 8.9A-101 et seq. of the Code, provides that: (a) the Commission shall promulgate and make available to the public such rules as it deems necessary to implement Title 8.9A of the Code and in accordance with applicable law; and (b) when adopting such rules and establishing filing office practices, the Commission shall make an effort to keep such rules and practices in harmony with the rules and practices of other jurisdictions which enact substantially similar legislation and, to the extent feasible, to keep the technology it uses compatible with the technology used by such other jurisdictions, as well as take into account the most recent version of any Model Rules proposed by the International Association of Commercial Administrators ("IACA"), or any successor organization.

The rules and regulations issued by the Commission pursuant to § 8.9A-526 of the Code are set forth in Title 5, Chapter 30 of the Virginia Administrative Code. These rules and regulations also may be found on the Commission's website at: [www.scc.virginia.gov/clk/uccrules.aspx](http://www.scc.virginia.gov/clk/uccrules.aspx).

The Office of the Clerk of the Commission ("Clerk") has submitted to the Commission a number of proposed revisions to Chapter 30 of Title 5 of the Virginia Administrative Code entitled "Rules Governing UCC Filings" ("Rules"). Most of the changes are minor and provide technical amendments to the Rules. In addition, the Clerk requests changes to allow electronic delivery of Uniform Commercial Code ("UCC") search requests and to accept payment via certain electronic funds transfer. The Clerk also requests the ability to void filings for uncollected filing fee payments. Finally, the Clerk requests updates to UCC forms.

Rules 5 VAC 5-30-20, 5 VAC 5-30-40, 5 VAC 5-30-50, 5 VAC 5-30-60, and 5 VAC 5-30-70 revise the term "filing officer" to "filing office."

Rule 5 VAC 5-30-20 provides technical amendments to the current definitions of "Correction Statement," "Termination Statement," and "UCC record," including changing the term "Correction Statement" to "Information Statement."

Rule 5 VAC 5-30-30 amends subsection C to allow UCC search requests to be delivered by electronic delivery method provided and authorized by the filing office.

Rule 5 VAC 5-30-40 deletes subdivision A 2 regarding acceptance of forms set forth in § 8.9A-521 of the Code and amends the filing office's website address in subdivision A 3. Additionally, this rule adds subdivision C 4 and subsection E. Subdivision C 4 provides that the filing office may accept payment via electronic funds under National Automated Clearing House Association rules from remitters. Subsection E provides that a filing office may void a filing if the filing fee payment is dishonored, declined, refused, reversed, charged back, returned unpaid, or otherwise rejected for any reason and the remitter fails to submit a valid payment for the filing fee and any penalties after notice by the filing office.

Rule 5 VAC 5-30-50 provides technical amendments to subsections C and D, including clarification that grounds to refuse a UCC record for filing include those grounds set forth in § 8.9A-516 (b) of the Code.

Rules 5 VAC 5-30-60 and 5-30-70 include technical amendments based on changes to UCC forms and updating "correction statement" to "information statement."

The Clerk also proposes to adopt forms concerning UCC financing statements, information statements and information requests adopted by IACA, by substituting these forms for the current forms. This substitution will conform the forms with other jurisdictions' UCC forms.

The Clerk has recommended to the Commission that the proposed revisions should be considered for adoption with an effective date of July 1, 2013. The Clerk also has recommended to the Commission that a hearing should be held only if requested by those interested persons who specifically indicate that a hearing is necessary and the reasons therefor.

## IT IS THEREFORE ORDERED THAT:

- (1) The proposed revisions are appended hereto and made a part of the record herein.
- (2) Comments or requests for hearing on the proposed revisions must be in writing, directed to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and received on or before May 14, 2013. Any request for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall reference Case No. CLK-2013-00007. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.
- (3) The proposed revisions shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>. Interested persons may also request a copy of the proposed revisions from the Clerk by telephone, mail or e-mail.

AN ATTESTED COPY hereof, together with a copy of the proposed revisions, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be delivered to the Clerk of the Commission, who shall forthwith mail or e-mail a copy of this Order and the proposed revisions to any interested persons as he may designate. A list of the foregoing persons shall be filed in this case.

**5VAC5-30-20. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Termination statement" shall have the meaning prescribed by ~~§ 8.9A-102(a)(79)~~ 8.9A-102(a)(80) of the Code of Virginia.

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

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

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

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

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

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

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

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

C. UCC search requests may be delivered to the filing office by personal, courier, ~~or~~ postal delivery, or by electronic delivery method provided and authorized by the filing office.

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

A. Forms.

1. The filing office shall only accept forms for UCC records that conform to the requirements of this chapter.
- ~~2. The forms set forth in § 8.9A-521 of the Code of Virginia shall be accepted.~~
- ~~3.~~ 2. The forms approved by the International Association of Commercial Administrators as they appear on the filing office's website (<http://www.scc.virginia.gov/division/clk/uccfile.aspx>) (<http://www.scc.virginia.gov/clk/uccfile.aspx>) shall be accepted.

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

## B. Fees.

1. The fee for filing and indexing a UCC record is \$20.
2. The fee for submitting a UCC search request is \$7.00.
3. The fee for furnishing UCC search copies is \$.50 for each page. The fee for affixing the seal of the commission to a certificate is \$3.00.

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

1. Payment in cash shall be accepted if paid in person at the filing office.
2. Personal checks, cashier's checks and money orders made payable to the State Corporation Commission or Treasurer of Virginia shall be accepted for payment if drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.
3. Payment by credit card acceptable to the filing office or electronic check ~~shall~~ may be accepted for the filing or submission of documents delivered by authorized electronic delivery method.

4. The filing office may accept payment via electronic funds under National Automated Clearing House Association (NACHA) rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

## D. Overpayment and underpayment policies.

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

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

E. Uncollected filing fee payment. A filing may be voided by the filing office if the filing fee payment that is submitted by the remitter is dishonored, declined, refused, reversed, charged back to the commission, returned to the commission unpaid, or otherwise rejected for any reason by a financial institution or other third party, and after notice from the filing office, the remitter fails to submit a valid payment for the filing fee and any penalties.

F. Federal liens. A notice of lien, certificate and other notice affecting a federal tax lien or other federal lien presented to

the filing office pursuant to the provisions of the Uniform Federal Lien Registration Act (§ 55-142.1 et seq. of the Code of Virginia) shall be treated as the most analogous UCC record unless the Uniform Federal Lien Registration Act or federal law provides otherwise.

## Part II

### Record Requirements

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

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

1. Determine the legal sufficiency or insufficiency of a record;
2. Determine that a security interest in collateral exists or does not exist;
3. Determine that information in the record is correct or incorrect, in whole or in part; or
4. Create a presumption that information in the record is correct or incorrect, in whole or in part.

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

C. Except as provided in 5VAC5-30-40 D, if the filing ~~office~~ office finds grounds to refuse a UCC record for filing, including those set forth in § 8.9A-516 (b) of the Code of Virginia, the filing ~~office~~ office shall return the record to the remitter and may retain the filing fee.

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

rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

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

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

Part III  
Record Filing and Searches

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

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

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

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

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

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

filing office may cause a financing statement to be ineffective.

D. The filing ~~officer~~ office shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor included in the UCC information management system.

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

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

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

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

C. Search requests may include:

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

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

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

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

1. The date and time the report was generated.

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

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

**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 (5VAC5-30)

- [UCC Financing Statement, Form UCC1, \(rev. 5/02\).](#)
- [UCC Financing Statement Addendum, Form UCC1Ad, \(rev. 5/09\).](#)
- [UCC Financing Statement Additional Party, Form UCC1AP, \(rev. 5/02\).](#)
- [UCC Financing Statement Amendment, Form UCC3, \(rev. 5/02\).](#)
- [UCC Financing Statement Amendment Addendum, Form UCC3Ad, \(rev. 7/98\).](#)
- [UCC Financing Statement Amendment Additional Party, Form UCC3AP, \(rev. 5/02\).](#)
- [UCC Information Statement of Claim, Form UCC5, \(rev. 5/09\).](#)
- [National UCC Information Request, Form UCC11, \(rev. 5/09\).](#)
- [UCC Financing Statement, Form UCC1 \(rev. 4/11\).](#)
- [UCC Financing Statement Addendum, Form UCC1Ad \(rev. 4/11\).](#)
- [UCC Financing Statement Additional Party, Form UCC1AP \(rev. 8/11\).](#)

[UCC Financing Statement Amendment, Form UCC3 \(rev. 4/11\).](#)

[UCC Financing Statement Amendment Addendum, Form UCC3Ad \(rev. 4/11\).](#)

[UCC Financing Statement Amendment Additional Party, Form UCC3AP \(rev. 8/11\).](#)

[UCC Information Statement, Form UCC5 \(rev. 7/12\).](#)

[UCC Information Request, Form UCC11 \(rev. 7/12\).](#)

VA.R. Doc. No. R13-3633; Filed April 2, 2013, 5:10 p.m.

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### Final Regulation

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

**Title of Regulation:** **9VAC5-30. Ambient Air Quality Standards (Rev. B13) (amending 9VAC5-30-15; adding 9VAC5-30-67).**

**Statutory Authority:** § 10.1-1308 of the Code of Virginia; §§ 108, 109, and 302 of the federal Clean Air Act; 40 CFR Parts 50, 53, and 58.

**Effective Date:** May 22, 2013.

**Agency Contact:** Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, TTY (804) 698-4021, or email mary.major@deq.virginia.gov.

**Summary:**

*This regulatory action revises the National Ambient Air Quality Standard (NAAQS) for PM<sub>2.5</sub> (particles in the ambient air with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers). Under this revision, the annual arithmetic mean concentration has been set at 12 µg/m<sup>3</sup>, and the standard for the 24-hour concentration is being retained at 35 µg/m<sup>3</sup>. By containing the specific criteria pollutant standards set out in 40 CFR Part 50, this chapter effectively implements the current Environmental Protection Agency requirements.*

**9VAC5-30-15. Reference conditions.**

All measurements of air quality that are expressed as mass per unit volume (e.g., micrograms per cubic meter) other than for the particulate matter (PM<sub>2.5</sub>) standards contained in 9VAC5-30-65 ~~and~~, 9VAC5-30-66, ~~and~~ 9VAC5-30-67, and lead standards contained in 9VAC5-30-80 shall be corrected to a reference temperature of 25°C and a reference pressure of 760 millimeters of mercury (1,013.2 millibars). Measurements of PM<sub>2.5</sub> for purposes of comparison to the standards contained in 9VAC5-30-65 ~~and~~, 9VAC5-30-66, ~~and~~ 9VAC5-30-67 and of lead for purposes of comparison to the standards contained in 9VAC5-30-80 shall be reported based on actual ambient air volume measured at the actual ambient temperature and pressure at the monitoring site during the measurement period.

**9VAC5-30-67. Particulate matter (PM<sub>2.5</sub>).**

A. The primary ambient air quality standards for particulate matter are:

1. 12.0 micrograms per cubic meter, annual arithmetic mean concentration.
2. 35 micrograms per cubic meter, 24-hour average concentration.

B. The secondary ambient air quality standards for particulate matter are:

1. 15.0 micrograms per cubic meter annual arithmetic mean concentration.
2. 35 micrograms per cubic meter 24-hour average concentration.

C. Particulate matter shall be measured in the ambient air as PM<sub>2.5</sub> (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) by the reference method based on Appendix L of 40 CFR Part 50, or other method designated as such, or by equivalent method.

D. The annual primary PM<sub>2.5</sub> standard is met when the annual arithmetic mean concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 12.0 micrograms per cubic meter.

E. The annual secondary PM<sub>2.5</sub> standard is met when the annual arithmetic mean concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 15.0 micrograms per cubic meter.

F. The 24-hour primary and secondary PM<sub>2.5</sub> standards are met when the 98th percentile 24-hour concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 35 micrograms per cubic meter.

G. The PM<sub>2.5</sub> standards set forth in this section were established by EPA on January 15, 2013 (78 FR 3086), and became effective in the Commonwealth on March 13, 2013, by adoption by the board. The PM<sub>2.5</sub> standards set forth in this section shall apply for purposes of the following:

1. Control strategy implementation plan revisions, maintenance plans, and associated emissions budgets relative to the PM<sub>2.5</sub> standards in this section.

2. Designation of nonattainment areas and maintenance areas relative to the PM<sub>2.5</sub> standards in this section.

3. Implementation of the new source review programs set forth in Part II (9VAC5-80-50 et seq.) of 9VAC5-80 (Permits for Stationary Sources).

Nothing in this section shall prevent the redesignation of any nonattainment area to attainment at any time.

VA.R. Doc. No. R13-3550; Filed March 20, 2013, 2:42 p.m.

**Final Regulation**

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

**Title of Regulation:** **9VAC5-80. Permits for Stationary Sources (Rev. A13) (amending 9VAC5-80-1615).**

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

**Effective Date:** May 22, 2013.

**Agency Contact:** Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TTY (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

**Summary:**

*On October 25, 2012 (77 FR 65107), the U.S. Environmental Protection Agency (EPA) promulgated final amendments revising the new source review (NSR) permitting program for prevention of significant deterioration (PSD) areas. The amendments revise the definition of "regulated NSR pollutant" to remove the term "particulate matter (PM) emissions" from the requirement to include the condensable particulate matter fraction. EPA has determined that only PM<sub>10</sub> and PM<sub>2.5</sub> may include condensable PM unless a specific new source performance standard (NSPS) or applicable implementation plan otherwise requires the condensable portion to be included. The State Air Pollution Control Board administers the NSR program under an approved state implementation plan (SIP); therefore, the board has amended the regulation to reflect the federal rule revisions.*

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## 9VAC5-80-1615. Definitions.

A. As used in this article, all words or terms not defined herein shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

B. For the purpose of this article, ~~9VAC5-80-280~~ 9VAC5-50-280 and applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section:

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a through c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9VAC5-80-1865. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal class I area. This determination shall be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (i) times of visitor use of the federal class I areas, and (ii) the frequency and timing of natural conditions that reduce visibility.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated

capacity of the source (unless the source is subject to federally and state enforceable limits that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- a. The applicable standards as set forth in 40 CFR Parts 60, 61, and 63;
- b. The applicable implementation plan emissions limitation including those with a future compliance date; or
- c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

- a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or § 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.
- b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.
- c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.
- d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
- e. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
- f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.
- g. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

l. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in this article.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions

means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the board for a permit required under this article, whichever is earlier, except that the five-year period shall not include any period earlier than November 15, 1990. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the board has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9VAC5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

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d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this subsection.

"Baseline area":

a. Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under § 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: (i) for SO<sub>2</sub>, NO<sub>2</sub>, or PM<sub>10</sub>, equal to or greater than 1 µg/m<sup>3</sup> (annual average); or (ii) for PM<sub>2.5</sub>, equal to or greater than 0.3 µg/m<sup>3</sup> (annual average).

b. Area redesignations under § 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

- (1) Establishes a minor source baseline date; or
- (2) Is subject to this article or 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

c. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that such baseline area shall not remain in effect if the board rescinds the corresponding minor source baseline date in accordance with subdivision d of the definition of "baseline date."

"Baseline concentration"

a. Means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

- (1) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision b of this definition; and
- (2) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

b. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

- (1) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and
- (2) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date"

a. "Major source baseline date" means:

- (1) In the case of PM<sub>10</sub> and sulfur dioxide, January 6, 1975;
- (2) In the case of nitrogen dioxide, February 8, 1988; and
- (3) In the case of PM<sub>2.5</sub>, October 20, 2010.

b. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to this article submits a complete application under this article. The trigger date is:

- (1) In the case of PM<sub>10</sub> and sulfur dioxide, August 7, 1977;
- (2) In the case of nitrogen dioxide, February 8, 1988; and
- (3) In the case of PM<sub>2.5</sub>, October 20, 2011.

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

- (1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under § 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act for the pollutant on the date of its complete application under this article or 40 CFR 52.21; and
- (2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that the board may rescind any such minor source baseline date where it can be shown, to the satisfaction of the board, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM<sub>10</sub> emissions.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., that have the same first two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence" as applied to construction of a major stationary source or major modification, means that the owner

has all necessary preconstruction approvals or permits and either has:

- a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- b. Entered into binding agreements or contractual obligations, that cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for the purposes of permit processing does not preclude the board from requesting or accepting any additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this article, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this article, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record average operational parameter value(s) on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this definition, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for

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less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

- a. Are permanent;
- b. Contain a legal obligation for the owner to adhere to the terms and conditions;
- c. Do not allow a relaxation of a requirement of the implementation plan;
- d. Are technically accurate and quantifiable;
- e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits on a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and
- f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

- a. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.
- b. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
- c. All terms and conditions (unless expressly designated as not federally enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit.
- d. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act.
- e. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review permit issued under regulations approved by the EPA into the implementation plan.

f. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

- (1) The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act;
- (2) The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA;
- (3) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable";
- (4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter; and
- (5) The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

g. Limitations and conditions in a regulation of the board or program that has been approved by the EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

h. Individual consent agreements that the EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

"Lowest achievable emission rate" or "LAER" is as defined in 9VAC5-80-2010 C.

"Locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

"Low terrain" means any area other than high terrain.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant for nonattainment areas in an amount that is equal to or greater than the major source threshold for the PAL pollutant in subdivision a (1) of the definition of "major stationary source" in 9VAC5-80-2010 C.

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant, and a significant net emissions increase of that pollutant from the major stationary source.

b. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or NO<sub>x</sub> shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include the following:

- (1) Routine maintenance, repair and replacement.
- (2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plant pursuant to the federal Power Act.
- (3) Use of an alternative fuel by reason of any order or rule under § 125 of the federal Clean Air Act.
- (4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source that:

(a) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter.

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) The applicable implementation plan; and

(b) Other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

(9) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(10) The reactivation of a very clean coal-fired electric utility steam generating unit.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 9VAC5-80-1865 for a PAL for that pollutant. Instead, the definition of "PAL major modification" shall apply.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

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

"Major stationary source"

a. Means:

(1) Any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant:

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- (a) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
  - (b) Coal cleaning plants (with thermal dryers).
  - (c) Kraft pulp mills.
  - (d) Portland cement plants.
  - (e) Primary zinc smelters.
  - (f) Iron and steel mill plants.
  - (g) Primary aluminum ore reduction plants.
  - (h) Primary copper smelters.
  - (i) Municipal incinerators capable of charging more than 250 tons of refuse per day.
  - (j) Hydrofluoric acid plants.
  - (k) Sulfuric acid plants.
  - (l) Nitric acid plants.
  - (m) Petroleum refineries.
  - (n) Lime plants.
  - (o) Phosphate rock processing plants.
  - (p) Coke oven batteries.
  - (q) Sulfur recovery plants.
  - (r) Carbon black plants (furnace process).
  - (s) Primary lead smelters.
  - (t) Fuel conversion plants.
  - (u) Sintering plants.
  - (v) Secondary metal production plants.
  - (w) Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).
  - (x) Fossil fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.
  - (y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
  - (z) Taconite ore processing plants.
  - (aa) Glass fiber processing plants.
  - (bb) Charcoal production plants.
- (2) Notwithstanding the stationary source size specified in subdivision a (1) of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or
- (3) Any physical change that would occur at a stationary source not otherwise qualifying under subdivision a (1) or a (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.
- b. A major stationary source that is major for volatile organic compounds or NO<sub>x</sub> shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (1) Coal cleaning plants (with thermal dryers).
- (2) Kraft pulp mills.
- (3) Portland cement plants.
- (4) Primary zinc smelters.
- (5) Iron and steel mills.
- (6) Primary aluminum ore reduction plants.
- (7) Primary copper smelters.
- (8) Municipal incinerators capable of charging more than 250 tons of refuse per day.
- (9) Hydrofluoric, sulfuric, or nitric acid plants.
- (10) Petroleum refineries.
- (11) Lime plants.
- (12) Phosphate rock processing plants.
- (13) Coke oven batteries.
- (14) Sulfur recovery plants.
- (15) Carbon black plants (furnace process).
- (16) Primary lead smelters.
- (17) Fuel conversion plants.
- (18) Sintering plants.
- (19) Secondary metal production plants.
- (20) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).
- (21) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.
- (22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- (23) Taconite ore processing plants.
- (24) Glass fiber processing plants.
- (25) Charcoal production plants.
- (26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
- (27) Any other stationary source category that, as of August 7, 1980, is being regulated under 40 CFR Parts 60 and 61.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) that are not subject to

review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of this part.

"Necessary preconstruction approvals or permits" means those permits required under NSR programs that are part of the applicable implementation plan.

"Net emissions increase"

a. Means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9VAC5-80-1605 G; and

(2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(1) The date five years before construction on the particular change commences; and

(2) The date that the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if (i) it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs; and (ii) the board has not relied on it in issuing a permit for the source under this article (or the administrator under 40 CFR 52.21), which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

f. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

g. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

h. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-1865.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending five years later.

"PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the state operating permit issued by the board that establishes a PAL for a major stationary source.

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"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter by the state.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions (before beginning actual construction), the owner of the major stationary source:

- a. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved implementation plan;
- b. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and
- c. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the

unit's emissions following the project that an existing unit could have emitted during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth, provided such exclusion shall not reduce any calculated increases in emissions that are caused by, result from, or are related to the particular project; or

d. In lieu of using the method set out in subdivisions a through c of this definition, may elect to use the emissions unit's potential to emit, in tons per year.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

- a. Has not been in operation for the two-year period prior to the enactment of the federal Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the department's emissions inventory at the time of enactment;
- b. Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;
- c. Is equipped with low-NOX burners prior to the time of commencement of operations following reactivation; and
- d. Is otherwise in compliance with the requirements of the federal Clean Air Act.

"Reasonably available control technology" or "RACT" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

"Regulated NSR pollutant" means:

- a. Any pollutant for which an ambient air quality standard has been promulgated ~~and any pollutant identified under this subdivision as a constituent or precursor to such pollutant.~~ This includes, but is not limited to, the following:

(1) PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued under this article. Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit. Applicability determinations made prior to this date without

accounting for condensable particulate matter shall not be considered in violation of this article.

(2) Any pollutant identified under this subdivision as a constituent or precursor to a pollutant for which an ambient air quality standard has been promulgated.

Precursors identified for the purposes of this article shall be the following:

(1) (a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(2) (b) Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas.

(3) (c) Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas, unless the board determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

(4) (d) Volatile organic compounds are presumed not to be precursors to PM<sub>2.5</sub> in any attainment or unclassifiable area, unless the board determines that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

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

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

~~d. Particulate matter emissions, PM<sub>2.5</sub> emissions, and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for particulate matter, PM<sub>2.5</sub> and PM<sub>10</sub> in permits issued under this article. Compliance with emissions limitations for particulate matter, PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this article.~~

e. d. Any pollutant that otherwise is subject to regulation under the federal Clean Air Act; except that any or all hazardous air pollutants either listed in § 112 of the federal Clean Air Act or added to the list pursuant to § 112(b)(2), which have not been delisted pursuant to § 112(b)(3), are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under § 108 of the federal Clean Air Act.

"Repowering" means:

a. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

b. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

c. The board may give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under § 409 of the federal Clean Air Act.

"Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

a. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

| Pollutant                | Emissions Rate          |
|--------------------------|-------------------------|
| Carbon Monoxide          | 100 tons per year (tpy) |
| Nitrogen Oxides          | 40 tpy                  |
| Sulfur Dioxide           | 40 tpy                  |
| Particulate Matter (TSP) | 25 tpy                  |
| PM <sub>10</sub>         | 15 tpy                  |

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| PM <sub>2.5</sub>   | 10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of SO <sub>2</sub> emissions; 40 tpy of NO <sub>x</sub> emissions unless demonstrated not to be a PM <sub>2.5</sub> precursor under the definition of "regulated NSR pollutant" |
| Ozone   | 40 tpy of volatile organic compounds or NO <sub>x</sub>  |
| Lead  | 0.6 tpy  |
| Fluorides   | 3 tpy  |
| Sulfuric Acid Mist  | 7 tpy  |
| Hydrogen Sulfide (H <sub>2</sub> S)   | 10 tpy   |
| Total Reduced Sulfur (including H <sub>2</sub> S)   | 10 tpy   |
| Reduced Sulfur Compounds (including H <sub>2</sub> S)   | 10 tpy   |
| Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans) | 3.5 x 10 <sup>-6</sup> tpy   |
| Municipal waste combustor metals (measured as particulate matter)   | 15 tpy   |
| Municipal waste combustor acid gases (measured as the sum of SO <sub>2</sub> and HCl)                                     | 40 tpy   |
| Municipal solid waste landfills emissions (measured as nonmethane organic compounds)                                      | 50 tpy   |

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is significant for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources; (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability; and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

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b. In reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that subdivision a of this definition does not list, any emissions rate.

c. Notwithstanding subdivision a of this definition, any emissions rate or any net emissions increase associated with a major stationary source or major modification that would construct within 10 kilometers of a class I area, and have an impact on such area equal to or greater than 1 µg/m<sup>3</sup> (24-hour average).

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

STATE WATER CONTROL BOARD

Final Regulation

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

**Title of Regulation:** 9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-110, 9VAC25-720-130).

**Statutory Authority:** § 62.1-44.15 of the Code of Virginia; 33 USC § 1313(e).

**Effective Date:** May 22, 2013.

**Agency Contact:** John Kennedy, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, FAX (804) 698-4032, TTY (804) 698-4021, or email john.kennedy@deq.virginia.gov.

**Summary:**

*This regulatory action amends the state's Water Quality Management Planning Regulation (9VAC25-720) to include three total maximum daily load (TMDL) wasteload allocations. The amendments are to the New River Basin (9VAC25-720-130 A) and the Chesapeake Bay - Small Coastal - Eastern Shore Basin (9VAC25-720-110 A). The TMDLs were developed in accordance with federal regulations (40 CFR 130.7).*

**9VAC25-720-110. Chesapeake Bay -- Small Coastal -- Eastern Shore River Basin.**

A. Total ~~maximum~~ Maximum Daily Load (TMDLs).

| TMDL # | Stream Name        | TMDL Title   | City/County     | WBID        | Pollutant             | WLA        | Units        |
|--------|--------------------|--|-----------------|-------------|-----------------------|------------|--------------|
| 1.     | Parker Creek       | Benthic Total Maximum Daily Load (TMDL) Development for Parker Creek, Virginia             | Accomack        | D03E        | Total Phosphorus      | 664.2      | LB/YR        |
| 2.     | Pettit Branch      | Benthic Total Maximum Daily Load (TMDL) Development for the Pettit Branch Watershed        | Accomack        | D02R        | Total Phosphorus      | 0.01       | LB/D         |
| 3.     | Mill Creek         | Total Maximum Daily Load for Dissolved Oxygen in Mill Creek, Northampton County, Virginia  | Northampton     | D06R        | Organic Carbon as TC  | 30.53      | LB/D         |
| 4.     | Mill Creek         | Total Maximum Daily Load for Dissolved Oxygen in Mill Creek, Northampton County, Virginia  | Northampton     | D06R        | Nutrients as TN       | 10.07      | LB/D         |
| 5.     | <u>Folly Creek</u> | <u>Total Maximum Daily Loads of Pathogens for Folly Creek in Accomack County, Virginia</u> | <u>Accomack</u> | <u>D03E</u> | <u>Total Nitrogen</u> | <u>2.6</u> | <u>LBS/D</u> |

# Regulations

|    |                       |  |                 |             |                       |            |              |
|----|-----------------------|--|-----------------|-------------|-----------------------|------------|--------------|
| 6. | <u>Gargathy Creek</u> | <u>Total Maximum Daily Loads of Dissolved Oxygen and Pathogens for Gargathy Creek (Upper, Lower, and Riverine Portions) in Accomack County, Virginia</u> | <u>Accomack</u> | <u>D03E</u> | <u>Total Nitrogen</u> | <u>1.9</u> | <u>LBS/D</u> |
|----|-----------------------|--|-----------------|-------------|-----------------------|------------|--------------|

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

Small Coastal and Chesapeake Bay-  
TABLE B1—CURRENT STREAM SEGMENT CLASSIFICATION

| Segment No. | Name               | Current State Class |
|-------------|--------------------|---------------------|
| 7-12A       | Pocomoke Sound     | EL                  |
| 7-12B       | Messongo Creek     | EL                  |
| 7-12C       | Beasley Bay        | EL                  |
| 7-12D       | Chesconessex Creek | EL                  |
| 7-13        | Onancock Creek     | WQ                  |
| 7-14        | Pungoteague        | WQ                  |
| 7-12E       | Nandua Creek       | EL                  |
| 7-15        | Occohannock Creek  | WQ                  |
| 7-12F       | Nassawadox Creek   | EL                  |
| 7-12G       | Hungars Creek      | EL                  |
| 7-12H       | Cherrystone Inlet  | EL                  |
| 7-12I       | South Bay          | EL                  |
| 7-12J       | Tangier Island     | —                   |
| 7-11A       | Chincoteague       | EL                  |
| 7-11B       | Hog Bogue          | EL                  |
| 7-11C       | Metomkim Bay       | EL                  |
| 7-11D       | Machipongo River   | EL                  |
| 7-11E       | South Ocean        | EL                  |

Small Coastal and Chesapeake Bay  
TABLE B2 - EASTERN SHORE WASTELOAD ALLOCATIONS

| NAME                          | RECEIVING STREAM OR ESTUARY | INTERIM WASTELOAD ALLOCATIONS <sup>(1)</sup> |                         |                     | FINAL WASTELOAD ALLOCATIONS |                         |                     |
|-------------------------------|-----------------------------|--|-------------------------|---------------------|-----------------------------|-------------------------|---------------------|
|                               |                             | BOD <sub>5</sub> (lb/d)                      | SUSPENDED SOLIDS (lb/d) | OIL & GREASE (lb/d) | (Current Permit Limits)     |                         |                     |
|                               |                             |  |                         |                     | BOD <sub>5</sub> (lb/d)     | SUSPENDED SOLIDS (lb/d) | OIL & GREASE (lb/d) |
| Commonwealth of Va. Rest Area | Pitts Cr.                   | 4.3  | 4.3                     | --                  | 4.3                         | 4.3                     | --                  |

# Regulations

|                                  |                      |   |                            |                       |  |                       |                       |
|----------------------------------|----------------------|---|----------------------------|-----------------------|--|-----------------------|-----------------------|
| Edgewood Park                    | Bullbegger Cr.       | 0.80                                      | 0.80                       | --                    | 0.80   | 0.80                  | --                    |
| Holly Farms                      | Sandy Bottom Cr.     | 167 <sup>(3)</sup>                        | 167 <sup>(3)</sup>         | 10 mg/l               | Stream survey/model and determination of final wasteload allocations planned for the summer of 1980.   |                       |                       |
| Taylor Packing Company           | Messongo Cr.         | 7006 <sup>(3)</sup>                       | 13010 <sup>(3)</sup>       | --                    | Stream survey/model was run previously. No change in permit anticipated.                               |                       |                       |
| No. Accomack E.S.                | Messongo Cr.         | 1.8                                       | 1.4                        | --                    | 1.8  | 1.4                   | --                    |
| Messick & Wessels Nelsonsonia    | Muddy Cr.            | 30mg/l <sup>(4)</sup>                     | 30mg/l <sup>(4)</sup>      | --                    | Interim wasteload allocations may be changed based on BAT guidance.                                    |                       |                       |
| Whispering Pines Motel           | Deep Cr.             | 4.8                                       | 4.8                        | --                    | 4.8  | 4.8                   | --                    |
| Town of Onancock                 | Onancock Cr.         | 21  | 21                         | --                    | 21   | 21                    | --                    |
| Messick & Wessels                | Onancock Cr.         | 30mg/l <sup>(4)</sup>                     | 30mg/l <sup>(4)</sup>      | --                    | Interim wasteload allocations may be changed based on guidance.  |                       |                       |
| So. Accomack E.S.                | Pungoteague Cr.      | 1.8                                       | 1.4                        | --                    | 1.8  | 1.4                   | --                    |
| A & P Exmore                     | Nassawadox Cr.       | 0.38                                      | 0.38                       | --                    | 0.38   | 0.38                  | --                    |
| Norstrom Coin Laundry            | Nassawadox Cr.       | 60mg/l <sup>(4)</sup> max.                | 60mg/l <sup>(4)</sup> max. | --                    | Interim wasteload allocation may be changed based on BAT guidance.                                     |                       |                       |
| NH-Acc. Memorial Hospital        | Warehouse Cr.        | 12.5                                      | 12.5                       | --                    | 21.5   | 12.5                  | --                    |
| Machipongo E.S. & H.H. Jr. High  | Trib. To Oresbus Cr. | 5.2                                       | 5.2                        | --                    | 5.2  | 5.2                   | --                    |
| Town of Cape Charles             | Cape Charles Harbor  | 62.6                                      | 62.6                       | --                    | 62.6   | 62.6                  | --                    |
| America House                    | Chesapeake Bay       | 5   | 5                          | --                    | 5  | 5                     | --                    |
| U.S. Coast Guard Chesapeake Bay  | Chesapeake Bay       | --  | --                         | 10/mgl <sup>(5)</sup> | --   | --                    | 10/mgl <sup>(5)</sup> |
| U.S. Government Cape Charles AFB | Magothy Bay          | Currently No Discharge                    |                            |                       |  |                       |                       |
| Exmore Foods (Process Water)     | Trib. To Parting Cr. | 200                                       | 100                        | --                    | Stream survey/model and determination of final wasteload allocations planned for the summer of 1980.   |                       |                       |
| Exmore Foods (Sanitary)          | Trib. To Parting Cr. | 30mg/l <sup>(5)</sup>                     | 30mg/l <sup>(5)</sup>      | --                    | 30mg/l <sup>(5)</sup>  | 30mg/l <sup>(5)</sup> | --                    |
| Perdue Foods (process water)     | Parker Cr.           | May-Oct<br>275 367<br>Nov-Apr.<br>612 797 | --                         | --                    | Interim Permit in process. Stream survey/models were run. No substantial change in permit anticipated. |                       |                       |
| Perdue Foods (parking lot)       | Parker Cr.           | 30mg/l <sup>(5)</sup>                     | 30mg/l <sup>(5)</sup>      | --                    | 30mg/l <sup>(5)</sup>  | 30mg/l <sup>(5)</sup> | --                    |
| Accomack Nursing Home            | Parker Cr.           | 2.7                                       | 2.6                        | --                    | 2.7  | 2.6                   | --                    |
| U.S. Gov't NASA Wallops Island   | Mosquito Cr.         | 75  | 75                         | --                    | 75   | 75                    | --                    |
| U.S. Gov't NASA Wallops Island   | Cat Cr.              | 1.25                                      | 1.25                       | --                    | 1.25   | 1.25                  | --                    |

# Regulations

|  |   |     |                   |                    |   |                     |                    |
|--|---|-----|-------------------|--------------------|---|---------------------|--------------------|
| F & G Laundromat                         | Chincoteague Channel                            | 10  | 4.8               | --                 | Interim wasteload allocations may be changed based on BAT guidance. |                     |                    |
| U.S. Coast Guard                         | <del>Chincoteague</del><br>Chincoteague Channel | --  | --                | 15mg/l (max.)      | --  | --                  | 15mg/l (max.)      |
| Virginia-Carolina Seafood                | Chincoteague Bay                                | 342 | 264               | 5.5                | 342   | 264                 | 5.5                |
| Reginald Stubbs Seafood Co. (VA0005813)  | Assateague Channel                              | --  | 20                | 95                 | --  | 20                  | 95                 |
| Reginald Stubbs Seafood Co. (VA00056421) | Assateague Channel                              | --  | 20                | 98                 | --  | 20.4 <sup>(2)</sup> | 98                 |
| Shreaves                                 | Chincoteague Bay                                | --  | 16 <sup>(2)</sup> | 1.4 <sup>(2)</sup> | --  | 16 <sup>(2)</sup>   | 1.4 <sup>(2)</sup> |
| Chincoteague Seafood                     | Chincoteague Bay                                | 342 | 264               | 5.5                | 342   | 264                 | 5.5                |

TABLE B3 - EXISTING OR POTENTIAL SOURCES OF WATER POLLUTION

| Location No. | Name                        | Receiving Estuary | Stream            | Flow (MGD)          | CBOD (mg/#D)          | NBOD (mg/#D) | Total Suspended Solids (mg/#D) | D.O. (mg/l) | FC (MPN/100ml) | Treatment/ Operation                                  |
|--------------|-----------------------------|-------------------|-------------------|---------------------|-----------------------|--------------|--------------------------------|-------------|----------------|---|
| 1            | Comm. Va. Rest Area         | Pocomoke Sound    | Pitts Cr.         | .003                | 7/0.18                |              | 10/0.3                         | 7.5         | 1              | Extended aeration. Sec. Holding pond, CL <sub>2</sub> |
| 2            | H.E. Kelley                 | Pocomoke Sound    | Pitts Cr.         |                     |                       |              |                                |             |                | Currently no discharges. Out of business              |
| 3            | Edgewood Park               | Pocomoke Sound    | Bullbegger Creek  | .006 <sup>(3)</sup> | 16/0.8 <sup>(2)</sup> |              | 16/0.8 <sup>(2)</sup>          |             |                | PRI, CL <sub>2</sub> . Holding Pond                   |
| 4            | Holly Farms                 | Pocomoke Sound    | Sand Bottom Creek | 0.18                | 6/40                  |              | 15/100                         | 8.0         | 100            | Aerated Lagoons, CL <sub>2</sub>                      |
| 5            | J.W. Taylor                 | Messongo Creek    | Trib. To Messongo | .001                | 60/50                 |              | 150/125                        | 8.0         |                | Aerated Lagoons                                       |
| 6            | No. Accomack E.S.           | Messongo Creek    | Trib. To Messongo | .005                | 22/0.9                |              | 30/1.3                         | 9.0         |                | Sec., Septic Tank, Sand Filter Holding Pond           |
| 7            | Messick & Wessells-Nelsonia | Beasley Bay       | Muddy Creek       | .005                | 125/5.2               |              | 100/4.2                        |             |                | Sec., Extended Aeration                               |
| 8            | Willetts Laundromat         | Beasley Bay       | Hunting Creek     |                     |                       |              |                                |             |                | Prl., Septic Tank                                     |
| 9            | Byrd Food                   | Beasley Bay       |                   |                     |                       |              |                                |             |                | No discharge industry                                 |

# Regulations

|    |  |                    |                      |                    |                       |  |                       |     |     |  |
|----|--|--------------------|----------------------|--------------------|-----------------------|--|-----------------------|-----|-----|--|
| 10 | Whispering Pines Motel                 | Beasly Bay         | Deep Creek           | .009               | 25/1.9                |  | 30/2.3                | 6.0 |     | Sec.,<br>Extended<br>Aeration<br>Holding<br>Pond, CL <sub>2</sub>                                      |
| 11 | Town of Onancock                       | Onancock Creek     | North Fork           | .19                | 2/3.2                 |  | 3/4.8                 | 7.5 | 3   | Primary,<br>Primary<br>Settling<br>Sludge<br>Digestion,<br>CL <sub>2</sub>                             |
| 12 | Messick & Wessels-Onley                | Onancock Creek     | Joynes Branch        | .005               | 100/4.2               |  | 150/6.3               |     |     | Sec.,<br>Extended<br>Aeration  |
| 13 | So. Accomack E.S.                      | Pungoteague        | Trib. To Pungoteague |                    | 24/1.8 <sup>(2)</sup> |  | 19/1.4 <sup>(2)</sup> |     |     | Sec., Septic<br>Tank, Grease<br>Trap, Sand<br>Filter,<br>Holding<br>Pond. No<br>discharge in<br>4 yrs. |
| 14 | Great Atlantic & Pacific Tea Company   | Nassawadox         | Nassawadox           | .001               | 140/1.2               |  | 150/1.3               |     | 6.5 | Sec.,<br>Extended<br>Aeration CL <sub>2</sub>  |
| 15 | Norstrom Coin Laundry                  | Nassawadox         | Trib. To Nassawadox  | .008               |                       |  |                       |     |     | Sec.,<br>Extended<br>Aeration,<br>permit in<br>process   |
| 17 | N.H.-Acc. Memorial Hospital            | Nassawadox         | Warehouse Creek      | .03                | 25/1.6                |  | 35/2.2                | 6.5 | 750 | Secondary<br>Aerated<br>Lagoon, CL <sub>2</sub><br>Holding<br>pond Stab-<br>Lagoon                     |
| 18 | Machipongo E.S. & N.H. Jr. High School | Hungars Creek      | Trib. To Oresbus     | 0.3 <sup>(1)</sup> | 30/5.2 <sup>(2)</sup> |  | 30/5.2 <sup>(2)</sup> |     |     | Sec., Stab-<br>Lagoon,<br>Holding<br>Pond no<br>discharge in<br>4 yrs.                                 |
| 19 | B & B Laundromat                       | Cherry Stone Inlet | Old Castle Creek     |                    |                       |  |                       |     |     | Prl. Septic<br>Tank<br>w/discharger  |
| 20 | KMC Foods, Inc.                        | Cherry Stone Inlet |                      |                    |                       |  |                       |     |     | <del>No<br/>Discharge</del><br><u>No<br/>Discharge</u><br>industry                                     |
| 21 | Herbert West Laundromat                | Cherry Stone Inlet | Kings Creek          |                    |                       |  |                       |     |     | Prl. Septic<br>Tank<br>w/Discharger  |

# Regulations

|    |                                  |                      |                       |                     |                         |        |                        |                    |                    |   |
|----|----------------------------------|----------------------|-----------------------|---------------------|-------------------------|--------|------------------------|--------------------|--------------------|---|
| 22 | Town of Cape Charles             | Cape Charles Harbor  | Cape Charles Harbor   | .165 <sup>(2)</sup> | 290/400 <sup>(3)</sup>  |        | 139/192 <sup>(3)</sup> |                    |                    | Raw Sewage, Sewage Treatment to be completed by 1982  |
| 23 | American House Inn               | Chesapeake Bay       | Chesapeake Bay        |                     | 30/5 <sup>(2)</sup>     |        | 30/5 <sup>(2)</sup>    |                    |                    |   |
| 24 | U.S. Coast Guard                 | Chesapeake Bay       | Chesapeake Bay        | .001 <sup>(2)</sup> | 30/                     |        |                        | 5.0 <sup>(2)</sup> | 200 <sup>(2)</sup> | Bilgewater  |
| 25 | U.S. Gov't Cape Charles AFS      | Magothy              | Magothy               | .001 <sup>(2)</sup> |                         |        |                        | 5.0 <sup>(3)</sup> |                    | Sec., CL <sub>2</sub> , Aerated Lagoon, currently <del>no discharge</del> <u>no discharge</u> |
| 27 | Exmore Frozen Foods              | Machipongo           | Trib. To Parting Cr.  | .56                 | 29/135                  |        | 18/84                  | 6.5                |                    | Grass Bays, Screening   |
| 28 | Exmore Foods (Domestic)          | Machipongo           | Trib. To Parting Cr.  | .02                 | 5/0.8                   |        | 9/1.5                  |                    |                    | Septic Tank, Sand Filter  |
| 30 | Perdue Foods                     | Metomkin Bay         | Parker Creek          | 1.7                 | 11/156                  |        | 15/213                 | 6.5                | 150                | Sec., Aerated Lagoon, Holding Pond, CL <sub>2</sub>   |
| 31 | Perdue Foods                     | Metomkin Bay         | Parker Cr.            | .01 <sup>(4)</sup>  |                         |        | 15/1.3                 |                    |                    |   |
| 32 | Accomack Co. Nursing Home        | Metomkin Bay         | Parker Cr. North Fork | .011                | 20/1.8                  |        | 28/2.6                 | 6.5                | 100                | Sec., Extended Aeration, Holding Pond, CL <sub>2</sub>  |
| 33 | U.S. Gov't NASA (Wallops Island) | Hog Creek            | Cat Creek             | .005                | 30/                     |        | 30/                    |                    |                    | Sec., Stab., Pond, Holding Pond, CL <sub>2</sub>  |
| 34 | Robo Automatic Car               | Chincoteague Channel | Little Simoneaton     |                     |                         |        |                        |                    |                    |   |
| 35 | U.S. Gov't NASA                  | Chincoteague Channel | Mosquito Creek        | .105                | 10.6/9.3 <sup>(3)</sup> | 112/28 | 2.0/1.8                |                    |                    | Sec., Trickling Filter  |
| 36 | Trail's End Rec. Vehicle Dev.    | Chincoteague Channel | Trib to Mosquito Cr.  |                     |                         |        |                        |                    |                    | Septic Tank and Drainfield  |
| 37 | Coin-Op Laundromat               | Chincoteague Channel | Chincoteague Channel  |                     |                         |        |                        |                    |                    | No discharge  |
| 38 | F & G Laundromat                 | Chincoteague Channel | Chincoteague Channel  | .005                |                         |        |                        |                    |                    |   |
| 39 | U.S. Coast Guard                 | Chincoteague Channel | Chincoteague Channel  | .001 <sup>(2)</sup> |                         |        | 30/0.2 <sup>(2)</sup>  |                    | 200 <sup>(2)</sup> | Discharge-Bilgewater  |
| 40 | Phillip Custis                   | Ramshorn Bay         |                       |                     |                         |        |                        |                    |                    | Spray Irrigation, no Discharge  |

# Regulations

|    |                                   |                                  |  |                     |      |  |                     |  |  |   |
|----|-----------------------------------|----------------------------------|--|---------------------|------|--|---------------------|--|--|---|
| 43 | Boggs (Melfa)                     | Nickowampus Creek                |  |                     |      |  |                     |  |  | Septic tank waste lagoons, no discharge                                     |
| 44 | Blake (Greenbush)                 | Deep Creek                       |  |                     |      |  |                     |  |  | Septic tank waste lagoon, no discharge                                      |
| 45 | Cherrystone Campground            | Kings Creek or Cherrystone Inlet |  |                     |      |  |                     |  |  | Stab-Lagoon, Holding pond, no discharge                                     |
| 46 | Wallops Sanitary Landfill         |                                  |  |                     |      |  |                     |  |  | Solid waste disposal site, no discharge                                     |
| 47 | Chincoteague Dumpsite             |                                  |  |                     |      |  |                     |  |  | Solid waste disposal site, no discharge                                     |
| 48 | Bob Town Sanitary Landfill        |                                  |  |                     |      |  |                     |  |  | Solid waste disposal site, no discharge                                     |
| 49 | Northampton Sanitary Landfill     |                                  |  |                     |      |  |                     |  |  | Solid waste site, no discharge  |
| 52 | Dorsey's Seafood Market           | Chincoteague                     |  |                     |      |  |                     |  |  | Oysters <sup>(5)</sup>  |
| 54 | Va-Carolina Seafood Company, Inc. | Hog-Bogue                        |  |                     |      |  | 1152 <sup>(2)</sup> |  |  | Surf Clams, Oysters, Scallops   |
|    |                                   |                                  |  |                     |      |  | 68 <sup>(2)</sup>   |  |  |   |
|    |                                   |                                  |  |                     |      |  | 7.0 <sup>(2)</sup>  |  |  |   |
| 55 | Chincoteague Island Oyster Farm   | Chincoteague                     |  |                     |      |  |                     |  |  | (Oyster-Boat Operation (grows oysters & clams from larvae) <sup>(6)</sup> ) |
|    | Reginald Stubbs Seafood Company   | Assateague Channel               |  | .002 <sup>(4)</sup> | 4.2  |  | 2.8                 |  |  | Oyster  |
| 58 | Shreaves Bros.                    | Chincoteague                     |  | .002 <sup>(4)</sup> | 2.07 |  | 8.0                 |  |  | Oyster  |
| 60 | Chincoteague Seafood Co.          | Chincoteague                     |  | .063 <sup>(4)</sup> | 972  |  | 79.9                |  |  | Surf-Clam   |
| 61 | Ralph E. Watson Oyster Co.        | Chincoteague                     |  | .003 <sup>(4)</sup> | 57   |  | 53                  |  |  | Oyster  |
| 62 | McCready Bros. Inc.               | Chincoteague                     |  |                     |      |  |                     |  |  | Oyster, no discharge  |

# Regulations

|     |                               |              |                  |                      |      |  |                     |  |  |   |
|-----|-------------------------------|--------------|------------------|----------------------|------|--|---------------------|--|--|---|
| 63  | Wm. C. Bunting                | Chincoteague |                  | .001 <sup>(4)</sup>  | 12   |  | 4.8                 |  |  | Oyster  |
| 64  | Carpenters Seafood            | Chincoteague |                  | .001 <sup>(4)</sup>  | 4.1  |  | 2.1                 |  |  | Oyster  |
| 64a | Burtons Seafood, Inc.         | Chincoteague |                  | .006 <sup>(4)</sup>  | 10.3 |  | .35                 |  |  | Oyster shell stock deal no discharge                    |
| 69  | Jones Bros. Seafood           | Chincoteague | Sheepshead Cr.   |                      |      |  |                     |  |  | Oyster & Clams  |
| 70  | W.E. Jones Seafood            | Chincoteague | Sheepshead Creek |                      |      |  | 46.4 <sup>(2)</sup> |  |  | Oyster & Clams  |
| 71  | Conner & McGee Seafood        | Chincoteague | Sheepshead Creek |                      |      |  |                     |  |  | Oyster & Clams <sup>(6)</sup>                           |
| 72  | Hills Oyster Farm             | Chincoteague |                  |                      |      |  |                     |  |  | Oyster & Clams <sup>(5)</sup>                           |
| 73  | Thomas E. Reed Seafood        | Chincoteague | Deep Hole Creek  |                      |      |  |                     |  |  | Oyster & Clams <sup>(6)</sup>                           |
| 74  | Mears & Powell                | Metomkin     |                  |                      |      |  |                     |  |  | Oyster-Building, also used to clean fish <sup>(5)</sup> |
| 75  | Wachapreague Seafood Company  | Metomkin     | Finney Creek     | .036 <sup>(4)</sup>  |      |  | 144                 |  |  | Sea Clam  |
| 76  | George D. Spence and Son      | Machipongo   |                  |                      |      |  |                     |  |  | Crab Shedding <sup>(6)</sup>                            |
| 77  | George D. Spence and Son      | Machipongo   |                  |                      |      |  |                     |  |  | Crab Picking, no discharge                              |
| 78  | George T. Bell                | Machipongo   |                  |                      |      |  |                     |  |  | No Discharge, Oyster                                    |
| 79  | George D. Spence and Son      | Machipongo   | Upshur Bay       |                      |      |  |                     |  |  | Oyster <sup>(6)</sup>                                   |
| 80  | Peters Seafood                | Machipongo   |                  |                      |      |  |                     |  |  | Oyster <sup>(6)</sup>                                   |
| 81  | J.E. Hamblin                  | Machipongo   |                  |                      |      |  |                     |  |  | Oyster, No discharge                                    |
| 83  | Nathan Bell Seafood           | Machipongo   |                  |                      |      |  |                     |  |  | Clams, Hard <sup>(5)</sup>                              |
| 84  | John L. Marshall Seafood      | Machipongo   |                  |                      |      |  |                     |  |  | Clams <sup>(5)</sup>                                    |
| 85  | American Original Foods, Inc. | Machipongo   | Parting Creek    | .151 <sup>(4)</sup>  | 2632 |  | 1337                |  |  |   |
| 86  | Harvey & Robert Bowen         | Machipongo   | Parting Creek    | .0006 <sup>(4)</sup> | 6.2  |  | 1.7                 |  |  | Oyster  |
| 87  | H.M. Terry                    | Machipongo   | Parting Creek    | .0004 <sup>(4)</sup> | 3.3  |  | .62                 |  |  | Oyster  |

# Regulations

|           |                                 |                  |                |                      |     |  |                          |  |  |
|-----------|---------------------------------|------------------|----------------|----------------------|-----|--|--------------------------|--|--|
| 89        | Webb's Island Seafood           | South Ocean Area |                |                      |     |  |                          |  | Clams <sup>(6)</sup>   |
| 90        | Cliff's Seafood                 | South Ocean Area | Mockhorn Bay   |                      |     |  |                          |  | Oyster & Clam <sup>(6)</sup>   |
| 92        | H. Allen Smith                  | South Ocean Area |                | .037 <sup>(4)</sup>  | 213 |  | 522                      |  | Sea Clam   |
| 94        | C & D Seafood, Inc.             | South Ocean Area | Oyster Harbor  | .04 <sup>(4)</sup>   | 427 |  | 204 sea clam             |  | Sea Clam, Oyster   |
|           |                                 |                  |                |                      |     |  | 34 <sup>(2)</sup> oyster |  |  |
| 95        | B.L. Bell & Sons                | South Ocean Area | Oyster Harbor  | .001 <sup>(4)</sup>  | 12  |  | .9                       |  | Oyster   |
| 98        | Lance Fisher Seafood Co.        | Pocomoke         |                | .02 <sup>(4)</sup>   | 38  |  | 12.8                     |  | Oyster and Clam  |
| 99        | Fisher & Williams/Lester Fisher | Messongo         |                |                      |     |  |                          |  | Building used to shed soft crabs <sup>(5)</sup>                              |
| 100       | Grady Rhodes Seafood            | Messongo         |                |                      |     |  |                          |  | Sold business, Building used to shed soft crabs <sup>(5)</sup>               |
| 101       | Bonowell Bros.                  | Messongo         | Pocomoke Sound | .001 <sup>(4)</sup>  | 12  |  | 2.5                      |  | Oyster   |
| 102       | John H. Lewis & Co.             | Messongo         | Starling Creek |                      |     |  |                          |  | Oyster SS only, no discharge   |
| 103       | Eastern Shore Seafood           | Beasly           |                |                      |     |  |                          |  | Crab, no discharge   |
| 106       | Ashton's Seafood, Inc.          | Pungoteague      |                |                      |     |  |                          |  | Shell stock dealer-no discharge  |
| 107       | Nandua Seafood Co.              | Nandua           |                | .0001 <sup>(4)</sup> | .2  |  | .9                       |  | Crab   |
| 108       | A.M. Acuff                      | Cherrystone      |                |                      |     |  |                          |  | Building used for storage, no discharge                                      |
| 110       | D.L. Edgerton Co.               | Cherrystone      | Mud Creek      |                      |     |  |                          |  | Conch. In operation. Retort drains overboard & fish wash-down <sup>(6)</sup> |
| 111 & 112 | Tangier Island Seafood, Inc.    | Tangier          |                |                      |     |  |                          |  | Crab <sup>(5)</sup>  |
| 113       | Tangier                         | Chesapeake Bay   |                |                      |     |  |                          |  | 1000 KW Power Station  |

# Regulations

|     |                             |                      |              |                     |                    |  |                    |  |                              |
|-----|-----------------------------|----------------------|--------------|---------------------|--------------------|--|--------------------|--|------------------------------|
| 114 | Chincoteague                | Chincoteague Channel |              |                     |                    |  |                    |  | 2100 KW Power Station        |
| 115 | Parksley                    |                      |              |                     |                    |  |                    |  | 2400 KW Power Station        |
| 116 | Tasley                      |                      |              |                     |                    |  |                    |  | 1400 KW Power Station        |
| 117 | Bayview                     |                      |              |                     |                    |  |                    |  | 10,000 KW Power Station      |
| 118 | Cape Charles                | Cape Charles Harbor  |              |                     |                    |  |                    |  | 1200 KW Power Station        |
| 119 | Burdick Well & Pump Company |                      |              |                     |                    |  |                    |  | Holding Pond, no discharge   |
| 120 | Marshall & Son Crab Company | Messongo Cr.         |              |                     |                    |  |                    |  | Crab Shedding <sup>(6)</sup> |
|     | Linton & Lewis Crab Co.     | Pocomoke Sound       |              |                     |                    |  |                    |  | Crab Shedding <sup>(6)</sup> |
| 122 | D.L. Edgerton               | Chincoteague         |              |                     |                    |  |                    |  | Fish Washdown <sup>(6)</sup> |
| 123 | Evans Bros. Seafood Co.     | Pocomoke Sound       |              |                     |                    |  |                    |  | Crab Shedding <sup>(6)</sup> |
| 124 | Stanley F. Linton           | Messongo             | Starling Cr. |                     |                    |  |                    |  | Crab Shedding <sup>(6)</sup> |
| 125 | H.V. Drewer & Son           | Messongo             | Starling Cr. | .035 <sup>(4)</sup> | 349                |  | 736-clam           |  | Oyster & Clam                |
|     |                             |                      |              | .018 <sup>(4)</sup> | 180                |  | 198-oyster         |  |                              |
| 126 | Chincoteague Fish Co., Inc. | Chincoteague Channel |              |                     |                    |  |                    |  | Fish Washdown <sup>(6)</sup> |
| 127 | Chincoteague Crab Company   | Assateague Channel   |              |                     | .18 <sup>(2)</sup> |  | .54 <sup>(2)</sup> |  | Crab & Crab Shedding         |
| 128 | Aldon Miles & Sons          | Pocomoke Sound       |              |                     |                    |  |                    |  | Crab Shedding <sup>(6)</sup> |
| 129 | Saxis Crab Co.              | Messongo             | Starling Cr. |                     |                    |  |                    |  | Crab Shedding <sup>(6)</sup> |
|     | Paul Watkinson SFD          | Pocomoke Sound       |              |                     |                    |  |                    |  | Crab Shedding <sup>(6)</sup> |
| 131 | Russell Fish Co., Inc       | Chincoteague Channel |              |                     |                    |  |                    |  | Fish <sup>(6)</sup>          |
| 132 | Mason Seafood Co.           | Chincoteague Channel |              | .002 <sup>(4)</sup> | 7.7                |  | 13.7               |  | Oysters                      |

NOTE: <sup>(1)</sup>Water quality data taken from Discharge Monitoring Reports or special studies unless indicated.

<sup>(2)</sup>NPDES Permit limits given since the permit is new and discharge monitoring reports not yet available.

<sup>(3)</sup>Data from Accomack-Northampton Co. Water Quality Management Plan.

<sup>(4)</sup>Estimated.

<sup>(5)</sup>May need a permit--either company has not responded to SWCB letter or operation has just started up.

<sup>(6)</sup>No limits -- has an NPDES permit, but is not required to monitor.

C. Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus waste load allocations for the identified significant dischargers and the total nitrogen and total phosphorus waste load allocations for the listed facilities.

| Virginia Waterbody ID | Discharger Name                       | VPDES Permit No. | Total Nitrogen (TN) Waste Load Allocation (lbs/yr) | Total Phosphorus (TP) Waste Load Allocation (lbs/yr) |
|-----------------------|---------------------------------------|------------------|--|--|
| C16E                  | Cape Charles Town WWTP <sup>(1)</sup> | VA0021288        | 6,091  | 457  |
| C11E                  | Onancock WWTP <sup>(2)</sup>          | VA0021253        | 9,137  | 685  |
| C13E                  | Shore Memorial Hospital               | VA0027537        | 1,218  | 91   |
| C10E                  | Tangier WWTP                          | VA0067423        | 1,218  | 91   |
| C10R                  | Tyson Foods – Temperanceville         | VA0004049        | 22,842   | 1,142  |
| TOTALS:               |                                       |                  | 40,506   | 2,467  |

NOTE: <sup>(1)</sup>Cape Charles STP: waste load allocations (WLAs) based on a design flow capacity of 0.5 million gallons per day (MGD). If plant is not certified to operate at 0.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.

<sup>(2)</sup>Onancock STP: waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by December 31, 2011, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.

**9VAC25-720-130. New River Basin.**

A. Total Maximum Daily Load (TMDLs).

| TMDL # | Stream Name     | TMDL Title  | City/County | WBID | Pollutant | WLA    | Units |
|--------|-----------------|---|-------------|------|-----------|--------|-------|
| 1.     | Stroubles Creek | Benthic TMDL for Stroubles Creek in Montgomery County, Virginia   | Montgomery  | N22R | Sediment  | 233.15 | T/YR  |
| 2.     | Back Creek      | Fecal Bacterial and General Standard Total Maximum Daily Load Development for Back Creek Watershed, Pulaski County, VA    | Pulaski     | N22R | Sediment  | 0.28   | T/YR  |
| 3.     | Crab Creek      | Fecal Bacterial and General Standard Total Maximum Daily Load Development for Crab Creek Watershed, Montgomery County, VA | Montgomery  | N18R | Sediment  | 77     | T/YR  |
| 4.     | Peak Creek      | Fecal Bacterial and General Standard Total Maximum Daily Load Development for Peak Creek Watershed, Pulaski County, VA    | Pulaski     | N17R | Copper    | 12     | KG/YR |
| 5.     | Peak Creek      | Fecal Bacterial and General Standard Total Maximum Daily Load Development for Peak Creek Watershed, Pulaski County, VA    | Pulaski     | N17R | Zinc      | 57     | KG/YR |

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|     |                     |  |                                   |                   |                 |               |             |
|-----|---------------------|--|-----------------------------------|-------------------|-----------------|---------------|-------------|
| 6.  | Bluestone River     | Fecal Bacterial and General Standard Total Maximum Daily Load Development for Bluestone River  | Tazewell                          | N36R              | Sediment        | 116.2         | T/YR        |
| 7.  | Hunting Camp Creek  | Total Maximum Daily Load (TMDL) Development for Hunting Camp Creek Aquatic Life Use (Benthic) and E. coli (Bacteria) impairments             | Bland                             | N31R              | Sediment        | 0             | LB/YR       |
| 8.  | Chestnut Creek      | Total Maximum Daily Load Development for Chestnut Creek, Fecal Bacteria and General Standard (Benthic)                                       | Carroll, Grayson                  | N06R              | Sediment        | 18.9          | T/YR        |
| 9.  | Laurel Fork         | Benthic TMDL for Laurel Fork, Sussex County, Virginia  | Tazewell, Pocahontas              | N37R              | Sediment        | 21            | T/YR        |
| 10. | <u>Little River</u> | <u>Bacteria, Benthic, and Temperature Total Maximum Daily Loads in the Little River Watershed of Floyd and Montgomery Counties, Virginia</u> | <u>Floyd, Pulaski, Montgomery</u> | <u>N19R, N21R</u> | <u>Sediment</u> | <u>116.49</u> | <u>T/YR</u> |

## B. Non-TMDL waste load allocations.

| Water Body | Permit No. | Facility Name  | Receiving Stream         | River Mile | Outfall No. | Parameter Description       | WLA | Units WLA |
|------------|------------|--|--------------------------|------------|-------------|-----------------------------|-----|-----------|
| VAS-N11R   | VA0020281  | Wytheville WWTP  | Reed Creek               | 25.79      | 001         | BOD <sub>5</sub>            | 360 | KG/D      |
| VAS-N15R   | VA0089443  | Hillsville WWTP  | Little Reed Island Creed | 25.12      | 001         | CBOD <sub>5</sub> , JAN-MAY | 118 | KG/D      |
|            |            |  |                          |            |             | CBOD <sub>5</sub> , JUN-DEC | 95  | KG/D      |
| VAW-N21R   | VA0024040  | Montgomery Co. PSA - Riner Town - Sewage Treatment Plant     | Mill Creek               | 5.12       | 001         | BOD <sub>5</sub>            | 7.5 | KG/D      |
|            |            |  |                          |            |             | TKN (N-KJEL)                | 1.9 | KG/D      |
| VAW-N22R   | VA0060844  | Blacksburg VPI Sanitation Auth. - Lower Stroubles Creek WWTP | New River                | 71.37      | 001         | BOD <sub>5</sub>            | 818 | KG/D      |
| VAS-N36R   | VA0025054  | Bluefield Westside WWTP                                      | Bluestone River          | 25.64      | 001         | BOD <sub>5</sub> , JUN-NOV  | 130 | KG/D      |
|            |            |  |                          |            |             | BOD <sub>5</sub> , DEC-MAY  | 260 | KG/D      |
| VAS-N36R   | VA0062561  | Tazewell County PSA - Falls Mills Hales Bottom STP           | Bluestone River          | 22.49      | 001         | BOD <sub>5</sub>            | 5.5 | KG/D      |
| VAS-N37R   | VA0029602  | Pocahontas STP   | Laurel Fork              | 1.99       | 001         | BOD <sub>5</sub>            | 17  | KG/D      |

|          |           |  |            |       |     |                  |     |      |
|----------|-----------|--|------------|-------|-----|------------------|-----|------|
| VAW-N21R | VA002040  | Montgomery Co. PSA - Riner Town - Sewage Treatment Plant     | Mill Creek | 5.12  | 001 | BOD <sub>5</sub> | 7.5 | KG/D |
|          |           |  |            |       |     | TKN (N-KJEL)     | 1.9 | KG/D |
| VAW-N22R | VA0060844 | Blacksburg VPI Sanitation Auth. - Lower Stroubles Creek WWTP | New River  | 71.37 | 001 | BOD <sub>5</sub> | 818 | KG/D |

VA.R. Doc. No. R13-3629; Filed March 20, 2013, 2:44 p.m.

**TITLE 14. INSURANCE**

**STATE CORPORATION COMMISSION**

**Proposed Regulation**

**Title of Regulation:** 14VAC5-130. Rules Governing the Filing of Rates for Individual and Certain Group Accident and Sickness Insurance Policy Forms (amending 14VAC5-130-10, 14VAC5-130-30, 14VAC5-130-40, 14VAC5-130-50, 14VAC5-130-60, 14VAC5-130-70, 14VAC5-130-90; adding 14VAC5-130-65, 14VAC5-130-75, 14VAC5-130-81; repealing 14VAC5-130-80).

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

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

**Public Comment Deadline:** May 6, 2013.

In addition, the Bureau of Insurance will hold a meeting at 10 a.m. on April 22, 2013, in the Training Room on the Third Floor of the State Corporation Commission at 1300 East Main Street in Richmond, Virginia. At the meeting, interested parties may address questions about the proposed rules to staff of the Bureau of Insurance. Please contact Bob Grissom, Chief Insurance Market Examiner with the Bureau of Insurance at (804) 371-9152 if you have questions.

**Agency Contact:** Bob Grissom, Chief Insurance Market Examiner, Bureau of Insurance, Life and Health Division, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9152, FAX (804) 371-9944, or email bob.grissom@scc.virginia.gov.

**Summary:**

*The amendments implement the provisions of Senate Bill 922 passed by the 2013 General Assembly. This legislation creates § 38.2-316.1 of the Code of Virginia, which gives the commission the authority to review and approve accident and sickness insurance premium rates applicable to health benefit plans issued in Virginia in the individual and small group markets, and a health benefit plan or health insurance coverage issued to residents of Virginia through a group trust, association, purchasing*

*cooperative, or other group that is not an employer group. The scope of the regulation is expanded to include these additional rate review requirements, and includes new definitions, filing requirements, minimum standards, loss ratios, risk pools, and templates.*

AT RICHMOND, MARCH 29, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2013-00050

Ex Parte: In the matter of  
Amending the Rules Governing  
Filing of Rates for Individual and  
Group Accident and Sickness Insurance

**ORDER TO TAKE NOTICE**

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: <http://www.scc.virginia.gov/case>.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to rules set forth in Chapter 130 of Title 14 of the Virginia Administrative Code, entitled Rules Governing the Filing of Rates for Individual and Group Accident and Sickness Insurance, 14 VAC 5-130-10 et seq. ("Rules"), which amend the Rules at 14 VAC 5-130-10, 14 VAC 5-130-30 through 14 VAC 5-130-70, and 14 VAC 5-130-90; add new Rules at 14 VAC 5-130-65, 14 VAC 5-130-75, and 14 VAC 5-130-81; repeal the Rules at 14 VAC 5-130-80; and add new forms.

The amendments to Chapter 130 are necessary to implement the provisions of Senate Bill 922 passed by the 2013 General

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Assembly. This legislation creates a new section, § 38.2-316.1 of the Code, which gives the Commission the authority to review and approve accident and sickness insurance premium rates applicable to health benefit plans issued in Virginia in the individual and small group markets and a health benefit plan or health insurance coverage issued to residents of Virginia through a group trust, association, purchasing cooperative or other group that is not an employer group.

The scope of Chapter 130 has been expanded to include these additional rate review requirements and includes new definitions, filing requirements, minimum standards, loss ratios, risk pools and templates.

NOW THE COMMISSION is of the opinion that the proposed amendments submitted by the Bureau to amend the Rules at 14 VAC 5-130-10, 14 VAC 5-130-30 through 14 VAC 5-130-70, and 14 VAC 5-130-90; add new Rules at 14 VAC 5-130-65, 14 VAC 5-130-75, and 14 VAC 5-130-81; repeal the Rules at 14 VAC 5-130-80; and add new forms, should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to Rules Governing Filing of Rates for Individual and Group Accident and Sickness Insurance, which amend the Rules at 14 VAC 5-130-10, 14 VAC 5-130-30 through 14 VAC 5-130-70, and 14 VAC 5-130-90; add new Rules at 14 VAC 5-130-65, 14 VAC 5-130-75, and 14 VAC 5-130-81; repeal the Rules at 14 VAC 5-130-80; and add new forms, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose amending Chapter 130 of Title 14 of the Virginia Administrative Code, shall file such comments or hearing request on or before May 6, 2013, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2013-00050.

(3) The Bureau shall hold a meeting during the comment period in order for interested parties to address questions about the Rules to the Bureau. The meeting will be held on Monday, April 22, 2013, at 10 a.m. in the Training Room located on the Third Floor of the State Corporation Commission, 1300 East Main Street, Richmond, Virginia 23219.

(4) If no written request for a hearing on the proposal to amend Chapter 130 of Title 14 of the Virginia Administrative Code is received on or before May 6, 2013, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may amend the Rules.

(5) AN ATTESTED COPY hereof, together with a copy of the proposal to amend the Rules, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Althelia P. Battle, who forthwith shall give further notice of the proposal to amend the Rules by mailing a copy of this Order, together with the proposal, to all companies licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, as well as all interested parties.

(6) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposal to amend the Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(7) The Commission's Division of Information Resources shall make available this Order and the attached proposed amendments to the Rules on the Commission's website: <http://www.scc.virginia.gov/case>.

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

(9) This matter is continued.

## **14VAC5-130-10. Purpose.**

The purposes of this chapter (14VAC5-130-10 et seq.) are to: (i) implement procedures for the filing and approval of rates for individual and certain group accident and sickness insurance policy forms and (ii) establish minimum loss ratios to assure that the benefits provided by such policy forms are or are likely to be reasonable in relation to the premiums charged.

## **14VAC5-130-30. Scope.**

A. This chapter (14VAC5-130-10 et seq.) applies to all individual accident and sickness insurance policy forms, subscriber contracts of hospital, medical or surgical plans, dental plans, and optometric plans delivered or issued for delivery in this Commonwealth ~~on and after the effective date~~.

B. This chapter also applies to all health insurance coverage issued in the individual and small group markets.

~~B. C.~~ This chapter also applies to group Medicare supplement insurance policy forms and group Medicare supplement subscriber contracts of hospital, medical or surgical plans delivered or issued for delivery in this Commonwealth ~~on and after the effective date~~.

~~C. D.~~ For purposes of this chapter, a policy form shall include any rider or endorsement form affecting benefits which is attached to the base policy.

~~D. E.~~ Except as otherwise provided, nothing contained in this chapter shall be construed to relieve ~~an insurer~~ a health insurance issuer of complying with the statutory requirements set forth in Title 38.2 of the Code of Virginia.

**14VAC5-130-40. Definitions.**

As used in this chapter:

"Actuarial value" or "AV" means the result generated by the federal AV calculator that is a percentage of health care costs a health plan may cover.

"Anticipated loss ratio" is means the ratio of the present value of the future benefits to the present value of the future premiums of a policy form over the entire period for which rates are computed to provide coverage.

"Grandfathered plan" means coverage provided by a health carrier in which an individual was enrolled on March 23, 2010, for as long as such plan maintains that status in accordance with federal law.

"Group health insurance coverage" means in connection with a group health plan, health insurance coverage offered in connection with such plan.

"Group health plan" means an employee welfare benefit plan (as defined in § 3 (1) of the Employee Retirement Income Security Act of 1974 (29 USC § 1002 (1)), to the extent that the plan provides medical care and including items and services paid for as medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

"Group Medicare supplement policy" is means a group policy of accident and sickness insurance, or a group subscriber contract of hospital, medical or surgical plans, covering individuals who are entitled to have payment made under Medicare, which is designed primarily to supplement Medicare by providing benefits for payment of hospital, medical or surgical expenses, or is advertised, marketed or otherwise purported to be a supplement to Medicare. Such term does not include:

1. A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or
2. A policy or contract of any professional, trade or occupational association for its members or former retired members, or combination thereof, if such association:
  - a. Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;
  - b. Has been maintained in good faith for purposes other than obtaining insurance; and
  - c. Has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members.

"Health benefit plan" means any accident and health insurance policy or certificate, health services plan contract, health maintenance organization subscriber contract, plan

provided by a MEWA, or plan provided by another benefit arrangement. "Health benefit plan" does not mean accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans, pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; Medicaid coverage; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

"Health insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

"Health insurance issuer" means an insurance company, or insurance organization (including a health maintenance organization) that is licensed to engage in the business of insurance in this Commonwealth and that is subject to the laws of this Commonwealth that regulate insurance within the meaning of § 514 (b) (2) of the Employee Retirement Income Security Act of 1974 (29 USC § 1144 (b) (2)). Such term does not include a group health plan.

"Health maintenance organization" means:

1. A federally qualified health maintenance organization;
2. An organization recognized under the laws of this Commonwealth as a health maintenance organization; or
3. A similar organization regulated under the laws of this Commonwealth for solvency in the same manner and to the same extent as such a health maintenance organization.

"Individual accident and sickness insurance" is means insurance against loss resulting from sickness or from bodily injury or death by accident or accidental means or both when sold on an individual rather than group basis.

"Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, that includes a health benefit plan provided to individuals through a trust arrangement, association, or other discretionary group that is not an employer plan, but does not include coverage defined as "excepted benefits" in § 38.2-3431 of the Code of Virginia or short-term limited duration insurance.

"Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan. Coverage that would be regulated as

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individual market coverage if it were not sold through an association is individual market coverage.

"Individual Medicare supplement policy" ~~is~~ means an individual policy of accident and health insurance or a subscriber contract of hospital, medical or surgical plans, offered to individuals who are entitled to have payment made under Medicare, which is designed primarily to supplement Medicare by providing benefits for hospital, medical or surgical expenses, or is advertised, marketed or otherwise purported to be a supplement to Medicare.

"Member" means an enrollee, member, subscriber, policyholder, certificate holder, or other individual who is participating in a health benefit plan or covered under health insurance.

"Premium" means all moneys paid by an employer, eligible employee, or member as a condition of coverage from a health insurance issuer, including fees and other contributions associated with a health benefit plan.

"Qualified Actuary" ~~is~~ means a member of the American Academy of Actuaries, or ~~any~~ other individual ~~who has demonstrated actuarial competence that in the opinion of the Commission is deemed adequate to certify the actuarial content of the rate filing~~ qualified as described in the American Academy of Actuaries' U.S. Qualification Standards and the Code of Professional Conduct to render statements of actuarial opinion in the applicable area of practice.

"SERFF" means the National Association of Insurance Commissioner's (NAIC) System for Electronic Rate and Form Filing.

"Small employer" means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 50 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. Effective January 1, 2016, "small employer" means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 100 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.

"Small group market" means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer. Coverage that would be regulated as small group market coverage if it were not sold through an association is small group market coverage.

## **14VAC5-130-50. General rules on rate filing; experience records and data.**

A. Every policy, rider or endorsement form affecting benefits which is submitted for approval shall be accompanied by a rate filing unless such rider or endorsement form does not require a change in the rate. Any subsequent addition to or change in rates applicable to such policy, rider or endorsement form shall also be filed.

B. Each rate submission shall include an actuarial memorandum describing the basis on which rates were determined and shall indicate and describe the calculation of the anticipated loss ratio. ~~Interest, Except for coverage issued in the small group market, interest~~ at a rate consistent with that assumed in the original determination of premiums, shall be used in the calculation of this loss ratio. Each rate submission must also include a certification by a qualified actuary that to the best of the actuary's knowledge and judgment, the rate filing is in compliance with the applicable laws and regulations of this Commonwealth and that the benefits are reasonable in relation to the premiums.

C. ~~Insurers~~ Health insurance issuers shall maintain records of earned premiums and incurred benefits for each calendar year for each policy form, including data for rider and endorsement forms which are used with the policy form, on the same basis, including all reserves, as required for the Accident and Health Policy Experience Exhibit. Separate data may be maintained for each rider or endorsement form to the extent appropriate. Experience under forms which provide substantially similar coverage may be combined. The data shall be ~~for all years of issue combined,~~ for each calendar year of experience since the year the form was first issued; ~~except that data for calendar years prior to the most recent five years may be combined.~~

D. In determining the credibility and appropriateness of experience data, due consideration must be given to all relevant factors, such as:

1. Statistical credibility of premiums and benefits, e.g., low exposure, low loss frequency.
2. Experienced and projected trends relative to the kind of coverage, e.g., inflation in medical expenses, economic cycles affecting disability income experience.
3. The concentration of experience at early policy durations where select morbidity and preliminary term reserves are applicable and where loss ratios are expected to be substantially lower than at later policy durations.
4. The mix of business by risk classification.

E. Rates for coverage issued in the individual or small group markets are required to meet the following:

1. Premium rates with respect to a particular plan or coverage may only vary by:
  - a. Whether the plan or coverage covers an individual or family;

b. Rating area, as may be established by the commission;  
 c. Age, consistent with the Uniform Age Rating Curve table below; and

d. Tobacco use, except that the rate shall not vary by more than 1.5 to 1. Employees of a small employer may avoid this surcharge by participating in a wellness program that complies with § 2705(j) of the Public Health Service Act (42 USC § 300gg-4).

Uniform Age Rating Curve

| <u>AGE</u> | <u>PREMIUM RATIO</u> | <u>AGE</u> | <u>PREMIUM RATIO</u> | <u>AGE</u>   | <u>PREMIUM RATIO</u> |
|------------|----------------------|------------|----------------------|--------------|----------------------|
| 0-20       | 0.635                | 35         | 1.222                | 50           | 1.786                |
| 21         | 1.000                | 36         | 1.230                | 51           | 1.865                |
| 22         | 1.000                | 37         | 1.238                | 52           | 1.952                |
| 23         | 1.000                | 38         | 1.246                | 53           | 2.040                |
| 24         | 1.000                | 39         | 1.262                | 54           | 2.135                |
| 25         | 1.004                | 40         | 1.278                | 55           | 2.230                |
| 26         | 1.024                | 41         | 1.302                | 56           | 2.333                |
| 27         | 1.048                | 42         | 1.325                | 57           | 2.437                |
| 28         | 1.087                | 43         | 1.357                | 58           | 2.548                |
| 29         | 1.119                | 44         | 1.397                | 59           | 2.603                |
| 30         | 1.135                | 45         | 1.444                | 60           | 2.714                |
| 31         | 1.159                | 46         | 1.500                | 61           | 2.810                |
| 32         | 1.183                | 47         | 1.563                | 62           | 2.873                |
| 33         | 1.198                | 48         | 1.635                | 63           | 2.952                |
| 34         | 1.214                | 49         | 1.706                | 64 and older | 3.000                |

2. A premium rate shall not vary by any other factor not described in this subsection.

3. With respect to family coverage, the rating variations permitted in this subsection shall be applied based on the portion of the premium that is attributable to each family member covered under the plan. With respect to family members under age 21, the premiums for no more than the three oldest covered children shall be taken into account in determining the total family premium.

4. The premium charged shall not be adjusted more frequently than annually, except that the premium rate may be changed to reflect changes to (i) the family composition of the member or (ii) the coverage requested by the member.

~~E. F.~~ In the event of disapproval or withdrawal of approval by the ~~Commission~~ commission of a ~~policy form~~ rate submission, ~~an insurer~~ a health insurance issuer may proceed as indicated in § 38.2-1926 of the Code of Virginia.

**14VAC5-130-60. Filing of rates for a new policy form.**

A. Each rate submission shall include: (i) the applicable policy or certificate form, application and endorsements

required by § 38.2-316 of the Code of Virginia, (ii) a rate sheet and (iii) an actuarial memorandum. For coverage issued in the individual or small group markets, the Unified Rate Review Template shall also be filed.

B. ~~Actuarial memorandum:~~ The actuarial memorandum shall contain the following information:

1. A description of the type of policy or coverage, including benefits, renewability, general marketing method, and issue age limits.

2. A description of how rates were determined, including the general description and source of each assumption used.

3. The estimated average annual premium per policy and per member.

4. The anticipated loss ratio and a description of how it was calculated.

5. The minimum anticipated loss ratio presumed reasonable in this chapter, as specified in ~~subsection C of this section~~ 14VAC5-130-65.

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6. If ~~item~~ the anticipated loss ratio in subdivision 4 of this subsection is less than ~~item~~ the minimum loss ratio in subdivision 5 of this subsection, supporting documentation for the use of such premiums shall also be included.

7. For coverage issued in the individual or small group market, a certification by a qualified actuary of the actuarial value of each plan of benefits included and the AV calculation summary.

~~7. 8.~~ A certification by a qualified actuary that, to the best of the actuary's knowledge and judgment, the rate filing is in compliance with the applicable laws and regulations of this Commonwealth and the premiums are reasonable in relation to the benefits provided.

~~C. Reasonableness of benefits in relation to premiums: Benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio of the policy form, including riders and endorsements, is at least as great as specified below:~~

~~1. If the expected average annual premium is at least \$200 but less than \$1,000:~~

| Type of Coverage   | Renewal Clause |     |     |     |       |
|--|----------------|-----|-----|-----|-------|
|  | OR             | CR  | GR  | NC  | Other |
| Hospital Expense, Medical-Surgical Expense, Major Medical Expense, Hospital Confinement Indemnity                                | 60%            | 55% | 55% | 50% | 60%   |
| Disability Income Protection, Accident Only, Specified Disease and Other, whether paid on an expense incurred or indemnity basis | 60%            | 55% | 50% | 45% | 60%   |

~~Definitions of renewal clause:~~

~~OR—Optionally renewable: individual policy renewal is at the option of the insurance company.~~

~~CR—Conditionally renewable: renewal can be declined by the insurance company only for stated reasons other than deterioration of health or renewal can be declined on a geographic territory basis.~~

~~GR—Guaranteed renewable: renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.~~

~~NC—Non cancellable: renewal cannot be declined nor can rates be revised by the insurance company.~~

~~Other—Any other renewal or non renewal clauses (e.g. short term non renewable policies).~~

~~2. If the expected average annual premium is \$100 or more but less than \$200, subtract five percentage points from the numbers in the table above.~~

~~3. If the expected average annual premium is less than \$100, subtract 10 percentage points from the numbers in the table above.~~

~~4. If the expected average annual premium is \$1,000 or more, add five percentage points to the numbers in the table above.~~

~~5. Notwithstanding 1 above, group Medicare supplement policies, shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 75% of the aggregate amount of premiums collected.~~

~~6. Notwithstanding 1 and 5 above, Medicare supplement policies issued as a result of solicitation of individuals through the mails or by mass media advertising, which shall include both print and broadcast advertising, shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 60% of the aggregate amount of premiums collected.~~

~~7. Notwithstanding 1 above, Medicare supplement policies sold on an individual rather than group basis shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 60% of the aggregate amount of premiums collected.~~

~~The above anticipated loss ratio standards do not apply to a class of business where such standards are in conflict with specific statutes or regulations.~~

~~The average annual premium per policy shall be computed by the insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all policies (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation).~~

## 14VAC5-130-65. Reasonableness of benefits in relation to initial premiums.

A. Benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio of the policy form, including riders and endorsements, is at least as great as specified below:

1. If the expected average annual premium is at least \$200 but less than \$1,000:

| Type of Coverage   | Renewal Clause |     |     |     |       |
|--|----------------|-----|-----|-----|-------|
|  | OR             | CR  | GR  | NC  | Other |
| Hospital Confinement Indemnity   | 60%            | 55% | 55% | 50% | 60%   |
| Disability Income Protection, Accident Only, Specified Disease and Other, whether paid on an expense incurred or indemnity basis | 60%            | 55% | 50% | 45% | 60%   |

Definitions of renewal clause:

OR - Optionally renewable: individual policy renewal is at the option of the insurance company.

CR - Conditionally renewable: renewal can be declined by the insurance company only for stated reasons other than deterioration of health or renewal can be declined on a geographic territory basis.

GR - Guaranteed renewable: renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.

NC - Noncancellable: renewal cannot be declined nor can rates be revised by the insurance company.

Other - Any other renewal or nonrenewal clauses (e.g., short term nonrenewable policies).

2. If the expected average annual premium is \$100 or more but less than \$200, subtract five percentage points from the numbers in the table in subdivision 1 of this subsection.

3. If the expected average annual premium is less than \$100, subtract 10 percentage points from the numbers in the table in subdivision 1 of this subsection.

4. If the expected average annual premium is \$1,000 or more, add five percentage points to the numbers in the table in subdivision 1 of this subsection.

5. Notwithstanding subdivision 1 of this subsection, group Medicare supplement policies, shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 75% of the aggregate amount of premiums collected.

6. Notwithstanding subdivisions 1 and 5 of this subsection, for Medicare supplement policies issued prior to July 30, 1992, as a result of solicitation of individuals through the mails or by mass media advertising, which shall include both print and broadcast advertising, shall be expected to

return to policyholders in the form of aggregate benefits under the policy at least 60% of the aggregate amount of premiums collected.

7. Notwithstanding subdivision 1 of this subsection, for Medicare supplement policies issued prior to July 30, 1992, sold on an individual rather than group basis shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 60% of the aggregate amount of premiums collected.

8. Notwithstanding subdivisions 1 through 4 of this subsection, all health insurance coverage issued in the individual market shall be originally priced to meet a minimum 75% loss ratio and shall be guaranteed renewable or noncancellable.

9. Notwithstanding subdivisions 1 through 4 of this subsection, all health insurance coverage issued in the small group market shall be originally priced to meet a minimum 75% loss ratio and shall be guaranteed renewable or noncancellable.

The above anticipated loss ratio standards do not apply to a type of coverage where such standards are in conflict with specific statutes or regulations.

B. The average annual premium per policy and per member shall be computed by the health insurance issuer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all policies (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation).

**14VAC5-130-70. Filing of a rate increase revision.**

A. Each rate revision submission shall include: (i) a new rate sheet and; (ii) an actuarial memorandum; and (iii) all information required in SERFF. For coverage issued in the individual or small group markets, the Unified Rate Review Template shall also be filed.

B. Actuarial memorandum. The actuarial memorandum shall contain the following information:

1. A description of the type of policy, including benefits, renewability, and issue age limits, and if applicable, whether the policy includes grandfathered or nongrandfathered plans or both.

2. The scope and reason for the premium or rate revision.

3. A comparison of the revised premiums with the current premium scale, including all percentage rate changes and any rating factor changes.

4. A statement of whether the revision applies only to new business, only to in-force business, or to both.

5. The estimated average annual premium per policy and per member, before and after the proposed rate increase revision. Where different changes by rating classification are being requested, the rate filing shall also include (i) the

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range of changes and (ii) the average overall change with a detailed explanation of how the change was determined.

6. ~~Past~~ Except for coverage issued in the small group market, historical and projected experience, as specified in 14VAC5-130-50-C submitted on Form 130 A, including:

a. Virginia and national historical experience as specified in 14VAC5-130-50 C and projections for future experience;

b. A statement indicating the basis for determining the rate revision (Virginia, national or blended);

c. If the basis is blended, the credibility factor assigned to the national experience;

~~a. Show~~ d. Earned Premiums (EP), Incurred Benefits (IB), Increase in Reserves (IR), and Incurred Loss Ratio = (IB + IR) ÷ (EP); and

~~b. e.~~ Any other available data the insurer health insurance issuer may wish to provide. The additional data may include, if available and appropriate, the ratios of actual claims to the claims expected according to the assumptions underlying the existing rates; substitution of actual claim run-offs for claim reserves and liabilities; accumulations of experience funds; substitution of net level policy reserves for preliminary term policy reserves; adjustments of premiums to an annual mode basis; or other adjustments or schedules suited to the form and to the records of the company. All additional data must be reconciled, as appropriate, to the required data.

7. Details and dates of all past rate increases on this form revisions, including the annual rate revisions members will experience as a result of this filing. For companies revising rates only annually, the rate revision should be identical to the current submission. For companies that have had more frequent rate revisions, the annual revision should reflect the compounding impact of all such revisions for the previous twelve months.

8. A description of how revised rates were determined, including the general description and source of each assumption used. For expenses, include percent of premium, dollars per policy, and/or dollars per unit of benefit on Form 130A. For claims, provide historical and projected claims by major service category for both cost and utilization on Form 130B.

9. If the rate revision applies to new business, provide the anticipated loss ratio and a description of how it was calculated.

10. If the rate revision applies to in-force business:

a. The anticipated future loss ratio and a description of how it was calculated; and

b. The estimated cumulative loss ratio, past historical and future anticipated, and a description of how it was calculated.

~~11. Minimum loss ratio presumed reasonable in 14VAC5-130-60-C~~ The loss ratio that was originally anticipated for the policy.

12. If 9, 10a, or 10b is less than 11, supporting documentation for the use of such premiums or rates.

13. The current number of Virginia policyholders and national members to which the revision applies for the most recent month for which such data is available, and either premiums in force, premiums earned, or premiums collected for such policyholders members in the year immediately prior to the filing of the rate increase revision.

14. Certification by a qualified actuary that, to the best of the actuary's knowledge and judgment, the rate filing is in compliance with applicable laws and regulations of this Commonwealth and the premiums are reasonable in relation to the benefits provided.

15. For coverage issued in the individual or small group markets, a certification by a qualified actuary of the actuarial value of each plan of benefits included and the AV calculation summary.

~~C. Reasonableness of benefits in relation to premiums. With respect to filings of rate revisions for a previously approved form, benefits shall be deemed reasonable in relation to premiums provided the following standards are met:~~

~~1. Both a and b as follows shall be at least as great as the standards in 14VAC5-130-60-C.~~

~~a. The anticipated loss ratio over the entire period for which the revised rates are computed to provide coverage;~~

~~b. The ratio of (1) to (2) where~~

~~(1) is the sum of the accumulated benefits, from the original effective date of the form to the effective date of the revision, and the present value of future benefits, and~~

~~(2) is the sum of the accumulated premiums from the original effective date of the form to the effective date of the revision and the present value of future premiums,~~

~~such present values to be taken over the entire period for which the revised rates are computed to provide coverage, and such accumulated benefits and premiums to include an explicit estimate of the actual benefits and premiums from the last date as of which an accounting has been made to the effective date of the revision. Interest, at a rate consistent with that assumed in the determination of premiums, shall be used in the calculation of this loss ratio.~~

~~2. If an insurer wishes to charge a premium for policies issued on or after the effective date of the revision which is different from the premium charged for such policies issued prior to the revision date, then with respect to policies issued prior to the effective date of the revision the requirements of subdivision C-1 above must be satisfied, and with respect to policies issued on and after the effective date of the revision, the standards are the same as~~

~~in 14VAC5-130-60 C, except that the average annual premium shall be determined based on an actual rather than an anticipated distribution of business.~~

**14VAC5-130-75. Reasonableness of benefits in relation to revised premiums.**

A. For individual accident and sickness insurance, group Medicare supplement insurance, and coverage issued in the individual market, with respect to filings of rate revisions for a previously approved form, benefits shall be deemed reasonable in relation to premiums provided that both subdivisions 1 and 2 of this subsection shall be at least as great as the standards in 14VAC5-130-70 B 11.

1. The anticipated loss ratio over the entire period for which the revised rates are computed to provide coverage; and
2. The ratio of (a) to (b) where (a) is the sum of the accumulated benefits, from the original effective date of the form to the effective date of the revision, and the present value of future benefits, and (b) is the sum of the accumulated premiums from the original effective date of the form to the effective date of the revision and the present value of future premiums.

Present values shall be taken over the entire period for which the revised rates are computed to provide coverage. Accumulated benefits and premiums shall include an explicit estimate of benefits and premiums from the last accounting date to the effective date of the revision. Interest, at a rate consistent with that assumed in the original determination of premiums shall be used in the calculation of this loss ratio.

B. For coverage issued in the small group market, the anticipated loss ratio over the entire period for which the revised rates are computed to provide coverage shall be at least as great as the standards in 14VAC5-130-70 B 11.

C. If a health insurance issuer wishes to charge a premium for policies issued on or after the effective date of the rate revision that is different from the premium charged for such policies issued prior to the revision date, then with respect to policies issued prior to the effective date of the revision the requirements of subsection A of this section must be satisfied, and with respect to policies issued on and after the effective date of the revision, the standards are the same as in 14VAC5-130-65, except that the average annual premium shall be determined based on an actual rather than an anticipated distribution of business.

**14VAC5-130-80. Special considerations relating to new forms and rate increases. (Repealed.)**

~~The Commission, in certain limited instances, may approve new forms and rate revisions with loss ratios lower than those indicated in 14VAC5-130-60 C and 14VAC5-130-70 C. Any such approval will require justification based on the special circumstances that may be applicable.~~

**14VAC5-130-81. Risk pools and index rate.**

A. A health insurance issuer shall consider the claims experience of all enrollees in all health benefit plans, other than grandfathered plans, in the individual market to be members of a single risk pool.

B. A health insurance issuer shall consider the claims experience of all enrollees in all health plans, other than grandfathered plans, in the small group market to be members of a single risk pool.

C. Each plan year or policy year, as applicable, a health insurance issuer shall establish an index rate based on the total combined claims costs for providing essential health benefits within the single risk pool of the individual or small group market. The index rate may be adjusted on a market-wide basis based on the total expected market-wide payments and charges under the risk adjustment and reinsurance programs in this Commonwealth. The premium rate for all of the health insurance issuer's plans shall use the applicable index rate, as adjusted in accordance with subsection D of this section.

D. A health insurance issuer may vary premium rates for a particular plan from its index rate for a relevant state market based only on the following actuarially justified plan-specific factors:

1. The actuarial value and cost-sharing design of the plan.
2. The plan's provider network, delivery system characteristics, and utilization management practices.
3. The benefits provided under the plan that are in addition to the essential health benefits. These additional benefits shall be pooled with similar benefits within a single risk pool and the claims experience from those benefits shall be utilized to determine rate variations for plans that offer those benefits in addition to essential health benefits.
4. Administrative costs, excluding health benefit exchange user fees.
5. With respect to catastrophic plans, the expected impact of the specific eligibility categories for those plans.

**14VAC5-130-90. Monitoring of experience.**

A. The ~~Commission~~ commission may prescribe procedures for the effective monitoring of actual experience under ~~policy forms~~ any form subject to this chapter.

B. The ~~Commission~~ commission may request information subsequent to approval of a policy form or rate revision so that it may determine whether premium rates are reasonable in relation to the benefits provided as specified herein in ~~14VAC5-130-60 C~~ 14VAC5-130-65 and ~~14VAC5-130-70 C~~ 14VAC5-130-75.

C. If the commission finds that the premium rate filed in accordance with this chapter is or will not meet the originally filed and approved loss ratio, the commission may require appropriate rate adjustments, premium refunds or premium credits as deemed necessary for the coverage to conform with

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the minimum loss ratio standards set forth in 14VAC5-130-65, and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current rates by the health insurance issuer for the coverage. Detailed supporting documents will be required as necessary to justify the adjustment.

**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 (14VAC5-130)

Form 130A. Template for data supporting individual rate revision filings (eff. 7/13).

Form 130B. Trend analysis details (eff. 7/13).

Unified rate review template, at  
[http://www.serff.com/plan\\_management\\_data\\_templates.htm](http://www.serff.com/plan_management_data_templates.htm)

VA.R. Doc. No. R13-3605; Filed April 2, 2013, 11:31 a.m.

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# GENERAL NOTICES/ERRATA

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## STATE AIR POLLUTION CONTROL BOARD

### State Implementation Plan - Proposed Revision - § 110(a)(2) Infrastructure SIP for Nitrogen Dioxide

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to assure necessary authorities are contained in the state implementation plan (SIP) to allow areas to attain and maintain the national ambient air quality standard (NAAQS) for nitrogen dioxide (NO<sub>2</sub>). The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comment on the issue of whether the plan demonstrates the Commonwealth's compliance with federal Clean Air Act requirements related to general state plan infrastructure for controlling NO<sub>2</sub>.

Public comment period: April 22, 2013, to May 22, 2013.

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

Description of proposal: The proposed revision will consist of a demonstration of compliance with the general requirements of § 110(a)(2) of the federal Clean Air Act for the 2010 NO<sub>2</sub> NAAQS.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All information received is part of the public record.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.state.va.us/Programs/Air/PublicNotices/airpl>)

ansandprograms.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. Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (540) 676-4800,
3. Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,
4. Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (804) 582-5120,
5. Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,
6. Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,
7. Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and
8. Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Doris A. McLeod, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4510, TDD (804) 698-4021, or email [doris.mcleod@deq.virginia.gov](mailto:doris.mcleod@deq.virginia.gov).

## DEPARTMENT OF CONSERVATION AND RECREATION

### Total Maximum Daily Load for Cripple Creek

The Department of Conservation and Recreation (DCR) will host a public meeting to discuss the development of a water quality improvement plan for reducing fecal bacteria contamination in Cripple Creek within Smyth and Wythe Counties, Virginia. The purpose of the meeting is to provide an overview of the process for developing the plan and solicit feedback from local stakeholders regarding the residential and agricultural land uses and practices that are needed in order to improve water quality.

The public meeting will be held at the Speedwell Elementary School located at 6820 Cedar Springs Road in Speedwell, VA, on April 30, 2013, from 6:30 p.m. to 8:30 p.m.

Fecal bacteria levels in Cripple Creek do not meet the state bacteria water quality standard designed to protect the recreational use (e.g., swimming, wading, kayaking, etc.) of this stream. Due to this water quality impairment, a total maximum daily load (TMDL) for fecal bacteria has been

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## General Notices/Errata

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developed by the Virginia Department of Environmental Quality. A TMDL describes the amount of pollution that a water body can take in and still meet water quality standards. The bacteria TMDL study for Cripple Creek was completed in September 2009. The Bacteria TMDL Development for Cripple Creek study report can be found on DEQ's website at: <http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/newrvr/crippleec.pdf>.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of a plan for water bodies that have approved TMDLs, that when implemented, will result in the achievement of TMDLs and attainment of water quality standards. The Virginia Department of Conservation and Recreation has been authorized to develop water quality improvement plans to implement TMDLs (called a TMDL Implementation Plan or an IP). An IP must provide measurable goals and the date of expected achievement of water quality objectives. An IP must also contain the corrective actions needed to attain the water quality standard(s) and their associated costs, benefits, and environmental impacts.

Questions or information requests should be addressed to Patrick Lizon, TMDL/Watershed Field Coordinator, Department of Conservation and Recreation, 355 Deadmore Street, Abingdon, VA 24210, telephone (276) 676-5529, or email [patrick.lizon@dcr.virginia.gov](mailto:patrick.lizon@dcr.virginia.gov).

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### **Total Maximum Daily Load for Bull Creek, Levisa Fork, North and South Fork Pound River, and Powell River**

Announcement of an effort to restore water quality in Bull Creek, Buchanan County; Levisa Fork, Buchanan County; North and South Fork Pound River, Wise County; and Powell River, Lee and Wise Counties, Virginia.

Public meeting location: Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, on April 25, 2013, from 6 p.m. to 8 p.m.

Purpose of notice: To seek public comment and announce a public meeting on phased revisions for water quality improvement studies by the Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Mines, Minerals and Energy (DMME) for the four coalfield streams.

Meeting description: Final public meeting on the phased revisions to the TMDLs.

Description of study: DEQ and DMME have been working to identify sources pollutants affecting the aquatic organisms in the waters of Bull Creek, Levisa Fork, North and South Pound River, and Powell River. During the development of the studies the pollutants impairing the aquatic community were identified and total maximum daily loads (TMDLs)

were developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels must be reduced to the TMDL amount.

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

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, April 25, 2013, to May 25, 2013. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review the draft monitoring plan: The draft monitoring plan, the phased TMDL reports, and the presentation from the public meeting are available from the contact below or on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs.aspx>.

Contact for additional information: Martha Chapman, Regional TMDL Coordinator, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4800, FAX (276) 676-4899, or email [martha.chapman@deq.virginia.gov](mailto:martha.chapman@deq.virginia.gov).

### DEPARTMENT OF MOTOR VEHICLES

#### **Notice of Periodic and Small Business Impact Review**

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Motor Vehicles is conducting a periodic and small business impact review of:

1. 24VAC20-40, Rules and Regulations on Accident Prevention Courses for Older Drivers
2. 24VAC20-110, T&M Vehicle, Trailer, and Motorcycle Dealer Advertising Practices and Enforcement Regulations

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

The purpose of this review is to determine whether these regulations should be terminated, amended, or retained in their current form. Public comment is sought on the review of any issue relating to these regulations, including whether the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the

economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

The comment period begins April 22, 2013, and ends May 13, 2013.

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 Melissa K. Velazquez, Senior Policy Analyst, 2300 West Broad Street, Richmond, VA 23269, telephone (804) 367-1844, FAX (804) 367-4336, or email [melissa.velazquez@dmv.virginia.gov](mailto:melissa.velazquez@dmv.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 and small business impact review will be posted on the Town Hall and published in the Virginia Register of Regulations.

## STATE WATER CONTROL BOARD

### Proposed Consent Order for the County of Charles City

Enforcement actions have been proposed for the County of Charles City for violations that occurred at County of Charles City Administration Building WWTF, Charles City, Virginia; the County of Charles City Hideaway STP; the County of Charles City Mt. Zion and Rustic WTP; the County of Charles City Roxbury Industrial Center WWTP; and the County of Charles City Ruthville WWTP. The State Water Control Board proposes to issue consent special orders with a civil penalty and a Supplemental Environmental Project (SEP) to the County of Charles City to address noncompliance with State Water Control Board law. A description of the proposed actions is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Kyle Ivar Winter, P.E., will accept comments by email at [kyle.winter@deq.virginia.gov](mailto:kyle.winter@deq.virginia.gov), FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from April 22, 2013, to May 24, 2013.

### Proposed Consent Order for Coeburn-Norton-Wise Regional Waste Water Treatment Authority

An enforcement action has been proposed for the Coeburn-Norton-Wise Regional Waste Water Treatment Authority for violations in Wise County. The proposed consent order addresses violations of the State Water Control Law and VPDES Permit No. VA0077828 at the Coeburn-Norton-Wise Regional Wastewater Treatment Plant. The consent order contains a schedule for upgrade/expansion of the Coeburn-Norton-Wise Regional Wastewater Treatment Plant. A description of the proposed action is available at the Department of Environmental Quality office named below or

online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Ralph Hilt will accept comments by email at [ralph.hilt@deq.virginia.gov](mailto:ralph.hilt@deq.virginia.gov), FAX at (276) 676-4899, or postal mail at Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, from April 23, 2013, to May 23, 2013.

### Proposed Consent Order for George's Chicken, L.L.C.

An enforcement action has been proposed for George's Chicken, L.L.C. (Edinburg plant) for violations in Shenandoah County. A proposed consent order describes a settlement to resolve permit effluent limitation violations at its wastewater treatment plant. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Steven W. Hetrick will accept comments by email at [steven.hetrick@deq.virginia.gov](mailto:steven.hetrick@deq.virginia.gov), FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from April 22, 2013, to May 22, 2013.

### Proposed Consent Order for the Holtzman Oil Corporation

An enforcement action has been proposed for the Holtzman Oil Corporation for alleged violations in Loudoun County. The action seeks to resolve the unauthorized discharge of oil to state waters. The consent order describes a settlement to resolve these violations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Daniel Burstein will accept comments by email at [daniel.burstein@deq.virginia.gov](mailto:daniel.burstein@deq.virginia.gov), FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from April 23, 2013, through May 23, 2013.

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 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/>.

**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

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## General Notices/Errata

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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

#### STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-193. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concrete Products Facilities.**

Publication: 29:16 VA.R. 1993-2017 April 8, 2013.

Correction to Final Regulation:

Page 1997, 9VAC25-193-60 C 17, line 3, delete "9VAC25-70" and insert "9VAC25-193"

VA.R. Doc. No. R12-3072