



VIRGINIA

REGISTER OF REGULATIONS

VOL. 30 ISS. 2

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

SEPTEMBER 23, 2013

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Virginia Code Commission

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

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

THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 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; **Karen Perrine**, Assistant Registrar; **Anne Bloomsburg**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

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

September 2013 through August 2014

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 (Tuesday)	December 16, 2013
30:9	December 11, 2013	December 30, 2013
30:10	December 23, 2013 (Monday)	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
30:18	April 16, 2014	May 5, 2014
30:19	April 30, 2014	May 19, 2014
30:20	May 14, 2014	June 2, 2014
30:21	May 28, 2014	June 16, 2014
30:22	June 11, 2014	June 30, 2014
30:23	June 25, 2014	July 14, 2014
30:24	July 9, 2014	July 28, 2014
30:25	July 23, 2014	August 11, 2014
30:26	August 6, 2014	August 25, 2014

*Filing deadlines are Wednesdays unless otherwise specified.

REGULATIONS

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

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.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Proposed Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: 1VAC20-10. Public Participation Guidelines (amending 1VAC20-10-10, 1VAC20-10-40, 1VAC20-10-50, 1VAC20-10-60, 1VAC20-10-80, 1VAC20-10-90, 1VAC20-10-100, 1VAC20-10-120).

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

Public Hearing Information:

November 25, 2013 - 10 a.m. - House Room C, General Assembly Building, 910 Capitol Street, Richmond, VA

Public Comment Deadline: October 7, 2013.

Agency Contact: Justin Riemer, Deputy Secretary, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8904, or email justin.riemer@sbe.virginia.gov.

Summary:

The amendments provide that the State Board of Elections website, as well as the Virginia Regulatory Town Hall website, can be used at the board's discretion when seeking public comment on regulations. The amendments also address the method by which and reduce the time period within which public comment for exempt regulations is received.

1VAC20-10-10. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the State Board of Elections.

"Approving authority" means the State Board of Elections established pursuant to § 24.2-103 of the Code of Virginia as the legal authority to adopt regulations.

"Board" means the State Board of Elections, which is the unit of state government empowered by Title 24.2 of the Code of Virginia to make rules and regulations for registration of voters and elections. Actions specified in this

chapter may be fulfilled by state employees as delegated by the agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members of the board will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"State Board of Elections website" means the website operated by the Virginia State Board of Elections at <http://www.sbe.virginia.gov>, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration by the board and makes this information viewable to the public.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at <http://www.townhall.virginia.gov>, which has online public comment forums and displays information about

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regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended, and repealed regulations of state agencies, which is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

1VAC20-10-40. Public comment.

A. Whenever directed by statute or upon its own initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

B. In considering any nonemergency, exempt regulatory action, the board ~~shall, in its discretion, will~~ afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall or through the State Board of Elections website.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; any economic impact analysis of the proposed regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

C. ~~The agency~~ If the board, in its discretion, affords interested persons an opportunity to submit data, views, and arguments, the board shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of ~~30~~ 14 calendar days following the publication of the notice of proposed exempt regulatory action.

2. For a minimum of ~~30~~ 14 calendar days following the publication of a repropoed regulation.

3. To the extent reasonably possible following the publication of a proposed emergency regulation.

4. For a minimum of ~~24~~ seven calendar days following the publication of a notice of periodic review.

5. Not later than ~~24~~ seven calendar days following the publication of a petition for rulemaking.

D. The agency may determine if any of the comment periods listed in subsection C of this section shall be extended or reduced if necessary.

E. If the board finds that one or more changes with substantial impact have been made to a proposed regulation, it may allow an additional 30 calendar days to solicit additional public comment on the changes.

~~F. If practicable, the board shall send a draft of the board's summary description of public comment to all public~~

~~commenters on the proposed regulation at least five days before final adoption of the regulation.~~

1VAC20-10-50. Petition for rulemaking.

A. Any person may petition the board to consider a regulatory action.

B. A petition shall include sufficient information to understand and evaluate the proposed action and contact the person responsible for presenting it. The following is a noninclusive list of information typically needed to the extent available:

1. The petitioner's name, mailing address, email address, and telephone number;

2. The petitioner's interest in the proposed action;

3. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections;

4. Reference to the legal authority of the agency to take the action requested;

5. Statement of the need and justification for the proposed action;

6. Statement of the impact on the petitioner and other affected persons; and

7. Supporting documents, if applicable.

C. The agency shall receive, consider, and respond to a petition and shall have the sole authority to dispose of the petition. The board may require a petitioner to reimburse copying costs associated with a petition.

D. The petition shall be posted on the State Board of Elections website or the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

1VAC20-10-60. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if the proposed text of the regulation is posted on the State Board of Elections website or on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate.

1VAC20-10-80. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the ~~Virginia Regulatory State Board of Elections website or the~~ Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with § 2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

1VAC20-10-90. Public hearings on regulations.

A. The board shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The board may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The Governor requests the board to hold a public hearing; or
2. The board receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of proposed regulatory action.

D. Notice of any public hearing shall be posted on the State Board of Elections website or the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The board shall also notify those persons who requested a hearing under subdivision C 2 of this section.

1VAC20-10-100. Effective date and posting to agency website.

Regulations adopted by the board shall be effective as of the date stated in the regulation, which may provide conditions, ~~including preclearance required under the federal Voting Rights Act,~~ and in no event before they are published in the Register of Regulations. All adopted regulations shall be posted to ~~the agency website~~ the Internet within three business days after they become effective.

1VAC20-10-120. Periodic review of regulations.

A. Following each presidential election, the board shall conduct a periodic review of its regulations consistent with an executive order issued by the Governor to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the State Board of Elections website or the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R14-3850; Filed August 23, 2013, 2:42 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-20. General Administration.**

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

Effective Date: September 23, 2013.

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

Summary:

This regulatory action updates the Virginia state plan under the Help America Vote Act of 2002.

DOCUMENTS INCORPORATED BY REFERENCE (1VAC20-20)

[Security Requirements for Cryptographic Modules, FIPS PUB 140-2, issued May 25, 2001, including change notices through December 3, 2002, National Institute of Standards and Technology, U.S. Department of Commerce; http://csre.nist.gov/publications/fips/fips140-2/fips1402.pdf](http://csre.nist.gov/publications/fips/fips140-2/fips1402.pdf)

~~Virginia State Plan, Help America Vote Act of 2002, adopted July 2003, amended August 2005, and July 2006, Virginia State Board of Elections~~

[Virginia State Plan - 2012, Help America Vote Act of 2002, adopted March 2012, Virginia State Board of Elections](#)

[Help America Vote Act of 2002 Performance Goals, Virginia State Board of Elections, June 19, 2006 \(Virginia State Board of Elections Policy 2006-004\)](#)

[State Board of Election Minutes of December 2, 2004, as amended September 14, 2010](#)

VA.R. Doc. No. R14-3811; Filed August 26, 2013, 3:49 p.m.

TITLE 8. EDUCATION

LONGWOOD UNIVERSITY

Final Regulation

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

Title of Regulation: **8VAC50-11. Motor Vehicle Parking and Traffic Regulation (adding 8VAC50-11-10 through 8VAC50-11-70).**

Statutory Authority: § 23-188 of the Code of Virginia.

Regulations

Effective Date: September 10, 2013.

Agency Contact: Robert Beach, Chief of Police, 201 High Street, Farmville, VA 23909, telephone (434) 395-2091, or email beachrr@longwood.edu.

Summary:

The regulatory action updates the parking regulations for Longwood University and includes provisions regarding (i) registration for parking, (ii) designation of parking zones and categories, (iii) types of parking violations, and (iv) the appeals process.

CHAPTER 11

MOTOR VEHICLE PARKING AND TRAFFIC

REGULATION

8VAC50-11-10. Definitions.

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

"24/7" means 24 hours a day, seven days a week.

"Campus" means any property owned, leased, or controlled by Longwood University.

"University" means Longwood University.

8VAC50-11-20. Registration.

A. Scope. Faculty, staff, commuter students, and resident students (except freshmen as provided in 8VAC11-60) are permitted to have vehicles on campus. The university, however, cannot guarantee a parking space on campus, nor is it liable for damages to or losses from any vehicle parked on the campus. The university has a 24/7 parking policy in that all vehicles must remain in their decal zone throughout the year. Other parking restrictions may be imposed for appropriate special events, activities, and conditions.

B. Parking allocation. On-campus parking allocation will be Faculty/Staff, Commuter, and Residential. Additional descriptions as to exact identification and locations of these parking areas will be provided on the Longwood Police Department, Office of Parking Services website as well as in a booklet provided to all who purchase parking decals.

C. Registration requirement. Vehicles utilizing campus parking facilities must be registered and display the appropriate permit. All outstanding parking citations must be paid prior to vehicle registration. Since parking regulations are enforced year round, vehicles should be registered prior to the start of the semester.

D. Number of vehicles. Faculty and staff members will be issued hanging tags. These permits are transferable to other family vehicles. Only one registered vehicle per permit may be present on campus at any time.

E. Motorcycles. Motorcycles have the same status as automobiles. Owners must abide by the same requirements concerning registration, parking, and operation on campus.

F. Decals.

1. Decals are to be displayed on the vehicle's left rear window.

2. Decals must be secured with their own adhesive. Scotch tape, etc. may not be used.

3. Student decals are nontransferable to other vehicles. Additional vehicles must have their own decals.

4. Hanging tags must be displayed per instructions.

5. Students and employees should report any changes to vehicle registration information to the Parking Services Manager as soon as possible (e.g., tag number change, residence change, or new car).

G. Guest's vehicle. To register a guest's vehicle during business hours, a guest permit must be obtained from the Parking Services Office. After business hours, an individual must go to the Longwood University Police Department for assistance.

8VAC50-11-30. Parking.

A. Daily parking zones. This chapter and all parking policies of the university are in effect 24/7. All vehicles must be parked in their specific decal zone 24/7.

B. External law. Town, county, and state laws must be observed when parking on the university campus.

C. Parking prohibitions. Parking in fire zones, loading zones, and areas where the curbs are painted yellow is strictly prohibited.

D. Town streets. Parking on the Town of Farmville streets is at the driver's risk. University parking decals do not authorize parking in the Town of Farmville "Resident Only" parking areas. The Farmville Police patrol these areas and will issue town citations if violations are observed.

E. Visitor parking. A limited number of two-hour visitor parking spaces are available on campus. Students, faculty, and staff of the university may not use these spaces at any time, as students, faculty, and staff of the university are not considered visitors to the campus. Visitor parking spaces are designated at the Craft Lot for use by prospective students and university visitors only.

F. Guest parking. If a guest's vehicle is to be on campus anytime, the vehicle must display a guest parking permit. Failure to register a guest's vehicle is not grounds for citation appeal.

G. Loading/unloading limitations. Loading/unloading locations have been designated throughout campus. Parking in these areas is limited to 10 minutes, and hazard lights must be used.

H. Handicapped parking. Persons requiring use of handicapped spaces on campus or Town of Farmville streets must display a permit from the Virginia Department of Motor Vehicles. Temporary (seven-day) medical permits may be obtained from the Longwood University Office of Disability Services.

I. Exceptions for freshman. Freshmen are permitted to have vehicles on campus by written permission only. Freshmen must contact the Parking Services Manager to obtain the required written permission.

J. Brock Commons Garage. Student use of the Brock Commons Garage is restricted at all times. Students are not allowed to park in the garage regardless of time of day or day of the week.

8VAC50-11-40. Parking violations.

A. Responsibility for enforcement. The Parking Services Office of the Longwood University Police Department is charged with the enforcement of all parking regulations.

B. Parking citations. Parking citations for unregistered or improperly parked vehicles are issued year round, whenever the university is open, regardless if classes are in session or not.

C. Payment. Parking citations must be paid or appealed within five full working days (Monday-Friday), excluding holidays.

1. Timeliness. Drivers must pay fines in a timely fashion. Unpaid fines may be transmitted to the Virginia Department of Taxation or to a collection agency. A hold will be placed on the records of any student who has unpaid fines. If the vehicle appears on campus after suspension of privileges, (i) the vehicle may be towed, (ii) a \$50 fine may be assessed, (iii) disciplinary action may be taken, or (iv) any combination of (i), (ii), and (iii) may occur. Seniors will have a hold placed on their records prior to graduation unless all fines have been paid. Flagrant disregard of the parking regulations may result in revocation of parking privileges.

2. Multiple unpaid citations. If a driver accumulates three or more unpaid parking citations, the driver's vehicle may be towed at the owner's expense.

3. Parking suspensions. If a driver accumulates five tickets in one semester, his privilege to park on campus may be suspended. Suspension is for the remainder of the current semester and all of the next. No refund of unused parking permit balances is made in these instances. The Parking Citation Appeals Committee hears appeals for these suspensions.

8VAC50-11-50. Parking Citation Appeals Committee.

A. Role. The purposes of the Parking Citation Appeals Committee are to review all appealed parking citations and render a final decision and review appeals for the reinstatement of suspended parking privileges.

B. Appeal form. An appeal for each citation issued must be submitted in writing on an appeals form within five working days of the date listed on the citation, or the right to appeal is forfeited. If appeal is denied, payment is due upon receipt of the notification letter. Appeal forms are available on <https://mylongwood.edu> at Automobile Registration under the

Student Life tab, in the Parking Services Office in Graham Hall, and at Dispatch in the Dorrill Dining Hall.

C. Rationale for appeal. An appeal is based on extenuating circumstances and should not be filed if an individual has clearly failed to observe the university parking rules and regulations.

D. Decisions. Appeals are decided in one of the following ways: (i) appeal denied; (ii) appeal accepted; or (iii) appeal denied, fee reduced. Students must contact the Parking Services Office for information.

8VAC50-11-60. Resident freshmen motor vehicles.

Freshmen living in residence halls are not permitted to bring motor vehicles to campus or to Farmville and vicinity. Upperclass students are not permitted to register cars for freshmen. Students who bring unauthorized motor vehicles to campus or to Farmville and vicinity are subject to sanction under the university's conduct standards. Requests for exceptions to this section must be made to the Parking Services Manager. Freshmen students will lose their parking rights if three or more citations are issued to their vehicles. Permit fees are not refunded.

8VAC50-11-70. Inclement weather parking.

During times when snowfall or ice accumulation is predicted for the Farmville area, parking will be restricted from the campus streets and commuter and faculty/staff lots so that the removal process can be completed. Students will be contacted by an email announcement when this section is in effect.

FORMS (8VAC50-11)

[Parking Appeal Form, Longwood University Police Department \(undated\)](#)

VA.R. Doc. No. R14-3757; Filed September 10, 2013, 2:36 p.m.



TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: Enactment 7 of Chapters 756 and 793 of the 2013 Acts of Assembly transfers the powers related to administration and implementation of the Virginia Stormwater Management Act, the Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act from the Virginia Soil and Water Conservation Board to the State Water Control Board. Pursuant to enactment 8 of Chapters 756 and 793, initial actions of the State Water Control Board to adopt, with necessary amendments, the regulations implementing these programs are exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

Title of Regulation: 9VAC25-830. Chesapeake Bay Preservation Area Designation and Management

Regulations

Regulations (adding 9VAC25-830-10 through 9VAC25-830-280).

Statutory Authority: §§ 62.1-44.15:69 and 62.1-44.15:72 of the Code of Virginia.

Effective Date: October 23, 2013.

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Summary:

The amendments reflect changes made by Chapters 756 and 793 of the 2013 Acts of Assembly regarding the transfer of the Chesapeake Bay Management Program regulations from the Virginia Soil and Water Conservation Board to the State Water Control Board. These conforming amendments change the chapter and section numbers so that the regulation appears under the State Water Control Board in the Virginia Administrative Code and update the agency name, Code of Virginia citations, and Virginia Administrative Code cross references to reflect the change in administration of the program from the Department of Conservation and Recreation and Virginia Soil and Water Conservation Board to the Department of Environmental Quality and State Water Control Board. In addition, the amendments (i) update the 1997 edition of the Department of Forestry's best management practices for water quality, which is incorporated by reference in 9VAC25-830-130, to the March 2011 edition; (ii) delete the requirement that local governments notify the board of all development requiring water quality impact assessments in 9VAC25-830-140 to conform to Chapters 785 and 819 of the 2013 Acts of Assembly; (iii) add a provision delegating certain authority of the State Water Control Board to the Director of the Department of Environmental Quality; and (iv) make clarifying changes.

CHAPTER ~~90~~ 830

CHESAPEAKE BAY PRESERVATION AREA DESIGNATION AND MANAGEMENT REGULATIONS

Part I Introduction

~~4VAC50-90-10.~~ 9VAC25-830-10. Application.

The board is charged with the development of regulations which establish criteria that will provide for the protection of water quality, and that also will accommodate economic development. All counties, cities and towns in Tidewater Virginia shall comply with this chapter. Other local governments not in Tidewater Virginia may use the criteria and conform their ordinances as provided in this chapter to protect the quality of state waters in accordance with § ~~40.1-2410~~ 62.1-44.15:75 of the Code of Virginia.

~~4VAC50-90-20.~~ 9VAC25-830-20. Authority for chapter.

This chapter is issued under the authority of § ~~40.1-2407~~ 62.1-44.15:72 of the Code of Virginia (the Chesapeake Bay Preservation Act, hereinafter "the Act").

~~4VAC50-90-30.~~ 9VAC25-830-30. Purpose of chapter.

A. The purpose of this chapter is to protect and improve the water quality of the Chesapeake Bay, its tributaries, and other state waters by minimizing the effects of human activity upon these waters and implementing the Act, which provides for the definition and protection of certain lands called Chesapeake Bay Preservation Areas, which if improperly used or developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries.

B. This chapter establishes the criteria that counties, cities and towns (hereinafter "local governments") shall use to determine the extent of the Chesapeake Bay Preservation Areas within their jurisdictions. This chapter establishes criteria for use by local governments in granting, denying or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas. This chapter identifies the requirements for changes which local governments shall incorporate into their comprehensive plans, zoning ordinances and subdivision ordinances and employ to ensure that the use and development of land in Chesapeake Bay Preservation Areas shall be accomplished in a manner that protects the quality of state waters pursuant to §§ ~~40.1-2409~~ 62.1-44.15:74 and ~~40.1-2414~~ 62.1-44.15:76 of the Act.

~~4VAC50-90-40.~~ 9VAC25-830-40. Definitions.

The following words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § ~~40.1-2404~~ 62.1-44.15:68 of the Act.

"Act" means the Chesapeake Bay Preservation Act ~~found in, Article 2.5~~ (§ 62.1-44.15:67 et seq.) of Chapter ~~24~~ 3.1 (§ ~~40.1-2400~~ et seq.) of Title ~~40.1~~ 62.1 of the Code of Virginia.

"Best management practice" means a practice, or combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

"Board" means the ~~Virginia Soil and Water Conservation Board~~ State Water Control Board.

"Buffer area" means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (~~4VAC50-90-70~~ 9VAC25-830-70 et seq.) of this chapter and § ~~40.1-2407~~ 62.1-44.15:74 of the Act. A Chesapeake Bay

Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

"Department" means the Department of ~~Conservation and Recreation~~ Environmental Quality.

"Development" means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures.

"Director" means the Director of the Department of ~~Conservation and Recreation~~ Environmental Quality.

"Erosion and Sediment Control Law" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Floodplain" means all lands that would be inundated by flood water as a result of a storm event of a 100-year return interval.

"Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula $RKLS/T$, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

"Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation Service.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt or compacted gravel surface.

"Infill" means utilization of vacant land in previously developed areas.

"Intensely Developed Areas" means those areas designated by the local government pursuant to ~~4VAC50-90-100~~ 9VAC25-830-100.

"Local governments" means counties, cities and towns. This chapter applies to local governments in Tidewater Virginia, as defined in ~~§ 40.1-2104~~ 62.1-44.15:68 of the Act, but the provisions of this chapter may be used by other local governments.

"Local program" means the measures by which a local government complies with the Act and this chapter.

"Local program adoption date" means the date a local government meets the requirements of subdivisions 1 and 2 of ~~4VAC50-90-60~~ 9VAC25-830-60.

"Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water 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, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act; in 33 CFR § 328.3b.

"Plan of development" means any process for site plan review in local zoning and land development regulations designed to ensure compliance with ~~§ 40.1-2109~~ 62.1-44.15:74 of the Act and this chapter, prior to issuance of a building permit.

"Public road" means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law (~~§ 40.1-560 et seq. of the Code of Virginia~~) and (ii) the Virginia Stormwater Management Act (~~§ 40.1-603.1 et seq. of the Code of Virginia~~). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government.

"Redevelopment" means the process of developing land that is or has been previously developed.

"Resource Management Area" means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area.

"Resource Protection Area" means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

"Silvicultural activities" means forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under § 58.1-3230 of the Code of Virginia.

"Substantial alteration" means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the Resource Management Area only.

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"Tidal shore" or "shore" means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

"Tidal wetlands" means vegetated and nonvegetated wetlands as defined in § 28.2-1300 of the Code of Virginia.

"Tidewater Virginia" means those jurisdictions named in § ~~10.1-2104~~ 62.1-44.15:68 of the Act.

"Use" means an activity on the land other than development including, but not limited to, agriculture, horticulture and silviculture.

"Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources facilities.

Part II

Local Government Programs

~~4VAC50-90-50.~~ 9VAC25-830-50. Local program development.

Local governments shall develop measures (hereinafter called "local programs") necessary to comply with the Act and this chapter. Counties and towns are encouraged to cooperate in the development of their local programs. In conjunction with other state water quality programs, local programs shall encourage and promote: (i) protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (ii) safeguarding the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv) reduction of existing pollution; and (v) promotion of water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of the Commonwealth.

~~4VAC50-90-60.~~ 9VAC25-830-60. Elements of program.

Local programs shall contain the elements listed below.

1. A map delineating Chesapeake Bay Preservation Areas.
2. Performance criteria applying in Chesapeake Bay Preservation Areas that employ the requirements in Part IV (~~4VAC50-90-120~~ 9VAC25-830-120 et seq.) of this chapter.

3. A comprehensive plan or revision that incorporates the protection of Chesapeake Bay Preservation Areas and of the quality of state waters, in accordance with criteria set forth in Part V (~~4VAC50-90-160~~ 9VAC25-830-160 et seq.) of this chapter.

4. A zoning ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, as set forth in Part VI (~~4VAC50-90-180~~ 9VAC25-830-180 et seq.) of this chapter, and (ii) requires compliance with all criteria set forth in Part IV (~~4VAC50-90-120~~ 9VAC25-830-120 et seq.) of this chapter.

5. A subdivision ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, as set forth in Part VI (~~4VAC50-90-180~~ 9VAC25-830-180 et seq.) of this chapter, and (ii) assures that all subdivisions in Chesapeake Bay Preservation Areas comply with the criteria set forth in Part IV (~~4VAC50-90-120~~ 9VAC25-830-120 et seq.) of this chapter.

6. A plan of development process prior to the issuance of a building permit to assure that use and development of land in Chesapeake Bay Preservation Areas is accomplished in a manner that protects the quality of state waters.

Part III

Chesapeake Bay Preservation Area Designation Criteria

~~4VAC50-90-70.~~ 9VAC25-830-70. Purpose.

The criteria in this part provide direction for local government designation of the ecological and geographic extent of Chesapeake Bay Preservation Areas. Chesapeake Bay Preservation Areas are divided into Resource Protection Areas and Resource Management Areas that are subject to the criteria in Part IV (~~4VAC50-90-120~~ 9VAC25-830-120 et seq.) and the requirements in Part V (~~4VAC50-90-160~~ 9VAC25-830-160 et seq.) of this chapter. In addition, the criteria in this part provide guidance for local government identification of areas suitable for redevelopment that are subject to the redevelopment criteria in Part IV (~~4VAC50-90-120 et seq.~~) of this chapter.

~~4VAC50-90-80.~~ 9VAC25-830-80. Resource Protection Areas.

A. At a minimum, Resource Protection Areas shall consist of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may cause significant degradation to the quality of state waters. In their natural condition, these lands provide for the removal, reduction or assimilation of sediments, nutrients and potentially harmful or toxic substances in runoff entering the bay and its tributaries, and minimize the adverse effects of human activities on state waters and aquatic resources.

B. The Resource Protection Area shall include:

1. Tidal wetlands;

2. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
3. Tidal shores;
4. Such other lands considered by the local government to meet the provisions of subsection A of this section and to be necessary to protect the quality of state waters; and
5. A buffer area not less than 100 feet in width located adjacent to and landward of the components listed in subdivisions 1 through 4 above, and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the Resource Protection Area notwithstanding the presence of permitted uses, encroachments, and permitted vegetation clearing in compliance with Part IV (~~4VAC50-90-120~~ 9VAC25-830-120 et seq.) of this chapter.

C. Designation of the components listed in subdivisions 1-4 of subsection B of this section shall not be subject to modification unless based on reliable, site-specific information as provided for in ~~4VAC50-90-110~~ 9VAC25-830-110 and subdivision 6 of ~~4VAC50-90-140~~ 9VAC25-830-140.

D. For the purpose of generally determining whether water bodies have perennial flow, local governments may use one of the following methods as long as the methodology is adopted into the local program and applied consistently: (i) designation of water bodies depicted as perennial on the most recent U.S. Geological Survey 7-1/2 minute topographic quadrangle map (scale 1:24,000) or (ii) use of a scientifically valid system of in-field indicators of perennial flow. However, site-specific determinations shall be made or confirmed by the local government pursuant to ~~4VAC50-90-110~~ 9VAC25-830-110.

~~4VAC50-90-90.~~ 9VAC25-830-90. Resource Management Areas.

A. Resource Management Areas shall include land types that, if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

B. A Resource Management Area shall be provided contiguous to the entire inland boundary of the Resource Protection Area. The following land categories shall be considered for inclusion in the Resource Management Area and, where mapping resources indicate the presence of these land types contiguous to the Resource Protection Area, should be included in designations of Resource Management Areas:

1. Floodplains;
2. Highly erodible soils, including steep slopes;
3. Highly permeable soils;

4. Nontidal wetlands not included in the Resource Protection Area; and

5. Such other lands considered by the local government to meet the provisions of subsection A of this section and to be necessary to protect the quality of state waters.

C. Resource Management Areas shall encompass a land area large enough to provide significant water quality protection through the employment of the criteria in Part IV (~~4VAC50-90-120~~ 9VAC25-830-120 et seq.) and the requirements in Parts II (~~4VAC50-90-50~~ 9VAC25-830-50 et seq.) and V (~~4VAC50-90-160~~ 9VAC25-830-160 et seq.) of this chapter.

1. Local governments with few or no Resource Management Area land types evident from available mapping resources should evaluate the relationships of the following land categories to water quality protection in making their Resource Management Area designations. The board will consider the degree to which these land categories are included when evaluating the consistency of a locality's Resource Management Area designation for achievement of significant water quality protection:

- a. Known Resource Management Area land types;
- b. Developable land within the jurisdiction;
- c. Areas targeted for redevelopment; and
- d. Areas served by piped or channelized stormwater drainage systems which provide no treatment of stormwater discharges.

2. Localities with no mapping resources or with mapping resources for only portions of their jurisdiction should evaluate the relationships of the following land categories to water quality protection in making their Resource Management Area designations. The board will consider the degree to which these land categories are included when evaluating the consistency of a local government's Resource Management Area designation for achievement of significant water quality protection. Furthermore, such designations may be considered an interim designation until such time as appropriate mapping resources become available if such resources are considered by the board to be useful in determining the Resource Management Area boundaries, in which case the board will reevaluate the interim Resource Management Area designations at a later date:

- a. Known Resource Management Area land types;
- b. Developable land within the jurisdiction;
- c. Areas targeted for redevelopment; and
- d. Areas served by piped or channelized stormwater drainage systems which provide no treatment of stormwater discharges.

3. Local governments should consider extending the Resource Management Area boundary to the remainder of the lot, parcel, or development project upon which Resource Management Area-type features are present.

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4. Local governments shall demonstrate how significant water quality protection will be achieved within designated Resource Management Areas, as well as by each local program as a whole, and to explain the rationale for excluding eligible Resource Management Area components that are not designated.

5. It is not the intent of the board, nor is it the intent of the Act or this chapter, to require that local governments designate all lands within their jurisdiction as Chesapeake Bay Preservation Areas. It is also not the intent of the board to discourage or preclude jurisdiction-wide designations of Resource Management Areas when the local government considers such designations appropriate, recognizing that greater water quality protection will result from more expansive implementation of the performance criteria. The extent of the Resource Management Area designation should always be based on the prevalence and relation of Resource Management Area land types and other appropriate land areas to water quality protection.

4VAC50-90-100, 9VAC25-830-100, Intensely Developed Areas.

A. At their option, local governments may designate Intensely Developed Areas as an overlay of Chesapeake Bay Preservation Areas within their jurisdictions. For the purposes of this chapter, Intensely Developed Areas shall serve as redevelopment areas in which development is concentrated as of the local program adoption date. Areas so designated shall comply with the performance criteria for redevelopment in Part IV (~~4VAC50-90-120~~ 9VAC25-830-120 et seq.) of this chapter.

B. Local governments exercising this option shall examine the pattern of residential, commercial, industrial and institutional development within Chesapeake Bay Preservation Areas. Areas of existing development and infill sites where little of the natural environment remains may be designated as Intensely Developed Areas provided at least one of the following conditions existed at the time the local program was originally adopted:

1. Development has severely altered the natural state of the area such that it has more than 50% impervious surface;
2. Public sewer and water systems, or a constructed stormwater drainage system, or both, have been constructed and served the area by the original local program adoption date. This condition does not include areas planned for public sewer and water or constructed stormwater drainage systems; or
3. Housing density is equal to or greater than four dwelling units per acre.

4VAC50-90-110, 9VAC25-830-110, Site-specific refinement of Chesapeake Bay Preservation Area boundaries.

Local governments shall, as part of their plan-of-development review process pursuant to subdivision 1 e of

~~4VAC50-90-240~~ 9VAC25-830-240 or during their review of a water quality impact assessment pursuant to subdivision 6 of ~~4VAC50-90-140~~ 9VAC25-830-140, ensure or confirm that (i) a reliable, site-specific evaluation is conducted to determine whether water bodies on or adjacent to the development site have perennial flow and (ii) Resource Protection Area boundaries are adjusted, as necessary, on the site, based on this evaluation of the site. Local governments may accomplish this by either conducting the site evaluations themselves or requiring the person applying to use or develop the site to conduct the evaluation and submit the required information for review.

Part IV

Land Use and Development Performance Criteria

4VAC50-90-120, 9VAC25-830-120, Purpose.

A. The purpose of this part is to achieve the goals of the Act and ~~4VAC50-90-50~~ 9VAC25-830-50 by establishing criteria to implement the following objectives: prevent a net increase in nonpoint source pollution from new development and development on previously developed land where the runoff was treated by a water quality protection best management practice, achieve a 10% reduction in nonpoint source pollution from development on previously developed land where the runoff was not treated by one or more water quality best management practices, and achieve a 40% reduction in nonpoint source pollution from agricultural and silvicultural uses.

B. In order to achieve these goals and objectives, the criteria in this part establish performance standards to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, maximize rainwater infiltration, and ensure the long-term performance of the measures employed.

C. The criteria in this part become mandatory upon the local program adoption date. They are supplemental to the various planning and zoning concepts employed by local governments in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas.

D. Local governments shall incorporate the criteria in this part into their comprehensive plans, zoning ordinances and subdivision ordinances, and may incorporate the criteria in this part into such other ordinances and regulations as may be appropriate, in accordance with §§ ~~10.1-2108~~ 62.1-44.15:74 and ~~10.1-2111~~ 62.1-44.15:76 of the Act and Parts V (~~4VAC50-90-160~~ 9VAC25-830-160 et seq.), VI (~~4VAC50-90-180~~ 9VAC25-830-180 et seq.), and VII (~~4VAC50-90-200~~ 9VAC25-830-200 et seq.) of this chapter. The criteria may be employed in conjunction with other planning and zoning concepts to protect the quality of state waters.

4VAC50-90-130, 9VAC25-830-130, General performance criteria.

Through their applicable land use ordinances, regulations and enforcement mechanisms, local governments shall

require that any use, development or redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance criteria:

1. No more land shall be disturbed than is necessary to provide for the proposed use or development.
2. Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development proposed.
3. All development exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development review process consistent with § 15.2-2286 A 8 of the Code of Virginia and subdivision 1 e of ~~4VAC50-90-240~~ 9VAC25-830-240.
4. Land development shall minimize impervious cover consistent with the proposed use or development.
5. Any land disturbing activity that exceeds an area of 2,500 square feet (including construction of all single family houses, septic tanks and drainfields, but otherwise as defined in § ~~40.1-560~~ 62.1-44.15:51 of the Code of Virginia) shall comply with the requirements of the local erosion and sediment control ordinance. Enforcement for noncompliance with the erosion and sediment control requirements referenced in this criterion shall be conducted under the provisions of the Erosion and Sediment Control Act ~~Law (§ 10.1-560 et seq. of the Code of Virginia)~~ and attendant regulations.
6. On-site sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:
 - a. Have pump-out accomplished for all such systems at least once every five years.
 - (1) If deemed appropriate by the local health department and subject to conditions the local health department may set, local governments may offer to the owners of such systems, as an alternative to the mandatory pump-out, the option of having a plastic filter installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter should satisfy standards established in the Sewage Handling and Disposal Regulations (12VAC5-610) administered by the Virginia Department of Health.
 - (2) Furthermore, in lieu of requiring proof of septic tank pump-out every five years, local governments may allow owners of on-site sewage treatment systems to submit documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.
 - b. For new construction, provide a reserve sewage disposal site with a capacity at least equal to that of the

primary sewage disposal site. This reserve sewage disposal site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if the lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building shall be prohibited on the area of all sewage disposal sites until the structure is served by public sewer or an on-site sewage treatment system which operates under a permit issued by the ~~State Water Control Board~~ board. All sewage disposal site records shall be administered to provide adequate notice and enforcement. As an alternative to the 100% reserve sewage disposal site, local governments may offer the owners of such systems the option of installing an alternating drainfield system meeting the following conditions:

- (1) Each of the two alternating drainfields in the system shall have, at a minimum, an area not less than 50% of the area that would otherwise be required if a single primary drainfield were constructed.
- (2) An area equaling 50% of the area that would otherwise be required for the primary drainfield site must be reserved for subsurface absorption systems that utilize a flow diversion device, in order to provide for future replacement or repair to meet the requirements for a sewage disposal system. Expansion of the primary system will require an expansion of this reserve area.
- (3) The two alternating drainfields shall be connected by a diversion valve, approved by the local health department, located in the pipe between the septic (aerobic) tank and the distribution boxes. The diversion valve shall be used to alternate the direction of effluent flow to one drainfield or the other at a time. However, diversion valves shall not be used for the following types of treatment systems:
 - (a) Sand mounds;
 - (b) Low-pressure distribution systems;
 - (c) Repair situations when installation of a valve is not feasible; and
 - (d) Any other approved system for which the use of a valve would adversely affect the design of the system, as determined by the local health department.
- (4) The diversion valve shall be a three-port, two-way valve of approved materials (i.e., resistant to sewage and leakproof and designed so that the effluent from the tank can be directed to flow into either one of the two distribution boxes).
- (5) There shall be a conduit from the top of the valve to the ground surface with an appropriate cover to be level with or above the ground surface.
- (6) The valve shall not be located in driveways, recreational courts, parking lots, or beneath sheds or other structures.

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(7) In lieu of the aforementioned diversion valve, any device that can be designed and constructed to conveniently direct the flow of effluent from the tank into either one of the two distribution boxes may be approved if plans are submitted to the local health department and found to be satisfactory.

(8) The local government shall require that the owner(s) alternate the drainfields every 12 months to permit the yearly resting of half of the absorption system.

(9) The local government shall ensure that the owner(s) are notified annually of the requirement to switch the valve to the opposite drainfield.

7. Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and, where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Act and this chapter.

a. Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

(1) For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service.

(2) For nutrient management, whenever nutrient management plans are developed, the operator or

landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15).

(3) For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.

b. A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.

c. The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the local Soil and Water Conservation District Board, which will be the plan-approving authority.

8. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the ~~January 1997 edition~~ Fifth Edition (March 2011) of "Virginia's Forestry Best Management Practices for Water Quality in Virginia Technical Guide Manual." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.

9. Local governments shall require evidence of all wetlands permits required by law prior to authorizing grading or other on-site activities to begin.

4VAC50-90-140, 9VAC25-830-140. Development criteria for Resource Protection Areas.

In addition to the general performance criteria set forth in ~~4VAC50-90-130~~ 9VAC25-830-130, the criteria in this section are applicable in Resource Protection Areas.

1. Land development may be allowed in the Resource Protection Area, subject to approval by the local government, only if it (i) is water dependent; (ii) constitutes redevelopment; (iii) constitutes development or redevelopment within a designated Intensely Developed Area; (iv) is a new use established pursuant to subdivision 4 a of this section; (v) is a road or driveway crossing satisfying the conditions set forth in subdivision 1 d of this section; or (vi) is a flood control or stormwater

management facility satisfying the conditions set forth in subdivision 1 e of this section.

a. A water quality impact assessment in accordance with subdivision 6 of this section shall be required for any proposed land disturbance.

b. A new or expanded water-dependent facility may be allowed provided that the following criteria are met:

- (1) It does not conflict with the comprehensive plan;
- (2) It complies with the performance criteria set forth in ~~4VAC50-90-130~~ 9VAC25-830-130;
- (3) Any nonwater-dependent component is located outside of Resource Protection Areas; and
- (4) Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

c. Redevelopment outside locally designated Intensely Developed Areas shall be permitted in the Resource Protection Area only if there is no increase in the amount of imperious cover and no further encroachment within the Resource Protection Area, and it shall conform to applicable erosion and sediment control and stormwater management criteria set forth in the Erosion and Sediment Control Law (~~§ 10.1-560 et seq. of the Code of Virginia~~) and the Virginia Stormwater Management Act (~~§ 10.1-603.2 et seq. of the Code of Virginia~~) and their attendant regulations, as well as all applicable stormwater management requirements of other state and federal agencies.

d. Roads and driveways not exempt under subdivision B 1 of ~~4VAC50-90-150~~ 9VAC25-830-150 and which, therefore, must comply with the provisions of this chapter, may be constructed in or across Resource Protection Areas if each of the following conditions is met:

- (1) The local government makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area;
- (2) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality;
- (3) The design and construction of the road or driveway satisfy all applicable criteria of this chapter, including submission of a water quality impact assessment; and
- (4) The local government reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with local government site plan, subdivision and plan of development approvals.

e. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may

be allowed in Resource Protection Areas provided such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act (~~§ 10.1-603.2 et seq. of the Code of Virginia~~) and its attendant regulations, and provided that (i) the local government has conclusively established that location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with ~~4VAC50-60-92~~ 9VAC25-870-92 of the Virginia Stormwater Management Program (VSMP) ~~Permit~~ regulations; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, ~~the Virginia Department of Conservation and Recreation, the Virginia Department of Environmental Quality department,~~ and the Virginia Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

2. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempt from the criteria of this part provided that they comply with subdivisions a and b of this subdivision 2: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails and pathways; and (iii) historic preservation and archaeological activities:

- a. Local governments shall establish administrative procedures to review such exemptions.
- b. Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control criteria in subdivision 5 of ~~4VAC50-90-130~~ 9VAC25-830-130.

3. Buffer area requirements. The 100-foot wide buffer area shall be the landward component of the Resource Protection Area as set forth in subdivision B 5 of ~~4VAC50-90-80~~ 9VAC25-830-80. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width. To minimize the adverse effects of human activities on the other components of the Resource Protection Area, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist.

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a. The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.

b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this chapter.

4. Permitted encroachments into the buffer area.

a. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

(1) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.

(2) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel.

(3) The encroachment may not extend into the seaward 50 feet of the buffer area.

b. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989, and March 1, 2002, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

(1) The lot or parcel was created as a result of a legal process conducted in conformity with the local government's subdivision regulations;

(2) Conditions or mitigation measures imposed through a previously approved exception shall be met;

(3) If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and

(4) The criteria in subdivision 4 a of this section shall be met.

5. Permitted modifications of the buffer area.

a. In order to maintain the functional value of the buffer area, existing vegetation may be removed, subject to approval by the local government, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows:

(1) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.

(2) Any path shall be constructed and surfaced so as to effectively control erosion.

(3) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practice incorporated into locally-adopted standards.

(4) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

b. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:

(1) Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—erosion control or nutrient management—is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15) administered by the Virginia Department of Conservation and Recreation.

(2) Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource

Conservation Service. A nutrient management plan, including soil tests, must be developed, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

(3) The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—either erosion control or nutrient management—is being implemented on the adjacent land.

(4) If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the local government, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

(5) In cases where the landowner or his agent or operator has refused assistance from the local soil and water conservation district in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the local government. The local government shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

6. Water quality impact assessment. A water quality impact assessment shall be required for any proposed development within the Resource Protection Area consistent with this part and for any other development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.

a. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in the Resource Protection Areas

consistent with the goals and objectives of the Act, this chapter, and local programs, and to determine specific measures for mitigation of those impacts. The specific content and procedures for the water quality impact assessment shall be established by each local government. Local governments should notify the board of all development requiring such an assessment. ~~Upon request, the board will provide review and comment regarding any water quality impact assessment in accordance with the advisory state review requirements of § 10.1-2112 of the Act.~~

b. The water quality impact assessment shall be of sufficient specificity to demonstrate compliance with the criteria of the local program.

7. Buffer area requirements for Intensely Developed Areas. In Intensely Developed Areas the local government may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, local governments shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation.

~~4VAC50-90-150.~~ 9VAC25-830-150. **Nonconformities, exemptions, and exceptions.**

A. Nonconforming uses and noncomplying structures.

1. Local governments may permit the continued use, but not necessarily the expansion, of any structure in existence on the date of local program adoption. Local governments may establish an administrative review procedure to waive or modify the criteria of this part for structures on legal nonconforming lots or parcels provided that:

- a. There will be no net increase in nonpoint source pollutant load; and
- b. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this part.

2. This chapter shall not be construed to prevent the reconstruction of pre-existing structures within Chesapeake Bay Preservation Areas from occurring as a result of casualty loss unless otherwise restricted by local government ordinances.

B. Public utilities, railroads, public roads, and facilities exemptions.

1. Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with (i) regulations promulgated pursuant to the Erosion and Sediment Control Law (~~§ 10.1-560 et seq. of the Code of Virginia~~) and the Virginia Stormwater Management Act (~~§ 10.1-603.2 et~~

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seq. of the Code of Virginia), (ii) an erosion and sediment control plan and a stormwater management plan approved by the ~~Virginia Department of Conservation and Recreation~~ department, or (iii) local water quality protection criteria at least as stringent as the above state requirements will be deemed to constitute compliance with this chapter. The exemption of public roads is further conditioned on the following:

a. Optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality; and

b. Local governments may choose to exempt (i) all public roads as defined in ~~4VAC50-90-40~~ 9VAC25-830-40, or (ii) only those public roads constructed by the Virginia Department of Transportation.

2. Construction, installation and maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines owned, permitted, or both, by a local government or regional service authority shall be exempt from the criteria in this part provided that:

a. To the degree possible, the location of such utilities and facilities should be outside Resource Protection Areas;

b. No more land shall be disturbed than is necessary to provide for the proposed utility installation;

c. All such construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality; and

d. Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this part.

C. Exceptions.

1. Exceptions to the requirements of ~~4VAC50-90-130~~ 9VAC25-830-130 and ~~4VAC50-90-140~~ 9VAC25-830-140 may be granted, provided that a finding is made that:

a. The requested exception to the criteria is the minimum necessary to afford relief;

b. Granting the exception will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated;

c. The exception is in harmony with the purpose and intent of this part and is not of substantial detriment to water quality;

d. The exception request is not based upon conditions or circumstances that are self-created or self-imposed;

e. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and

f. Other findings, as appropriate and required by the local government, are met.

2. Each local government shall design and implement an appropriate process or processes for the administration of exceptions. The process to be used for exceptions to ~~4VAC50-90-140~~ 9VAC25-830-140 shall include, but not be limited to, the following provisions:

a. An exception may be considered and acted upon only by the local legislative body; the local planning commission; or a special committee, board or commission established or designated by the local government to implement the provisions of the Act and this chapter.

b. Local governments implementing this chapter through the local zoning code may provide for specific provisions that allow for consideration of exceptions that comply with subdivision 2 of this subsection.

c. The provision of subdivision 2 b of this subsection notwithstanding, no exception shall be authorized except after notice and a hearing, as required by § 15.2-2204 of the Code of Virginia, except that only one hearing shall be required. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the notice may be given by first-class mail rather than by registered or certified mail.

3. Exceptions to other provisions of this part may be granted, provided that:

a. Exceptions to the criteria shall be the minimum necessary to afford relief; and

b. Reasonable and appropriate conditions upon any exception granted shall be imposed, as necessary, so that the purpose and intent of the Act is preserved.

4. Notwithstanding the provisions of subdivisions 2 a through 2 c of this subsection, additions and modifications to existing legal principal structures may be processed through an administrative review process, as allowed by subsection A of this section, subject to the findings required by subdivision 1 of this subsection but without a requirement for a public hearing. This provision shall not apply to accessory structures.

Part V

Comprehensive Plan Criteria

~~4VAC50-90-160.~~ 9VAC25-830-160. Purpose.

The purpose of this part is to assist local governments in the development of a comprehensive plan or plan component that is consistent with the Act, and to establish guidelines for determining the consistency of the local comprehensive plan or plan component with the Act.

~~4VAC50-90-170, 9VAC25-830-170.~~ **Comprehensive plans.**

Local governments shall review and revise their comprehensive plans, as necessary, for compliance with § ~~10.1-2109~~ 62.1-44.15:74 of the Act and this chapter. As a minimum, the comprehensive plan or plan component shall consist of the following basic elements: (i) a summary of data collection; (ii) analysis and policy discussion(s); (iii) land use plan map(s); and (iv) implementing measures, including specific objectives and a time frame for accomplishment.

1. Local governments shall establish and maintain, as appropriate, an information base from which policy choices are made about future land use and development that will protect the quality of state waters. This element of the plan should be based upon the following, as applicable to the locality:

- a. The location and extent of Chesapeake Bay Preservation Areas;
- b. Physical constraints to development, including soil limitations;
- c. The character and location of commercial and recreational fisheries and other aquatic resources;
- d. Shoreline and streambank erosion problems;
- e. Existing and proposed land uses;
- f. Catalog of existing and potential water pollution sources;
- g. Public and private waterfront access areas, including the general locations of or information about docks, piers, marinas, boat ramps, and similar water access facilities;
- h. A map or map series accurately representing the above information.

2. As part of the comprehensive plan, local governments shall clearly indicate local policy on land use issues relative to water quality protection based on an analysis of the data referred to in subdivision 1 of this section. Local governments shall ensure consistency among the policies developed.

- a. Local governments shall discuss each component of Chesapeake Bay Preservation Areas in relation to the types of land uses considered appropriate and consistent with the goals and objectives of the Act, this chapter, and their local programs.
- b. As a minimum, local governments shall prepare policy statements for inclusion in the plan on the following issues, as applicable to the locality:
 - (1) Physical constraints to development, including a discussion of the relationship between soil limitations and existing and proposed land use, with an explicit discussion of soil suitability for septic tank use;
 - (2) Protection of potable water supply, including groundwater resources and threats to the water supply or

groundwater resources from existing and potential pollution sources;

- (3) Relationship of land use to commercial and recreational fisheries and other aquatic resources;
- (4) Siting of docks and piers;
- (5) Public and private access to waterfront areas and effect on water quality;
- (6) Mitigation of the impacts of land use and its associated pollution upon water quality;
- (7) Shoreline and streambank erosion problems; and
- (8) Potential water quality improvement through reduction of existing pollution sources and the redevelopment of Intensely Developed Areas and other areas targeted for redevelopment.

c. For each of the policy issues listed above, the plan shall contain a discussion of the scope and importance of the issue, the policy adopted by the local government for that issue, and a description of how the local policy will be implemented.

d. Within the policy discussion, local governments shall address the relationship between the plan, existing and proposed land use, public services, and capital improvement plans and budgets to ensure a consistent local policy.

Part VI

Land Development Ordinances

~~4VAC50-90-180, 9VAC25-830-180.~~ **Purpose.**

The purpose of this part is to assist local governments in the preparation of land use and development ordinances and regulations adopted pursuant to § ~~10.1-2109~~ 62.1-44.15:74 and Articles 1 (~~§ 2.2-2200 et seq.~~) (§ 15.2-2200 et seq.), 2 (~~§ 2.2-2210 et seq.~~) (§ 15.2-2210 et seq.), 4 (~~§ 2.2-2233 et seq.~~) (§ 15.2-2233 et seq.), 5 (~~§ 1.1-2239~~) (§ 15.2-2239), 6 (~~§ 2.2-2240 et seq.~~) (§ 15.2-2240 et seq.), and 7 (~~§ 2.2-2280 et seq.~~) (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 of the Code of Virginia that are consistent with the Act and this chapter, and to establish guidelines for determining the consistency of such ordinances and regulations with the Act and this chapter. Such ordinances and regulations include, but are not limited to, subdivision ordinances and zoning ordinances.

~~4VAC50-90-190, 9VAC25-830-190.~~ **Land development ordinances, regulations, and procedures.**

A. Local governments shall review and revise their land development regulations, as necessary, to comply with § ~~10.1-2109~~ 62.1-44.15:74 of the Act. To achieve this:

- 1. Local zoning ordinances shall ensure that the uses permitted by the local zoning regulations are consistent with the Act and this chapter;
- 2. Local land development ordinances and regulations shall incorporate either explicitly or by direct reference the performance criteria in Part IV (~~4VAC50-90-120~~).

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9VAC25-830-120 et seq.) of this chapter. Specific development standards that implement the performance criteria from subdivisions 1, 2 and 4 of ~~4VAC50-90-130~~ 9VAC25-830-130 (minimizing land disturbance and impervious cover and preserving existing vegetation) shall be included;

3. Local land development ordinances and regulations shall protect the integrity of Chesapeake Bay Preservation Areas by incorporating standards to ensure (i) the protection of water quality; (ii) the preservation of Resource Protection Area land categories, as set forth in ~~4VAC50-90-80~~ 9VAC25-830-80, including the 100-foot wide buffer area; and (iii) the compatibility of development with Resource Management Area land categories, as set forth in ~~4VAC50-90-90~~ 9VAC25-830-90;

4. Local land development ordinances and regulations shall provide for (i) depiction of Resource Protection Area and Resource Management Area boundaries on plats and site plans, including a notation on plats of the requirement to retain an undisturbed and vegetated 100-foot wide buffer area, as specified in subdivision 3 of ~~4VAC50-90-140~~ 9VAC25-830-140 (ii) a plat notation of the requirement for pump-out and 100% reserve drainfield sites for onsite sewage treatment systems, when applicable; and (iii) a plat notation of the permissibility of only water dependent facilities or redevelopment in Resource Protection Areas, including the 100-foot wide buffer area; and

5. Local governments shall require, during the plan of development review process, the delineation of the buildable areas that are allowed on each lot. The delineation of buildable areas shall be based on the performance criteria specified in Part IV (~~4VAC50-90-120~~ 9VAC25-830-120 et seq.) of this chapter, local front and side yard setback requirements, and any other relevant easements or limitations regarding lot coverage.

B. Local governments shall undertake the following as necessary, to comply with § ~~40.1-2109~~ 62.1-44.15:74 of the Act:

1. Local governments shall evaluate the relationship between the submission requirements, performance standards, and permitted uses in local land development ordinances and regulations to identify any obstacles to achieving the water quality goals of the Act and this chapter as set forth in § ~~40.1-2107~~ 62.1-44.15:74 B of the Act, ~~4VAC50-90-50~~ 9VAC25-830-50 and ~~4VAC50-90-120~~ 9VAC25-830-120. Local governments shall revise these ordinances and regulations, as necessary, to eliminate any obstacles identified in the submission requirements or development standards.

2. Local governments shall review and revise their land development ordinances and regulations adopted pursuant to § ~~40.1-2109~~ 62.1-44.15:74 and ~~Article~~ Articles 1 (§ ~~2.2-2200~~ et seq.) (§ 15.2-2200 et seq.), 2 (§ ~~2.2-2210~~ et seq.) (§ 15.2-2210 et seq.), 4 (§ ~~2.2-2233~~ et seq.) (§ 15.2-2233 et

seq.), 5 (§ ~~2.2-2239~~) (§ 15.2-2239), 6 (§ ~~2.2-2240~~ et seq.) (15.2-2240 et seq.), and 7 (§ ~~2.2-2280~~ et seq.) (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 of the Code of Virginia to assure that their subdivision ordinances, zoning ordinances, and all other components of their local Chesapeake Bay Preservation Act programs are consistent in promoting and achieving the protection of state waters. In addition, local governments shall identify and resolve any conflicts among the components of the local programs and with other local ordinances, regulations and administrative policies, to assure that the intent of the Act and this chapter is fulfilled.

3. Local governments shall review and revise their land development ordinances and regulations to ensure consistency with the water quality protection goals, objectives, policies, and implementation strategies identified in the local comprehensive plan.

Part VII

Local Assistance and Local Program Consistency Review Process

~~4VAC50-90-200.~~ 9VAC25-830-200. Purpose.

The purpose of this part is to assist local governments in the timely preparation of local programs to implement the Act and to establish an administrative procedure for determining local program consistency with the Act.

~~4VAC50-90-210.~~ 9VAC25-830-210. Local assistance manual guidance.

A. The department will prepare a ~~manual to provide~~ guidance to assist local governments in the ~~preparation~~ administration of local programs in order to implement the Act and this chapter. The ~~manual guidance~~ will be updated periodically to reflect the most current planning and zoning techniques ~~and~~, effective best management practices, ~~and~~ amendments to the Act or regulations. The ~~manual guidance~~ will be made available to the public.

B. The ~~manual guidance~~ will recommend a schedule for the completion of local program elements and their submission to the board for its information to ensure timely achievement of the requirements of the Act and timely receipt of assistance. The board will consider compliance with the schedule in allocating financial and technical assistance.

~~C. The manual is for the purpose of guidance only.~~

~~4VAC50-90-220.~~ 9VAC25-830-220. Board to establish liaison.

The board will establish liaison with each local government to assist the local government in developing and implementing its local program, in obtaining technical and financial assistance, and in complying with the Act and this chapter.

~~4VAC50-90-230, 9VAC25-830-230.~~ Planning district comments.

Local governments are encouraged to enlist the assistance and comments of regional planning district agencies ~~early~~ in the ~~development~~ management of their local programs.

~~4VAC50-90-240, 9VAC25-830-240.~~ Preparation and submission of management program.

Local governments must adopt the full management program, which will consist of Phases I-III as defined in this section and including any revisions to comprehensive plans, zoning ordinances, subdivision ordinances, and other local authorities necessary to implement the Act. Prior to adoption, local governments may submit any proposed revisions to the board for comments. Criteria are provided below for local government use in preparing local programs and the board's use in determining local program consistency.

1. Phase I shall consist of the designation of Chesapeake Bay Preservation Areas and adoption of the performance criteria. This phase of designating Chesapeake Bay Preservation Areas as an element of the local program should include:

- a. Utilizing existing data and mapping resources to identify and describe tidal wetlands, nontidal wetlands, tidal shores, water bodies with perennial flow, flood plains, highly erodible soils including steep slopes, highly permeable areas, and other sensitive environmental resources as necessary to comply with Part III (~~4VAC50-90-70~~ 9VAC25-830-70 et seq.) of this chapter;
- b. Determining, based upon the identification and description, the extent of Chesapeake Bay Preservation Areas within the local jurisdiction;
- c. Preparing an appropriate map or maps delineating Chesapeake Bay Preservation Areas;
- d. Preparing amendments to local ordinances that incorporate the performance criteria of Part IV (~~4VAC50-90-120~~ 9VAC25-830-120 et seq.) of this chapter or the model ordinance prepared by the board;
- e. Establishing, if necessary, and incorporating a plan of development review process. Local governments shall make provisions as necessary to ensure that any development of land within Chesapeake Bay Preservation Areas shall be accomplished through a plan of development procedure pursuant to § 15.2-2286 A 8 of the Code of Virginia to ensure compliance with the Act and this chapter. Any exemptions from those review requirements shall be established and administered in a manner that ensures compliance with this chapter.
- f. Conducting a public hearing. Prior to adopting Chesapeake Bay Preservation Areas and the performance criteria, each local government shall hold a public hearing to solicit public comment regarding these local program components.

g. Providing copies of the adopted program documents and subsequent changes thereto to the board for consistency review, as set forth in subdivision 5 of this section.

2. Phase II shall consist of local governments reviewing and revising their comprehensive plans, as necessary, for compliance with § ~~40.1-2109~~ 62.1-44.15:74 of the Act, in accordance with the provisions set forth in Part V (~~4VAC50-90-160~~ 9VAC25-830-160 et seq.) of this chapter.

3. Phase III shall consist of local governments reviewing and revising their land development regulations and processes, which include but are not limited to zoning ordinances, subdivision ordinances, and the plan of development review process, as necessary, to comply with § ~~40.1-2109~~ 62.1-44.15:74 of the Act and to be consistent with the provisions set forth in Part VI (~~4VAC50-90-180~~ 9VAC25-830-180 et seq.) of this chapter.

4. Consistent with §§ ~~40.1-2108~~ 62.1-44.15:73, ~~40.1-2109~~ 62.1-44.15:74, and ~~40.1-2113~~ 62.1-44.15:77 of the Act local governments may use civil penalties to enforce compliance with the requirements of local programs.

5. Review by the board.

a. The board will review proposed elements of a program phase within 60 days according to review policies adopted by the board. If the proposed program phase is consistent with the Act, the board will schedule a conference with the local government to determine what additional technical and financial assistance may be needed and available to accomplish the proposed program phase. If the proposed program phase or any part thereof is not consistent, the board will notify the local government in writing, stating the reasons for a determination of inconsistency and specifying needed changes. Copies of the adopted program documents and subsequent changes thereto shall be provided to the board.

b. The board will review locally adopted elements of a program phase according to review policies adopted by the board and as set forth in ~~4VAC50-90-260~~ 9VAC25-830-260.

Part VIII
Implementation and Enforcement

~~4VAC50-90-250, 9VAC25-830-250.~~ Applicability.

The Act requires that the board ensure that local governments comply with the Act and regulations and that their comprehensive plans, zoning ordinances and subdivision ordinances are in accordance with the Act. To satisfy these requirements, the board has adopted this chapter and will monitor each local government's compliance with the Act and this chapter.

Regulations

~~4VAC50-90-260.~~ 9VAC25-830-260. **Administrative proceedings.**

Subdivision 8 of § ~~40.1-2103~~ 62.1-44.15:69 and § ~~40.1-2104.1~~ 62.1-44.15:71 of the Act provide that the board shall ensure that local government comprehensive plans, subdivision ordinances and zoning ordinances are in accordance with the provisions of the Act, and that it shall determine such compliance in accordance with the provisions of the Administrative Process Act. ~~When the board determines to decide such compliance, it will give the subject local government at least 15 days notice of its right to appear before the board at a time and place specified for the presentation of factual data, argument and proof as provided by § 2.2-4019 of the Code of Virginia. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern the review activities and proceedings of the board and the judicial review thereof.~~ The board will provide a copy of its decision to the local government. If any deficiencies are found, the board will establish a schedule for the local government to come into compliance.

1. In order to carry out its mandated responsibilities under subdivision 10 of § ~~40.1-2103~~ 62.1-44.15:69 and § ~~40.1-2104.1~~ 62.1-44.15:71 of the Act, the board will:

a. Require that each Tidewater local government submit an annual implementation report outlining the implementation of the local program. The board will develop reporting criteria which outline the information to be included in the reports and the time frame for their submission. The board will use the information in these reports to assess local patterns of compliance with the Act and this chapter and to evaluate the need for an administrative proceeding to more closely review any individual local government's compliance. All proceedings of this nature will be developed and conducted in accordance with this section.

b. Develop a compliance review process. Reviews will occur on a five-year cycle, and, when feasible, will be conducted as part of the local government's comprehensive plan review and update process. The department may also conduct a comprehensive or partial program compliance review and evaluation of a local government program more frequently than the standard schedule. The review process shall consist of a self-evaluation by each local government of local program implementation and enforcement as well as an evaluation by department staff. Based on these evaluations, ~~the department shall provide the results and compliance recommendations to the board in the form of a corrective action agreement should deficiencies be found; otherwise,~~ the board may find the program compliant. ~~When or, if~~ deficiencies are found, the board will establish a corrective action plan and a schedule for the local government to come into compliance. The board shall provide a copy of its decision to the local

government that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule. If the local government has not implemented the necessary compliance actions identified by the board within ~~30 days following receipt of the corrective action agreement~~ the schedule established by the board, or such additional period as is granted to complete the implementation of the compliance actions, then the board shall have the authority to issue a special order to any local government imposing a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per day per violation for noncompliance with the state program, to be paid into the state treasury and deposited into the Virginia Stormwater Management Fund established by § ~~40.1-603.4.1~~ 62.1-44.15:29 of the Code of Virginia.

(1) The self-evaluation shall be conducted by each local government according to procedures developed by the board.

(2) At a minimum, the department staff's evaluation will include a review of previous annual reports and site visits.

2. Certification of a local program. Upon a satisfactory finding resulting from the compliance review process, the board will certify that the local program is being implemented and enforced by the local government consistent with the Act and this chapter and is, therefore, in compliance. Such a certification shall be valid for a period of five years until the local government's next scheduled review, unless the board finds a pattern of noncompliance during the interim period of time, pursuant to subdivision 1 of this section.

~~4VAC50-90-270.~~ 9VAC25-830-270. **Legal proceedings.**

Subdivision 10 of § ~~40.1-2103~~ 62.1-44.15:69 and § ~~40.1-2104.1~~ 62.1-44.15:71 of the Act provide that the board shall take administrative and legal actions to ensure compliance by local governments with the provisions of the Act. Before taking legal action against a local government to ensure compliance, the board shall, unless it finds extraordinary circumstances, initiate ~~an administrative~~ a proceeding under the Act and ~~4VAC50-90-260~~ 9VAC25-830-260 to obtain such compliance and give the local government at least 15 days notice of the time and place at which it will decide whether or not to take legal action. If it finds extraordinary circumstances, the board may proceed directly to request the Attorney General to enforce compliance with the Act and this chapter. Administrative actions will be taken pursuant to ~~4VAC50-90-260~~ 9VAC25-830-260.

Part IX
Miscellaneous

9VAC25-830-280. Delegation of authority.

The director, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

DOCUMENTS INCORPORATED BY REFERENCE
(4VAC50-90) (9VAC25-830)

"Field Office Technical Guide," US Department of Agriculture-Natural Resource Conservation Service, Second Edition, 1999

"National Soil Survey Handbook," US Department of Agriculture-Natural Resource Conservation Service, 1996

Virginia's Forestry Best Management Practices for Water Quality in Virginia, Technical Guide Manual, January 1997 Fifth Edition, March 2011 (http://www.dof.virginia.gov/water/print/BMP/Manual/2011_Manual_BMP.pdf), Virginia Department of Forestry

Virginia Agricultural BMP Manual, Virginia Department of Conservation and Recreation, 2000

Pest Management Guide, Virginia Polytechnic Institute and State University, 1999

VA.R. Doc. No. R14-3684; Filed August 30, 2013, 4:15 p.m.

Final Regulation

REGISTRAR'S NOTICE: Enactment 7 of Chapters 756 and 793 of the 2013 Acts of Assembly transfers the powers related to administration and implementation of the Virginia Stormwater Management Act, the Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act from the Virginia Soil and Water Conservation Board to the State Water Control Board. Pursuant to enactment 8 of Chapters 756 and 793, initial actions of the State Water Control Board to adopt, with necessary amendments, the regulations implementing these programs are exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

Title of Regulation: 9VAC25-840. Erosion and Sediment Control Regulations (adding 9VAC25-840-10 through 9VAC25-840-110).

Statutory Authority: § 62.1-44.15:52 of the Code of Virginia.

Effective Date: October 23, 2013.

Agency Contact: William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4347, TTY (804) 698-4021, or email william.norris@deq.virginia.gov.

Summary:

The amendments reflect changes made by Chapters 756 and 793 of the 2013 Acts of Assembly regarding the transfer of erosion and sediment control regulations from the Virginia Soil and Water Conservation Board to the State Water Control Board. These conforming

amendments change the chapter and section numbers so that the regulation appears under the State Water Control Board in the Virginia Administrative Code and update the agency name, Code of Virginia citations, and Virginia Administrative Code cross references to reflect the change in administration of the program from the Department of Conservation and Recreation and Virginia Soil and Water Conservation Board to the Department of Environmental Quality and the State Water Control Board. In addition, the amendments (i) add a provision delegating certain authority of the State Water Control Board to the Director of the Department of Environmental Quality; (ii) stipulate that erosion and sediment control reviews coordinate with other State Water Control Board reviews in order to avoid redundancy for the regulant; and (iii) make other clarifying changes.

CHAPTER 30 840**EROSION AND SEDIMENT CONTROL REGULATIONS****4VAC50-30-10. 9VAC25-840-10. Definitions.**

The following words and terms when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § ~~40.1-560~~ 62.1-44.15:51 of the Erosion and Sediment Control Law.

"Act" means the Erosion and Sediment Control Law, Article 2.4 (§ ~~40.1-560~~ 62.1-44.15:51 et seq.) of Chapter 5 3.1 of Title ~~40.1~~ 62.1 of the Code of Virginia.

"Adequate channel" means a watercourse that will convey the designated frequency storm event without overtopping its banks or causing erosive damage to the bed, banks and overbank sections of the same.

"Agreement in lieu of a plan" means a contract between the VESCP authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the VESCP authority in lieu of an erosion and sediment control plan.

"Applicant" means any person submitting an erosion and sediment control plan or an agreement in lieu of a plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

"Board" means the ~~Virginia Soil and Water Conservation~~ State Water Control Board.

"Causeway" means a temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

"Channel" means a natural stream or manmade waterway.

"Cofferdam" means a watertight temporary structure in a river, lake, etc., for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be constructed.

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"Dam" means a barrier to confine or raise water for storage or diversion, to create a hydraulic head, to prevent gully erosion, or to retain soil, rock or other debris.

"Denuded" means a term applied to land that has been physically disturbed and no longer supports vegetative cover.

"Department" means the Department of ~~Conservation and Recreation~~ Environmental Quality.

"Development" means a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

"Dike" means an earthen embankment constructed to confine or control water, especially one built along the banks of a river to prevent overflow of lowlands; levee.

"Director" means the Director of the Department of ~~Conservation and Recreation~~ Environmental Quality.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1- 506 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

"Diversion" means a channel with a supporting ridge on the lower side constructed across or at the bottom of a slope for the purpose of intercepting surface runoff.

"Dormant" ~~refers to~~ means denuded land that is not actively being brought to a desired grade or condition.

"Energy dissipator" means a nonerodible structure which reduces the velocity of concentrated flow to reduce its erosive effects.

"Erosion and Sediment Control Plan" or "plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the plan-approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Flume" means a constructed device lined with erosion-resistant materials intended to convey water on steep grades.

"Live watercourse" means a definite channel with bed and banks within which concentrated water flows continuously.

"Locality" means a county, city or town.

"Natural stream" means nontidal waterways that are part of the natural topography. They usually maintain a continuous or seasonal flow during the year and are 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.

"Nonerodible" means a material, e.g., riprap, concrete, plastic, etc., that will not experience surface wear due to natural forces.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

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

"Program administrator" means the person or persons responsible for administering and enforcing the erosion and sediment control program of a VESCP authority.

"Pre-development" ~~refers to~~ means conditions at the time the erosion and sediment control plan is submitted to the VESCP authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and sediment control plan for the initial phase is submitted for approval shall establish pre-development conditions.

"Sediment basin" means a temporary impoundment built to retain sediment and debris with a controlled stormwater release structure.

"Sediment trap" means a temporary impoundment built to retain sediment and debris which is formed by constructing an earthen embankment with a stone outlet.

"Sheet flow" (also called overland flow) means shallow, unconcentrated and irregular flow down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural conditions.

"Shore erosion control project" means an erosion control project approved by local wetlands boards, the Virginia Marine Resources Commission, the ~~Virginia Department of Environmental Quality~~ department, or the United States Army Corps of Engineers and located on tidal waters and within nonvegetated or vegetated wetlands as defined in Title 28.2 of the Code of Virginia.

"Slope drain" means tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope with an energy dissipator at the outlet end.

"Stabilized" means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

"Storm sewer inlet" means a structure through which stormwater is introduced into an underground conveyance system.

"Stormwater detention" means the process of temporarily impounding runoff and discharging it through a hydraulic outlet structure to a downstream conveyance system.

"Temporary vehicular stream crossing" means a temporary nonerodible structural span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches constructed on or through nonerodible material.

"Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an ~~exceedence~~ exceedance probability with a 10% chance of being equaled or exceeded in any given year.

"Two-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an ~~exceedence~~ exceedance probability with a 50% chance of being equaled or exceeded in any given year.

"Twenty-five-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 25 years. It may also be expressed as an ~~exceedence~~ exceedance probability with a 4.0% chance of being equaled or exceeded in any given year.

"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 this article, and evaluation consistent with the requirements of the Act and this chapter.

"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.

4VAC50-30-20. 9VAC25-840-20. Purpose.

The purpose of this chapter is to form the basis for the administration, implementation and enforcement of the Act. The intent of this chapter is to establish the framework for compliance with the Act while at the same time providing flexibility for innovative solutions to erosion and sediment control concerns.

4VAC50-30-30. 9VAC25-840-30. Scope and applicability.

A. This chapter sets forth minimum standards for the effective control of soil erosion, sediment deposition, and nonagricultural runoff that must be met:

1. In VESCPs adopted under § ~~10.1-562~~ 62.1-44.15:54 of the Act;
2. In erosion and sediment control plans that may be submitted directly to the department pursuant to § ~~10.1-563~~ 62.1-44.15:55 A of the Act;
3. In annual general erosion and sediment control standards and specifications that electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies are required to file, and authorities created pursuant to § 15.2-5102 of the Code of Virginia may file with the department pursuant to § ~~10.1-563~~ 62.1-44.15:55 D of the Act;
4. In erosion and sediment control plans or annual standards and specifications that state agencies are required to file with the department pursuant to § ~~10.1-564~~ 62.1-44.15:56 of the Act; and
5. In erosion and sediment control plans or annual standards and specifications that federal agencies may submit to the department pursuant to § ~~10.1-564~~ 62.1-44.15:56 of the Act.

B. The submission of annual standards and specifications to the department does not eliminate the need where applicable for a project specific Erosion and Sediment Control Plan.

C. In accordance with Item 360 I1 of Chapter 3 of the 2012 Virginia Acts of Assembly, Special Session 1, public institutions of higher education, including community colleges, colleges, and universities, shall be subject to project review and compliance for state erosion and sediment control requirements by the VESCP authority of the locality within which the land-disturbing activity is located, unless such institution submits annual specifications to the ~~Department of Conservation and Recreation~~ department in accordance with § ~~10.1-564~~ 62.1-44.15:56 A (i) of the Code of Virginia.

D. Any VESCP authority that administers a VESCP may charge applicants a reasonable fee to defray the costs of program administration. Such fee may be in addition to any fee charged for administration of a Virginia stormwater management program, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the programs. A VESCP authority shall hold a public hearing prior to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESCP authority's expense involved.

4VAC50-30-40. 9VAC25-840-40. Minimum standards.

A VESCP must be consistent with the following criteria, techniques and methods:

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1. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.
2. During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.
3. A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion.
4. Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.
5. Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.
6. Sediment traps and sediment basins shall be designed and constructed based upon the total drainage area to be served by the trap or basin.
 - a. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre of drainage area and the trap shall only control drainage areas less than three acres.
 - b. Surface runoff from disturbed areas that is comprised of flow from drainage areas greater than or equal to three acres shall be controlled by a sediment basin. The minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of drainage area. The outfall system shall, at a minimum, maintain the structural integrity of the basin during a 25-year storm of 24-hour duration. Runoff coefficients used in runoff calculations shall correspond to a bare earth condition or those conditions expected to exist while the sediment basin is utilized.
7. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.
8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.
9. Whenever water seeps from a slope face, adequate drainage or other protection shall be provided.
10. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.
11. Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.
12. When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport and stabilize the work area to the greatest extent possible during construction. Nonerodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by nonerodible cover materials.
13. When a live watercourse must be crossed by construction vehicles more than twice in any six-month period, a temporary vehicular stream crossing constructed of nonerodible material shall be provided.
14. All applicable federal, state and local ~~chapters~~ requirements pertaining to working in or crossing live watercourses shall be met.
15. The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed.
16. Underground utility lines shall be installed in accordance with the following standards in addition to other applicable criteria:
 - a. No more than 500 linear feet of trench may be opened at one time.
 - b. Excavated material shall be placed on the uphill side of trenches.
 - c. Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both, and discharged in a manner that does not adversely affect flowing streams or off-site property.
 - d. Material used for backfilling trenches shall be properly compacted in order to minimize erosion and promote stabilization.
 - e. Restabilization shall be accomplished in accordance with this chapter.
 - f. Applicable safety ~~chapters~~ requirements shall be complied with.
17. Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and

transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities.

18. All temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed, unless otherwise authorized by the VESCP authority. Trapped sediment and the disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation.

19. Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion and damage due to increases in volume, velocity and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following standards and criteria. Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels:

a. Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or man-made receiving channel, pipe or storm sewer system. For those sites where runoff is discharged into a pipe or pipe system, downstream stability analyses at the outfall of the pipe or pipe system shall be performed.

b. Adequacy of all channels and pipes shall be verified in the following manner:

(1) The applicant shall demonstrate that the total drainage area to the point of analysis within the channel is one hundred times greater than the contributing drainage area of the project in question; or

(2) (a) Natural channels shall be analyzed by the use of a two-year storm to verify that stormwater will not overtop channel banks nor cause erosion of channel bed or banks.

(b) All previously constructed man-made channels shall be analyzed by the use of a ten-year storm to verify that stormwater will not overtop its banks and by the use of a two-year storm to demonstrate that stormwater will not cause erosion of channel bed or banks; and

(c) Pipes and storm sewer systems shall be analyzed by the use of a ten-year storm to verify that stormwater will be contained within the pipe or system.

c. If existing natural receiving channels or previously constructed man-made channels or pipes are not adequate, the applicant shall:

(1) Improve the channels to a condition where a ten-year storm will not overtop the banks and a two-year storm will not cause erosion to the channel, the bed, or the banks; or

(2) Improve the pipe or pipe system to a condition where the ten-year storm is contained within the appurtenances;

(3) Develop a site design that will not cause the pre-development peak runoff rate from a two-year storm to increase when runoff outfalls into a natural channel or will not cause the pre-development peak runoff rate from a ten-year storm to increase when runoff outfalls into a man-made channel; or

(4) Provide a combination of channel improvement, stormwater detention or other measures which is satisfactory to the VESCP authority to prevent downstream erosion.

d. The applicant shall provide evidence of permission to make the improvements.

e. All hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the subject project.

f. If the applicant chooses an option that includes stormwater detention, he shall obtain approval from the VESCP of a plan for maintenance of the detention facilities. The plan shall set forth the maintenance requirements of the facility and the person responsible for performing the maintenance.

g. Outfall from a detention facility shall be discharged to a receiving channel, and energy dissipators shall be placed at the outfall of all detention facilities as necessary to provide a stabilized transition from the facility to the receiving channel.

h. All on-site channels must be verified to be adequate.

i. Increased volumes of sheet flows that may cause erosion or sedimentation on adjacent property shall be diverted to a stable outlet, adequate channel, pipe or pipe system, or to a detention facility.

j. In applying these stormwater management criteria, individual lots or parcels in a residential, commercial or industrial development shall not be considered to be separate development projects. Instead, the development, as a whole, shall be considered to be a single development project. Hydrologic parameters that reflect the ultimate development condition shall be used in all engineering calculations.

k. All measures used to protect properties and waterways shall be employed in a manner which minimizes impacts on the physical, chemical and biological integrity of rivers, streams and other waters of the state.

l. Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall

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resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to § ~~10.1-562~~ 62.1-44.15:54 or ~~10.1-570~~ 62.1-44.15:65 of the Act.

m. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of § ~~10.1-561~~ 62.1-44.15:52 A of the Act and this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (§ ~~10.1-603.2~~ 62.1-44.15:24 et seq. of the Code of Virginia) and attendant regulations, unless such land-disturbing activities are in accordance with ~~4VAC50-60-48~~ 9VAC25-870-48 of the Virginia Stormwater Management Program (VSMP) ~~Permit~~ Regulations.

n. Compliance with the water quantity minimum standards set out in ~~4VAC50-60-66~~ 9VAC25-870-66 of the Virginia Stormwater Management Program (VSMP) ~~Permit~~ Regulations shall be deemed to satisfy the requirements of ~~Minimum Standard 19~~ subdivision 19 of this subsection.

4VAC50-30-50. 9VAC25-840-50. Variances.

The VESCP authority may waive or modify any of the ~~chapter's~~ requirements that are deemed inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the VESCP authority shall be documented in the plan.
2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the VESCP authority. The VESCP authority shall respond in writing either approving or disapproving such a request. If the VESCP authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.
3. The VESCP authority shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

4VAC50-30-60. 9VAC25-840-60. Maintenance and inspections.

A. All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.

B. Periodic inspections are required on all projects by the VESCP authority. The VESCP authority shall either:

1. Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or
2. Establish an alternative inspection program which ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:
 - a. Approved by the board prior to implementation;
 - b. Established in writing;
 - c. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions and stage of construction; and
 - d. Documented by inspection records.

4VAC50-60-65. 9VAC25-840-65. Reporting.

Each VESCP authority shall report to the department, in a method such as an online reporting system and on a time schedule established by the department, a listing of each land-disturbing activity for which a plan has been approved by the VESCP authority under the Act and this chapter.

4VAC50-30-70. 9VAC25-840-70. Developments.

A. An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction.

B. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an "Agreement in Lieu of a Plan" signed by the property owner.

C. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the Act and this chapter if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

4VAC50-30-80. 9VAC25-840-80. Criteria for determining status of land-disturbing activity.

A. The program administrator shall determine the validity of a claim of exempt status by a property owner who disturbs 10,000 square feet or more or 2,500 square feet or more in all

~~area~~ areas of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830). As soon as a nonexempt status is determined, the requirements of the Act shall be immediately enforced.

B. Should a land-disturbing activity not begin during the 180-day period following plan approval or cease for more than 180 days, the VESCP authority may evaluate the existing approved erosion and sediment control plan to determine whether the plan still satisfies local and state erosion and sediment control criteria and to verify that all design factors are still valid. If the VESCP authority finds the previously filed plan to be inadequate, a modified plan shall be submitted and approved prior to the resumption of land-disturbing activity.

C. Shore erosion control projects are not subject to this chapter. However, land-disturbing activity immediately outside the limits of the shore erosion project is subject to the Act and this chapter.

D. Whenever land-disturbing activity involves activity at a separate location (including but not limited to borrow and disposal areas), the VESCP authority may either:

1. Consider the off-site activity as being part of the proposed land-disturbing activity; or
2. If the off-site activity is already covered by an approved erosion and sediment control plan, the VESCP authority may require the applicant to provide proof of the approval and to certify that the plan will be implemented in accordance with a the Act and this chapter.

~~4VAC50-30-90, 9VAC25-840-90, Review and evaluation of VESCPs: minimum program standards.~~

A. This section sets forth the criteria that will be used by the department to determine whether a VESCP operating under authority of the Act, satisfies minimum standards of effectiveness, as follows.

Each VESCP must contain an ordinance or other appropriate document or documents adopted by the VESCP authority. Such document or documents must be consistent with the Act, and this chapter, ~~and 4VAC50-40-10 et seq.~~, including the following criteria:

1. The document or documents shall include or reference the definition of land-disturbing activity including exemptions, as well as any other significant terms, as necessary to produce an effective VESCP.
2. The document or documents shall identify the VESCP authority and any soil and water conservation district, adjacent locality, or other public or private entities that the VESCP authority entered into agreements or contracts with to assist with carrying out the provisions of the Act and this chapter, and must include the ~~chapters~~ requirements and design standards to be used in the program.
3. The document or documents shall include procedures for submission and approval of plans, issuance of permits,

monitoring and inspections of land-disturbing activities. The position, agency, department, or other party responsible for conducting inspections shall be identified. The VESCP authority shall maintain, either on-site or in VESCP files, a copy of the approved plan and a record of inspections for each active land-disturbing activity.

4. Each VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with Virginia stormwater management, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

5. The VESCP authority must take appropriate enforcement actions, where authorized to do so, to achieve compliance with the program and maintain a record of enforcement actions for all active land-disturbing activities.

B. The department shall periodically conduct a comprehensive review and evaluation of local programs. The department will coordinate the review with its other program reviews for the same entity to avoid redundancy. The review and evaluation of a local program shall consist of the following: (i) ~~personal interview between the department staff and~~ consultation with the local program administrator or designee or designees; (ii) review of the local ordinance and other applicable documents; (iii) review of plans approved by the program; (iv) inspection of regulated activities; and (v) review of enforcement actions where authorized to do so. The department is also authorized to conduct a partial program compliance review.

C. Local programs shall be reviewed and evaluated for effectiveness in carrying out the Act and this chapter using the criteria in this section.

D. If deficiencies noted in the review will cause the erosion and sediment control program to be inconsistent with the state program and ~~chapters~~ this chapter, the board shall provide the VESCP authority with a copy of its decision that specifies the deficiencies, action needed to be taken, and ~~the an~~ approved compliance corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP authority has not implemented the necessary compliance actions identified by the board within ~~30 days following receipt of~~ the corrective action ~~agreement~~ schedule, or such additional period as is granted to complete the implementation of the corrective action, then the board shall have the authority to (i) issue a special order to any VESCP imposing a civil penalty set out in § ~~40.1-562~~ 62.1-44.15:54 F of the Act or (ii) revoke its approval of the VESCP. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern the review activities and proceedings

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of the board and the judicial review thereof. In lieu of issuing a special order or revoking the program, the board is authorized to take legal action against a VESCP to ensure compliance.

E. Review and evaluation of VESCPs shall be conducted according to a schedule adopted by the department.

4VAC50-30-100, 9VAC25-840-100. State agency projects.

A. All state agency land-disturbing activities that are not exempt and that have commenced without an approved erosion and sediment control plan shall immediately cease until the state agency has submitted annual standards and specifications for its conduct of land-disturbing activities which has been reviewed and approved by the department as being consistent with the Act and this chapter, or an erosion and sediment control plan has been submitted to and approved by the department. A formal "Notice of Plan Requirement" will be sent to the state agency under whose purview the project lies since that agency is responsible for compliance with the Act and this chapter.

B. Where inspections by department personnel reveal deficiencies in carrying out an approved plan, the person responsible for carrying out the plan, as well as the state agency responsible, will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure to meet the prescribed deadlines can result in the issuance of a stop work order for all land-disturbing activities on the project at the discretion of the department. The stop work order will be lifted once the required erosion and sediment control measures are in place and inspected by department staff.

C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided in an appropriate final order, the director of the department may petition for compliance as follows: For violations in the Natural Resources Secretariat, to the Secretary of Natural Resources; for violations in other secretariats, to the appropriate Secretary; for violations in other state agencies, to the head of such agency. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution. The board or the department may also pursue enforcement as provided by ~~§ 40.1-569~~ § 62.1-44.15:63 of the Act.

D. Where compliance will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

9VAC25-840-110. Delegation of Authority.

The director, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

VA.R. Doc. No. R14-3682; Filed August 30, 2013, 3:00 p.m.

Final Regulation

REGISTRAR'S NOTICE: Enactment 7 of Chapters 756 and 793 of the 2013 Acts of Assembly transfers the powers related to administration and implementation of the Virginia Stormwater Management Act, the Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act from the Virginia Soil and Water Conservation Board to the State Water Control Board. Pursuant to enactment 8 of Chapters 756 and 793, initial actions of the State Water Control Board to adopt, with necessary amendments, the regulations implementing these programs are exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

Title of Regulation: **9VAC25-850. Erosion and Sediment Control and Stormwater Management Certification Regulations (adding 9VAC25-850-10 through 9VAC25-850-100).**

Statutory Authority: § 62.1-44.15:52 of the Code of Virginia.

Effective Date: October 23, 2013.

Agency Contact: William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4347, TTY (804) 698-4021, or email william.norris@deq.virginia.gov.

Summary:

This regulatory action is a result of Chapters 756 and 793 of the 2013 Acts of Assembly, which transfer oversight of water quality planning and laws dealing with stormwater management, erosion and sediment control, and the Chesapeake Bay Preservation Areas from the Department of Conservation and Recreation and Virginia Soil and Water Conservation Board to the Department of Environmental Quality and State Water Control Board. The conforming amendments change the chapter and section numbers so that the regulation appears under the State Water Control Board in the Virginia Administrative Code and update the agency name, Code of Virginia citations, and Virginia Administrative Code cross references to reflect the change in administration of the program from the Department of Conservation and Recreation and Virginia Soil and Water Conservation Board to the Department of Environmental Quality and State Water Control Board. In addition, the amendments clarify responsible land disturber requirements; make additional changes for clarification and to conform to current practice; and add a provision delegating certain authority of the State Water Control Board to the Director of the Department of Environmental Quality.

CHAPTER ~~50~~ 850
 EROSION AND SEDIMENT CONTROL AND
 STORMWATER MANAGEMENT CERTIFICATION
 REGULATIONS

~~4VAC50-50-10.~~ 9VAC25-850-10. Definitions.

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

"Applicant" means any person submitting a request to be considered for certification.

"Board" means the ~~Virginia Soil and Water Conservation Board~~ State Water Control Board.

"Certification" means the process whereby the board, on behalf of the Commonwealth, issues a certificate to persons who have completed board-approved training programs and met any additional eligibility requirements of ~~4VAC50-50-50~~ 9VAC25-850-50 related to the specified classifications (~~4VAC50-50-40~~ 9VAC25-850-40) within the areas of ESC or SWM or in other ways demonstrated adequate knowledge and experience in accordance with the eligibility requirements of ~~4VAC50-50-50~~ 9VAC25-850-50 in the specified classifications within the areas of ESC or SWM.

"Certified combined administrator for ESC" means an employee or agent of a VESCP authority who holds a certificate of competence from the board in the combined ESC classifications of program administrator, plan reviewer, and project inspector in the area of ESC.

"Certified combined administrator for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the combined classifications of program administrator, plan reviewer, and project inspector in the area of SWM.

~~"Certified project inspector for ESC" means an employee or agent of a VESCP authority who holds a certificate of competence from the board in the classification of project inspector in the area of ESC.~~

~~"Certified project inspector for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of project inspector in the area of SWM.~~

"Certified plan reviewer for ESC" means an employee or agent of a VESCP authority who: (i) holds a certificate of competence from the board in the classification of plan reviewer in the area of ESC; (ii) is licensed as a professional engineer, architect, certified landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia; or (iii) is a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

"Certified plan reviewer for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of plan reviewer in the area of SWM.

"Certified program administrator for ESC" means an employee or agent of a VESCP authority who holds a certificate of competence from the board in the classification of program administrator in the area of ESC.

"Certified program administrator for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of program administrator in the area of SWM.

"Certified project inspector for ESC" means an employee or agent of a VESCP authority who holds a certificate of competence from the board in the classification of project inspector in the area of ESC.

"Certified project inspector for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of project inspector in the area of SWM.

"Classification" refers to the four specific certificate of competence classifications within the areas of ESC or SWM that make up activities being performed (program administrator, plan reviewer, project inspector, and combined administrator).

"Combined administrator for ESC" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer and project inspector of a VESCP authority.

"Combined administrator for SWM" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer and project inspector of a VSMP authority.

"Department" means the ~~Department of Conservation and Recreation~~ Department of Environmental Quality.

~~"ESC" means erosion and sediment control.~~

~~"ESC Act" means the Erosion and Sediment Control Law, Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.~~

"Erosion and sediment control plan" or "ESC plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of all decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objective.

"ESC" means erosion and sediment control.

"ESC Act" means the Erosion and Sediment Control Law, Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Plan reviewer" means anyone who is responsible for determining the accuracy of ESC plans and supporting documents or SWM plans and supporting documents for

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approval by a VESCP authority or a VSMP authority as may be applicable in the areas of ESC or SWM.

"Program administrator" means the person or persons responsible for administering and enforcing the VESCP or VSMP of a VESCP authority or a VSMP authority as may be applicable in the areas of ESC or SWM.

"Project inspector" means anyone who, as a representative of a VESCP authority or a VSMP authority, is responsible for periodically examining the ESC or SWM activities and premises of a land-disturbing activity for compliance with the ESC Act and Regulations or the SWM Act and Regulations as may be applicable.

"Responsible land disturber" or "RLD" means an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved ESC plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the ESC plan or permit as a prerequisite for engaging in land disturbance.

"Stormwater management plan" or "SWM plan" means a document containing material describing methods for complying with the requirements of a VSMP and the SWM Act and its attendant regulations.

"SWM" means stormwater management.

"SWM Act" means the Virginia Stormwater Management Act, Article ~~1.1~~ (§ ~~10.1-603.1 et seq.~~) 2.3 (§ 62.1-44.15:24 et seq.) of Chapter ~~6~~ 3.1 of Title ~~10.1~~ 62.1 of the Code of Virginia.

"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 ESC Act and this chapter, and evaluation consistent with the requirements of the ESC Act and this chapter.

"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 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 SWM 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~~ 62.1-44.15:31 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.

~~4VAC50-50-20. 9VAC25-850-20. Purpose.~~

The purpose of this chapter is to guide the issuance of certificates of competence required by §§ ~~10.1-561~~ 62.1-44.15:52 E and ~~10.1-561~~ 62.1-44.15:53 of the ESC Act and § ~~10.1-603.4:2~~ 62.1-44.15:30 of the SWM Act.

~~4VAC50-50-30. 9VAC25-850-30. Applicability.~~

This chapter is applicable to:

1. Every VESCP authority or VSMP authority that administers a VESCP or VSMP as may be applicable. Staff of a VESCP authority must be certified in accordance with §§ ~~10.1-560~~ 62.1-44.15:51 E and ~~10.1-561~~ 62.1-44.15:53 of the ESC Act. Staff of a VSMP authority must be certified in accordance with § ~~10.1-603.4:2~~ 62.1-44.15:30 of the SWM Act.
2. Anyone who is contracted by a VESCP authority or a VSMP authority to perform any or all of the functions of that authority as may be applicable. This person will be subject to the same certification requirements as the authority.
3. Anyone voluntarily seeking certificates of competence from the board for classifications described in ~~4VAC50-50-40~~ 9VAC25-850-40.

~~4VAC50-50-40. 9VAC25-850-40. Certificates of competence.~~

A. Certificates of competence shall be issued by the board in accordance with the requirements of ~~4VAC50-50-50~~ 9VAC25-850-50 for the following classifications:

1. Program administrator for ESC. The person employed as the VESCP administrator.
2. Plan reviewer for ESC. The person who reviews ESC plans to be approved by the VESCP authority.
3. Project inspector for ESC. The person responsible for inspecting erosion and sediment control practices to ensure compliance with the Virginia Erosion and Sediment Control Law and Regulations.
4. Combined administrator for ESC. The person responsible for performing the combined duties of program administrator, plan reviewer and project inspector for a VESCP authority.
5. Program administrator for SWM. The person employed as the VSMP administrator.
6. Plan reviewer for SWM. The person who reviews SWM plans to be approved by the VSMP authority.
7. Project inspector for SWM. The person responsible for inspecting regulated activities to ensure compliance with the SWM Act and Regulations.
8. Combined administrator for SWM. The person responsible for performing the combined duties of program administrator, plan reviewer, and project inspector for a VSMP authority.

B. A certificate shall be issued by the board for the responsible land disturber or RLD for ESC. The RLD is the person responsible for carrying out the land-disturbing activity.

~~B.~~ C. Any person employed as a plan reviewer who is licensed as a professional engineer, architect, certified landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or as a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall qualify as a certified plan reviewer for ESC and will not require a certificate of competence from the board. In lieu of a person holding this board certificate of competence, such person shall produce a current professional license or certification upon request of the department.

~~C.~~ D. Any person who holds a valid and unexpired certificate of competence issued by the board in the classification of ESC or SWM, or who obtains such a certificate, and who later successfully obtains an additional certificate of competence from the board in the parallel ESC or SWM classification may surrender both certificates of competence to the board and request in writing issuance of a dual certificate showing certification in both classifications. Such a request must be made while both of the ESC and SWM certificates of competence obtained are valid and unexpired. The expiration date of the dual certificate shall be three years from the date of expiration of the additional certificate acquired.

~~4VAC50-50-50, 9VAC25-850-50.~~ 9VAC25-850-50. Eligibility requirements.

A. Certification may be obtained by satisfactorily completing and submitting an application to the department ~~for review and approval in accordance with 9VAC25-850-80~~ and:

1. By obtaining a total of 800 hours of experience as an ESC or SWM plan reviewer, project inspector, or combined administrator and obtaining a passing score on the certification examination administered by the department in the applicable ESC or SWM area; or
2. By enrolling in and completing, within 12 months, a board-approved training program in the classifications of program administrator, plan reviewer, project inspector, or combined administrator and obtaining within one year of completion of the training program a passing score on the certification examination administered by the department in the applicable ESC or SWM area.

a. The training program for project inspectors for ESC will consist of attending and completing courses/seminars in "Basic Erosion and Sediment Control in Virginia" and "Erosion and Sediment Control for Inspectors."

b. The training program for plan reviewers for ESC will consist of attending and completing courses/seminars in "Basic Erosion and Sediment Control in Virginia" and "Erosion and Sediment Control for Plan Reviewers."

c. The training program for program administrators for ESC will consist of attending the ~~seminar~~ course "Basic Erosion and Sediment Control in Virginia."

d. The training program for combined administrators for ESC will consist of attending the courses/seminars "Basic Erosion and Sediment Control in Virginia," "Erosion and Sediment Control for Inspectors," and "Erosion and Sediment Control for Plan Reviewers."

e. The training program for project inspectors for SWM will consist of attending and completing courses/seminars in "Basic Stormwater Management in Virginia" and "Stormwater Management for Inspectors."

f. The training program for plan reviewers for SWM will consist of attending and completing courses/seminars in "Basic Stormwater Management in Virginia" and "Stormwater Management for Plan Reviewers."

g. The training program for program administrators for SWM will consist of attending the seminar "Basic Stormwater Management in Virginia."

h. The training program for combined administrators for SWM will consist of attending the courses/seminars "Basic Stormwater Management in Virginia," "Stormwater Management for Inspectors," and "Stormwater Management for Plan Reviewers."

3. By enrolling in and completing the training program and obtaining a passing score on the certification examination

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administered by the department for responsible land disturbers for ESC.

B. Certification and recertification shall be valid for three years and will expire on the last day of the expiration month except as otherwise set out in ~~4VAC50-50-40~~ 9VAC25-850-40 D or ~~4VAC50-50-90~~ 9VAC25-850-90.

C. Recertification may be obtained for classifications outlined in ~~4VAC50-50-40~~ 9VAC25-850-40 of this chapter prior to the expiration date of a certification by:

1. Obtaining a passing score on the ~~certification~~ recertification examination;
2. Successfully completing a board-approved training program during the last 12 months of the term of the certificate but prior to its expiration date;
3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1, and paying the required fee for recertification. Such professionals shall be deemed to satisfy the provisions of this subsection for classifications in subdivisions A 1 through 4 and subsection B of ~~4VAC50-50-40~~ 9VAC25-850-40. However, such professionals when in the classification of plan reviewer for ESC shall be exempt from the recertification requirements and fees of this chapter provided they maintain their professional license; ~~or~~
4. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia and paying the required fee for recertification. Such professionals shall be deemed to satisfy the provisions of this subsection for classifications in subdivisions A 5 through 8 and subsection B of ~~4VAC50-50-40~~ 9VAC25-850-40; or
5. Completing continuing professional education hours in accordance with department guidance.

~~4VAC50-50-55.~~ 9VAC25-850-55. Classification acknowledgement for the purposes of program compliance reviews.

For the purposes of VESCP or VSMP compliance reviews and evaluations, the certification requirements of §§ ~~40.1-561.1~~ 62.1-44.15:53 and ~~40.1-603.4:2~~ 62.1-44.15:30 of the Code of Virginia shall be deemed to have been met if the VESCP or the VSMP authority has a person or persons enrolled in the board's ESC or SWM training programs set forth in 9VAC25-850-50 A 1 and A 2 a through h for the necessary classifications and such person or persons obtains certification within one year of completing the necessary training programs.

~~4VAC50-50-60.~~ 9VAC25-850-60. Fees.

A. ~~Application~~ Certification, recertification, and dual certificate issuance fees shall be collected to cover the administrative cost for the certification program.

B. A fee will also be charged to present education and training program courses/seminars which support the certification program.

C. Fees are nonrefundable and shall not be prorated.

~~4VAC50-50-70.~~ 9VAC25-850-70. Examination.

A. A ~~board-approved~~ board-approved examination shall be administered at least twice a year.

B. An individual may take the certification examination for the desired certificate of competence after fulfilling the prerequisite experience requirement or completing a board-approved training program in accordance with ~~4VAC50-50-50~~ 9VAC25-850-50.

C. An individual who is unable to take an examination at the time scheduled shall notify the department within 48 hours prior to the date of the examination unless a later time is established by the department; such an individual may be rescheduled for the next examination. Failure to notify the department may require an individual to submit a new application and payment of fees in accordance with this chapter.

D. An applicant who is unsuccessful in passing an examination will be allowed to pay the appropriate fee and retake the appropriate exam within one year without resubmitting an application. After the one-year period has elapsed, an applicant will be required to submit a new application with the appropriate fee in accordance with this chapter in order to take the examination. Application for examination must be received at least 60 days prior to the scheduled examination unless a later date is established by the department to be eligible to sit for the examination.

E. A minimum passing score of 70% will be required on the appropriate certification exam(s).

F. All applicants will be notified ~~in writing~~ within 60 days of the results of the examination.

~~4VAC50-50-80.~~ 9VAC25-850-80. Application.

A. Any person seeking certification or recertification by a combination of experience and examination or by the combination of completion of the training program and examination shall submit a completed application in a manner prescribed by the department with the appropriate fee(s) ~~attached~~. The application shall contain the following:

1. The applicant's name, address, daytime phone number, email address, and name and address of business or organization as well as the date the application was filled out.
2. The classification of certification the applicant is applying for as set forth in ~~4VAC50-50-40 of this chapter~~ 9VAC25-850-40, and ~~if~~ designation whether the applicant is applying for initial certification or recertification.
3. If any special arrangements must be provided for because of a handicap.

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4. A verification of all work experience signed and dated by applicant's supervisor, if required.

5. A signed ~~and notarized affidavit confirming that all statements~~ statement that the information provided in the application are believed to be is true and accurate.

Incomplete applications will be returned to the applicant. All applications must be received ~~in by the appropriate department office or by mail post marked~~ at least 60 days prior to the scheduled examination date, unless a later date is established by the department, in order to be able to sit for the examination.

The department may establish other acceptable forms of documentation for the components of the application that provide similar assurances as those set forth in this subsection.

B. All complete applications of candidates will be reviewed by the department to determine eligibility for certification. All applicants will be notified of the results of the review ~~within 30 days of receipt of the application~~. Any applicant may appeal the review, in writing, to the board within 30 days of the department's determination. No applicant will be approved for certification unless ~~they meet all~~ he meets the requirements of this chapter.

C. Applicants who have been found ineligible to sit for an examination may request further consideration by submitting a letter to the board with the necessary evidence of additional qualifications. No additional fee will be required provided that all requirements for certification are met within one year from the date of original application.

4VAC50-50-90. 9VAC25-850-90. Discipline of certified personnel.

The board may suspend, revoke or refuse to grant or renew the certification of any person if the board, in an ~~informational~~ informal fact finding under § 2.2-4019 of the Code of Virginia, finds that:

1. The certification was obtained or renewed through fraud or misinterpretation;
2. The certified person has violated or cooperated with others in violating any provision of this chapter;
3. The certified person has not demonstrated reasonable care, judgment, or application of his knowledge and ability in the performance of his duties; or
4. The certified person has made any material misrepresentation in the course of performing his duties.

9VAC25-850-100. Delegation of authority.

The director, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

VA.R. Doc. No. R14-3683; Filed August 30, 2013, 3:13 p.m.

REGISTRAR'S NOTICE: Enactment 7 of Chapters 756 and 793 of the 2013 Acts of Assembly transfers the powers related to administration and implementation of the Virginia Stormwater Management Act, the Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act from the Virginia Soil and Water Conservation Board to the State Water Control Board. Pursuant to enactment 8 of Chapters 756 and 793, initial actions of the State Water Control Board to adopt, with necessary amendments, the regulations implementing these programs are exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

Title of Regulation: 9VAC25-870. Virginia Stormwater Management Program (VSMP) Regulation (adding 9VAC25-870-10 through 9VAC25-870-830).

Statutory Authority: §§ 62.1-44.15:25 and 62.1-44.15:28 of the Code of Virginia.

Effective Date: October 23, 2013.

Agency Contact: William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4347, TTY (804) 698-4021, or email william.norris@deq.virginia.gov.

Summary:

This regulatory action is a result of Chapters 756 and 793 of the 2013 Acts of Assembly, which transfer oversight of water quality planning and laws dealing with stormwater management, erosion and sediment control, and the Chesapeake Bay Preservation Areas from the Department of Conservation and Recreation and Virginia Soil and Water Conservation Board to the Department of Environmental Quality and State Water Control Board. The conforming amendments (i) change the chapter and section numbers so that the Stormwater Management Program Regulations appear under the State Water Control Board in the Virginia Administrative Code and (ii) update the agency name, Code of Virginia citations, and Virginia Administrative Code cross references to reflect the change in administration of the program.

In addition, this action (i) incorporates by reference the July 1, 2012, update to the Code of Federal Regulations; (ii) updates the 1990 edition of the Virginia Stormwater Management Handbook to the 1999 edition; (iii) provides that the Virginia Administrative Process Act governs the review activities and proceedings of the board and the judicial review thereof; (iv) requires that certain analyses be performed by an environmental laboratory certified under regulations of the Department of General Services; (v) establishes due dates for state permits; and (vi) makes clarifying amendments and changes to conform to current practice.

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CHAPTER ~~60~~ 870
VIRGINIA STORMWATER MANAGEMENT PROGRAM
(VSMP) ~~PERMIT~~ REGULATION

Part I
Definitions, Purpose, and Applicability

~~4VAC50-60-10~~, 9VAC25-870-10, 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.~~) 2.3 (§ 62.1-44.15:24 et seq.) of Chapter ~~6~~ 3.1 of Title ~~10.1~~ 62.1 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~~ State Water Control 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, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater systems.

"Board" means the ~~Virginia Soil and Water Conservation~~ State Water Control 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" means Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"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~~) (9VAC25-830) adopted pursuant to the Chesapeake Bay Preservation Act.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area Designation and Management Regulations and § 62.1-44.15:74 of the Chesapeake Bay Preservation Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

"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~~ Environmental Quality.

"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~~ 9VAC25-870-300.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of ~~Conservation and Recreation~~ Environmental Quality 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 individual or general permit. A notice of intent to ~~terminate a state permit, and a notice of intent to deny a state individual or general permit~~ are types is a type of draft state ~~permits~~ permit. 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.

"Erosion and Sediment Control Law" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"ESC" means erosion and sediment control.

"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.

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

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

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

"General permit" means a 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 separate 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 ~~4VAC50-60-400~~ 9VAC25-870-400 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 ~~§ 40.1-603.8~~ 62.1-44.15:34 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;

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- 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 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 9VAC25-870-640. 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 9VAC25-870-380 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 separate 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 separate 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. An application for a new permit issued pursuant to this chapter. 9VAC25-880, or 9VAC25-890 shall not be subject to §§ 62.1-44.15:3 A and 62.1-44.15:4 D of the Code of Virginia.

"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.

"Oil and gas exploration, production, processing, or treatment operations or transmission facilities" means all field activities or operations associated with exploration, production, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity. (33 USC § 1362(24))

"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~~ whom 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

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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~~ groundwater or surface water resources.

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

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

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

"Predevelopment" refers to the conditions that exist at the time that plans for the land development of a tract of land are submitted to the 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~~ 9VAC25-850-10 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~~ includes 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 an approved "total maximum daily load" (TMDL) 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~~ 9VAC25-870-380 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.

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"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. As the mechanism that imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, a state permit for stormwater discharges from an MS4 and, after June 30, 2014, a state permit for conducting a land-disturbing activity issued pursuant to the Act, are also types of Virginia Pollutant Discharge Elimination System (VPDES) Permits. 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.~~ Approvals issued pursuant to this chapter, 9VAC25-880, and 9VAC25-890 are not issuances of a permit under § 62.1-44.15.01 of the Code of Virginia.

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

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

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

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

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

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

constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

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

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

"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. 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.

"SWM" means stormwater management.

"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 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 "VЕСP" means a program approved by the board that has been established by a VЕСP 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 "VЕСP 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 ~~44~~ ~~(§ 10.1-603.1 et seq.)~~ 2.3 ~~(§ 62.1-44.15:24 et seq.)~~ of Chapter ~~6 3.1~~ of Title ~~10.1 62.1~~ of the Code of Virginia.

~~"Virginia Stormwater BMP Clearinghouse website"~~ 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

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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 § 40.1-603.5 62.1-44.15:31 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) (9VAC25-880).~~

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

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Act (§ ~~40.1-603.1~~ 62.1-44.15:24 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 water 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.

9VAC25-870-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the United States set forth in the Code of Federal Regulations is referenced and incorporated herein, that regulation shall be as it exists and has been published in the July 1, 2012, update.

4VAC50-60-20. 9VAC25-870-20. Purposes.

The purposes of this chapter are to provide a framework for the administration, implementation and enforcement of the Virginia Stormwater Management Act (Act) and to delineate the procedures and requirements to be followed in connection with state permits issued by the board pursuant to the Clean Water Act (CWA) and the Virginia Stormwater Management Act and permits issued by a VSMP authority, while at the same time providing flexibility for innovative solutions to stormwater management issues. The chapter also establishes the board's procedures for the authorization of a VSMP, the board's procedures for approving the administration of a VSMP by a VSMP authority, board and department oversight authorities for a VSMP, and the required technical criteria for stormwater management for land-disturbing activities.

4VAC50-60-30. 9VAC25-870-30. Applicability.

This chapter is applicable to:

1. Every VSMP authority that administers a VSMP;
2. The department in its oversight of VSMPs or in its administration of the Virginia Stormwater Management Program;
3. Every MS4 program;
4. Every state agency project regulated and every federal entity project covered under the Act and this chapter; and
5. Every land-disturbing activity regulated under § ~~40.1-603.8~~ 62.1-44.15:34 of the Code of Virginia unless otherwise exempted in § ~~40.1-603.8~~ 62.1-44.15:34 B.

Part II

Administrative and Technical Criteria for Land-Disturbing Activities

4VAC50-60-40. 9VAC25-870-40. Authority.

Pursuant to the Virginia Stormwater Management Act (§ ~~40.1-603.2~~ et seq. of the Code of Virginia), the board is required to take actions ensuring the general health, safety, and welfare of the citizens of the Commonwealth as well as protecting the quality and quantity of state waters from the potential harm of unmanaged stormwater. In addition to other authority granted to the board under the Stormwater Management Act, the board is authorized pursuant to §§ ~~40.1-603.2:1 and 40.1-603.4~~ 62.1-44.15:25 and 62.1-44.15:28 of the Code of Virginia to adopt regulations that specify

standards and procedures for VSMPs, to establish statewide standards for stormwater management for land-disturbing activities, and to protect properties, the quality and quantity of state waters, the physical integrity of stream channels, and other natural resources.

4VAC50-60-45. 9VAC25-870-45. Implementation date.

The technical criteria in Part II A and Part II B shall be implemented by a VSMP authority when a General Permit for Discharges of Stormwater from Construction Activities has been issued that incorporates such criteria. Until that time, the required technical criteria shall be found in Part II C. VSMPs adopted in accordance with the Act and this chapter shall become effective July 1, 2014, unless otherwise specified by the board.

4VAC50-60-46. 9VAC25-870-46. General objectives.

The physical, chemical, biological, and hydrologic characteristics and the water quality and quantity of the receiving state waters shall be maintained, protected, or improved in accordance with the requirements of this part. Objectives include, but are not limited to, supporting state designated uses and water quality standards. All control measures used shall be employed in a manner that minimizes impacts on receiving state waters.

4VAC50-60-47. 9VAC25-870-47. Applicability of other laws and regulations; time limits on applicability of approved design criteria.

A. Nothing in this chapter shall be construed as limiting the applicability of other laws and regulations, including, but not limited to, the CWA, Virginia Stormwater Management Act, Virginia Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act, except as provided in § ~~40.1-603.3~~ 62.1-44.15:27 K of the Code of Virginia, and all applicable regulations adopted in accordance with those laws, or the rights of other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law.

~~**4VAC50-60-47.1. Time limits on applicability of approved design criteria.**~~

B. Beginning with the General Permit for Discharges of Stormwater from Construction Activities issued July 1, 2009, all land-disturbing activities that receive general permit coverage shall be conducted in accordance with the Part II B or Part II C technical criteria in place at the time of initial state permit coverage and shall remain subject to those criteria for an additional two permit cycles, except as provided for in subsection D of ~~4VAC50-60-48~~ 9VAC25-870-48. After the two additional state permit cycles have passed, or should state permit coverage not be maintained, portions of the project not under construction shall become subject to any new technical criteria adopted since original state permit coverage was issued. For land-disturbing projects issued coverage under the July 1, 2009 state permit and for which coverage was maintained, such projects shall remain subject to the technical criteria of Part II C for an additional two state permits.

4VAC50-60-48. 9VAC25-870-48. Grandfathering.

A. Until June 30, 2019, any land-disturbing activity for which a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, was approved by a locality prior to July 1, 2012, and for which no coverage under the General Permit for Discharges of Stormwater from Construction Activities has been issued prior to July 1, 2014, shall be considered grandfathered by the VSMP authority and shall not be subject to the technical criteria of Part II B, but shall be subject to the technical criteria of Part II C for those areas that were included in the approval, provided that the VSMP authority finds that such proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, (i) provides for a layout and (ii) the resulting land-disturbing activity will be compliant with the requirements of Part II C. In the event that the locality-approved document is subsequently modified or amended in a manner such that there is no increase over the previously approved plat or plan in the amount of phosphorus leaving each point of discharge of the land-disturbing activity through stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.

B. Until June 30, 2019, for locality, state, and federal projects for which there has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or for which the department has approved a stormwater management plan prior to July 1, 2012, such projects shall be considered grandfathered by the VSMP authority and shall not be subject to the technical criteria of Part II B, but shall be subject to the technical criteria of Part II C for those areas that were included in the approval.

C. For land-disturbing activities grandfathered under subsections A and B of this section, construction must be completed by June 30, 2019, or portions of the project not under construction shall become subject to the technical criteria of Part II B.

D. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Part II C.

E. Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.

4VAC50-60-51. 9VAC25-870-51. Chesapeake Bay Preservation Act land-disturbing activity.

In order to protect the quality of state waters and to control the discharge of stormwater pollutants from land-disturbing activities, runoff associated with Chesapeake Bay Preservation Act land-disturbing activities shall be controlled. ~~Such~~ After June 30, 2014, such land-disturbing activities shall

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not require completion of a registration statement or require coverage under the General Permit for Discharges of Stormwater from Construction Activities but shall be subject to the following technical criteria and program and administrative requirements:

1. An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during land disturbing activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.
2. A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during the land-disturbing activity. The stormwater management plan shall be developed and submitted in accordance with ~~4VAC50-60-55~~ 9VAC25-870-55. Prior to land disturbance, this plan must be approved by the VSMP authority.
3. Exceptions may be requested in accordance with ~~4VAC50-60-57~~ 9VAC25-870-57.
4. Long-term maintenance of stormwater management facilities shall be provided for and conducted in accordance with ~~4VAC50-60-58~~ 9VAC25-870-58.
5. Water quality design criteria in ~~4VAC50-60-63~~ 9VAC25-870-63 shall be applied to the site.
6. Water quality compliance shall be achieved in accordance with ~~4VAC50-60-65~~ 9VAC25-870-65.
7. Channel protection and flood protection shall be achieved in accordance with ~~4VAC50-60-66~~ 9VAC25-870-66.
8. Offsite compliance options in accordance with ~~4VAC50-60-69~~ 9VAC25-870-69 shall be available to Chesapeake Bay Preservation Act land-disturbing activities.
9. Such land-disturbing activities shall be subject to the design storm and hydrologic methods set out in ~~4VAC50-60-72~~ 9VAC25-870-72, linear development controls in ~~4VAC50-60-76~~ 9VAC25-870-76, and criteria associated with stormwater impoundment structures or facilities in ~~4VAC50-60-85~~ 9VAC25-870-85.

Part II A

General Administrative Criteria for Regulated Land-Disturbing Activities

~~4VAC50-60-53~~ 9VAC25-870-53. **Applicability.**

This part applies to all regulated land-disturbing activities.

~~4VAC50-60-54~~ 9VAC25-870-54. **Stormwater pollution prevention plan requirements.**

A. A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a

description of any additional control measures necessary to address a TMDL pursuant to subsection E of this section.

B. An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.

C. A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority.

D. A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.

E. In addition to the requirements of subsections A through D of this section, if a specific WLA for a pollutant has been established in a an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA ~~in a State Water Control Board approved TMDL~~.

F. The stormwater pollution prevention plan must address the following requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a state permit:

1. Control stormwater volume and velocity within the site to minimize soil erosion;
2. Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;
3. Minimize the amount of soil exposed during construction activity;
4. Minimize the disturbance of steep slopes;
5. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
6. Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;

7. Minimize soil compaction and, unless infeasible, preserve topsoil;
8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the VSMP authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VSMP authority; and
9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.

G. The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

4VAC50-60-55. 9VAC25-870-55. Stormwater management plans.

A. A stormwater management plan shall be developed and submitted to the VSMP authority. The stormwater management plan shall be implemented as approved or modified by the VSMP authority and shall be developed in accordance with the following:

1. A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in this part to the entire land-disturbing activity.
2. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

B. A complete stormwater management plan shall include the following elements:

1. Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features if present, and predevelopment and postdevelopment drainage areas;
2. Contact information including the name, address, ~~and~~ telephone number, and email address of the owner and the tax reference number and parcel number of the property or properties affected;
3. A narrative that includes a description of current site conditions and final site conditions or if allowed by the VSMP authority, the information provided and

documented during the review process that addresses the current and final site conditions;

4. A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
5. Information on the proposed stormwater management facilities, including (i) the type of facilities; (ii) location, including geographic coordinates; (iii) acres treated; and (iv) the surface waters or karst features into which the facility will discharge;
6. Hydrologic and hydraulic computations, including runoff characteristics;
7. Documentation and calculations verifying compliance with the water quality and quantity requirements of these regulations;
8. A map or maps of the site that depicts the topography of the site and includes:
 - a. All contributing drainage areas;
 - b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
 - d. Current land use including existing structures, roads, and locations of known utilities and easements;
 - e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
 - f. The limits of clearing and grading, and the proposed drainage patterns on the site;
 - g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
 - h. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements;

9. If an operator intends to meet the requirements established in 4VAC50-60-63 9VAC25-870-63 or 4VAC50-60-66 9VAC25-870-66 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included; and

10. If payment of a fee is required with the stormwater management plan submission by the VSMP authority, the fee and the required fee form in accordance with Part XIII must have been submitted.

C. Elements of the stormwater management plans that include activities regulated under Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1

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(§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

D. A construction record drawing for permanent stormwater management facilities shall be submitted to the VSMP authority in accordance with ~~4VAC50-60-108~~ 9VAC25-870-108 and ~~4VAC50-60-112~~ 9VAC25-870-112. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

~~4VAC50-60-56.~~ 9VAC25-870-56. **Pollution prevention plans.**

A. A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e):

1. Wastewater from washout of concrete, unless managed by an appropriate control;
2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
4. Soaps or solvents used in vehicle and equipment washing.

C. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR 450.21(c).

~~4VAC50-60-57.~~ 9VAC25-870-57. **Requesting an exception.**

A request for an exception for Part II B or Part II C of this chapter, including the reasons for making the request, may be submitted in writing to the VSMP authority. Economic hardship alone is not a sufficient reason to request an exception from the requirements of this chapter. The request for an exception will be reviewed pursuant to ~~4VAC50-60-422~~ 9VAC25-870-122. An exception to the requirement that the land-disturbing activity obtain a state permit will not be granted by the VSMP authority.

~~4VAC50-60-58.~~ 9VAC25-870-58. **Responsibility for long-term maintenance of permanent stormwater management facilities.**

A recorded instrument shall be submitted to the VSMP authority in accordance with ~~4VAC50-60-112~~ 9VAC25-870-112.

~~4VAC50-60-59.~~ 9VAC25-870-59. **Applying for state permit coverage.**

The operator must submit a complete and accurate registration statement on the official department form to the VSMP authority in order to apply for state permit coverage. The registration statement must be signed by the operator in accordance with ~~4VAC50-60-370~~ 9VAC25-870-370.

Part II B

Technical Criteria for Regulated Land-Disturbing Activities

~~4VAC50-60-62.~~ 9VAC25-870-62. **Applicability.**

In accordance with the board's authority and except as provided in ~~4VAC50-60-48~~ 9VAC25-870-48, this part establishes the minimum technical criteria that shall be employed by a state agency in accordance with an implementation schedule set by the board, or by a VSMP authority that has been approved by the board, to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities.

~~4VAC50-60-63.~~ 9VAC25-870-63. **Water quality design criteria requirements.**

A. In order to protect the quality of state waters and to control the discharge of stormwater pollutants from regulated activities, the following minimum design criteria and statewide standards for stormwater management shall be applied to the site.

1. New development. The total phosphorus load of new development projects shall not exceed 0.41 pounds per acre per year, as calculated pursuant to ~~4VAC50-60-65~~ 9VAC25-870-65.
2. Development on prior developed lands.
 - a. For land-disturbing activities disturbing greater than or equal to one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 20% below the predevelopment total phosphorus load.

b. For regulated land-disturbing activities disturbing less than one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 10% below the predevelopment total phosphorus load.

c. For land-disturbing activities that result in a net increase in impervious cover over the predevelopment condition, the design criteria for new development shall be applied to the increased impervious area. Depending on the area of disturbance, the criteria of subdivisions a or b above, shall be applied to the remainder of the site.

d. In lieu of subdivision c of this subsection, the total phosphorus load of a linear development project occurring on prior developed lands shall be reduced 20% below the predevelopment total phosphorus load.

e. The total phosphorus load shall not be required to be reduced to below the applicable standard for new development unless a more stringent standard has been established by a locality.

B. Compliance with subsection A of this section shall be determined in accordance with ~~4VAC50-60-65~~ 9VAC25-870-65.

C. Upon completion of the 2017 Chesapeake Bay Phase III Watershed Implementation Plan, the department shall review the water quality design criteria standards.

D. Nothing in this section shall prohibit a locality's VSMP authority from establishing more stringent water quality design criteria requirements in accordance with § 62.1-44.15:33 of the Code of Virginia.

~~4VAC50-60-65.~~ 9VAC25-870-65. Water quality compliance.

A. Compliance with the water quality design criteria set out in subdivisions A 1 and A 2 of ~~4VAC50-60-63~~ 9VAC25-870-63 shall be determined by utilizing the Virginia Runoff Reduction Method or another equivalent methodology that is approved by the board.

B. The BMPs listed in this subsection are approved for use as necessary to effectively reduce the phosphorus load and runoff volume in accordance with the Virginia Runoff Reduction Method. Other approved BMPs found on the Virginia Stormwater BMP Clearinghouse Website at <http://www.vwrre.vt.edu/swe> may also be utilized. Design specifications and the pollutant removal efficiencies for all approved BMPs are found on the Virginia Stormwater BMP Clearinghouse Website at <http://www.vwrre.vt.edu/swe>.

1. Vegetated Roof (Version 2.3, March 1, 2011);
2. Rooftop Disconnection (Version 1.9, March 1, 2011);
3. Rainwater Harvesting (Version 1.9.5, March 1, 2011);
4. Soil Amendments (Version 1.8, March 1, 2011);
5. Permeable Pavement (Version 1.8, March 1, 2011);
6. Grass Channel (Version 1.9, March 1, 2011);

7. Bioretention (Version 1.9, March 1, 2011);
8. Infiltration (Version 1.9, March 1, 2011);
9. Dry Swale (Version 1.9, March 1, 2011);
10. Wet Swale (Version 1.9, March 1, 2011);
11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);
12. Extended Detention Pond (Version 1.9, March 1, 2011);
13. Filtering Practice (Version 1.8, March 1, 2011);
14. Constructed Wetland (Version 1.9, March 1, 2011); and
15. Wet Pond (Version 1.9, March 1, 2011).

C. BMPs differing from those listed in subsection B of this section shall be reviewed and approved by the director in accordance with procedures established by the ~~BMP Clearinghouse Committee and approved by the board department~~.

D. A VSMP authority may establish limitations on the use of specific BMPs ~~following the submission of the proposed limitation and written justification to the department in accordance with § 62.1-44.15:33 of the Code of Virginia~~.

E. The VSMP authority shall have the discretion to allow for application of the design criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with ~~4VAC50-60-92~~ 9VAC25-870-92.

F. Offsite alternatives where allowed in accordance with ~~4VAC50-60-69~~ 9VAC25-870-69 may be utilized to meet the design criteria of subsection A of ~~4VAC50-60-63~~ 9VAC25-870-63.

~~4VAC50-60-66.~~ 9VAC25-870-66. Water quantity.

A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of subdivision 7 of § ~~40.1-603.4~~ 62.1-44.15:28 of the Code of Virginia. Nothing in this section shall prohibit a locality's VSMP authority from establishing a more stringent standard in accordance with § 62.1-44.15:33 of the Code of Virginia especially where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters. Compliance with the minimum standards set out in this section shall be deemed to satisfy the requirements of subdivision 19 of ~~4VAC50-30-40~~ 9VAC25-840-40 (Minimum ~~Standard 19 of the standards;~~ Virginia Erosion and Sediment Control Regulations).

B. Channel protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet the criteria in subdivision 1, 2, or 3 of this subsection,

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where applicable, from the point of discharge to a point to the limits of analysis in subdivision 4 of this subsection.

1. Manmade stormwater conveyance systems. When stormwater from a development is discharged to a manmade stormwater conveyance system, following the land-disturbing activity, either:

a. The manmade stormwater conveyance system shall convey the postdevelopment peak flow rate from the two-year 24-hour storm event without causing erosion of the system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VSMP authority; or

b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

2. Restored stormwater conveyance systems. When stormwater from a development is discharged to a restored stormwater conveyance system that has been restored using natural design concepts, following the land-disturbing activity, either:

a. The development shall be consistent, in combination with other stormwater runoff, with the design parameters of the restored stormwater conveyance system that is functioning in accordance with the design objectives; or

b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

3. Natural stormwater conveyance systems. When stormwater from a development is discharged to a natural stormwater conveyance system, the maximum peak flow rate from the one-year 24-hour storm following the land-disturbing activity shall be calculated either:

a. In accordance with the following methodology:

$$Q_{\text{Developed}} \leq \text{I.F.} * (Q_{\text{Pre-developed}} * RV_{\text{Pre-Developed}}) / RV_{\text{Developed}}$$

Under no condition shall $Q_{\text{Developed}}$ be greater than $Q_{\text{Pre-Developed}}$ nor shall $Q_{\text{Developed}}$ be required to be less than that calculated in the equation $(Q_{\text{Forest}} * RV_{\text{Forest}}) / RV_{\text{Developed}}$; where

I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre.

$Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.

$RV_{\text{Developed}}$ = The volume of runoff from the site in the developed condition.

$Q_{\text{Pre-Developed}}$ = The peak flow rate of runoff from the site in the pre-developed condition.

$RV_{\text{Pre-Developed}}$ = The volume of runoff from the site in pre-developed condition.

Q_{Forest} = The peak flow rate of runoff from the site in a forested condition.

RV_{Forest} = The volume of runoff from the site in a forested condition; or

b. In accordance with another methodology that is demonstrated by the VSMP authority to achieve equivalent results and is approved by the board.

4. Limits of analysis. Unless subdivision 3 of this subsection is utilized to show compliance with the channel protection criteria, stormwater conveyance systems shall be analyzed for compliance with channel protection criteria to a point where either:

a. Based on land area, the site's contributing drainage area is less than or equal to 1.0% of the total watershed area; or

b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour storm prior to the implementation of any stormwater quantity control measures.

C. Flood protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of acceptable hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to stormwater conveyance systems that currently do not experience localized flooding during the 10-year 24-hour storm event: The point of discharge releases stormwater into a stormwater conveyance system that, following the land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VSMP authority.

2. Concentrated stormwater flow to stormwater conveyance systems that currently experience localized flooding during the 10-year 24-hour storm event: The point of discharge either:

a. Confines the postdevelopment peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system to avoid the localized flooding. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VSMP authority; or

b. Releases a postdevelopment peak flow rate for the 10-year 24-hour storm event that is less than the predevelopment peak flow rate from the 10-year 24-hour storm event. Downstream stormwater conveyance systems do not require any additional analysis to show compliance with flood protection criteria ~~is-if~~ this option is utilized.

3. Limits of analysis. Unless subdivision 2 b of this subsection is utilized to comply with the flood protection

criteria, stormwater conveyance systems shall be analyzed for compliance with flood protection criteria to a point where:

- a. The site's contributing drainage area is less than or equal to 1.0% of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system;
- b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-hour storm event prior to the implementation of any stormwater quantity control measures; or
- c. The stormwater conveyance system enters a mapped floodplain or other flood-prone area, adopted by ordinance, of any locality.

D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down-gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a stormwater management facility or a stormwater conveyance system that conveys the runoff without causing down-gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

E. For purposes of computing predevelopment runoff, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the VSMP authority that actual site conditions warrant such considerations.

F. Predevelopment and postdevelopment runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices. Guidance provided in the Virginia Stormwater Management Handbook and by on the Virginia Stormwater BMP Clearinghouse Website shall be considered appropriate practices.

~~4VAC50-60-69.~~ 9VAC25-870-69. Offsite compliance options.

A. Offsite compliance options that a VSMP authority may allow an operator to use to meet required phosphorus nutrient reductions include the following:

- 1. Offsite controls utilized in accordance with a comprehensive stormwater management plan adopted

pursuant to ~~4VAC50-60-92~~ 9VAC25-870-92 for the local watershed within which a project is located;

- 2. A locality pollutant loading pro rata share program established pursuant to § 15.2-2243 of the Code of Virginia or similar local funding mechanism;
- 3. The nonpoint nutrient offset program established pursuant to ~~§ 40.1-603.8:1~~ 62.1-44.15:35 of the Code of Virginia;
- 4. Any other offsite options approved by an applicable state agency or state board; and
- 5. When an operator has additional properties available within the same HUC or upstream HUC that the land-disturbing activity directly discharges to or within the same watershed as determined by the VSMP authority, offsite stormwater management facilities on those properties may be utilized to meet the required phosphorus nutrient reductions from the land-disturbing activity.

B. Notwithstanding subsection A of this section, and pursuant to ~~§ 40.1-603.8:1~~ 62.1-44.15:35 of the Code of Virginia, operators shall be allowed to utilize offsite options identified in subsection A of this section under any of the following conditions:

- 1. Less than five acres of land will be disturbed;
- 2. The postconstruction phosphorus control requirement is less than 10 pounds per year; or
- 3. At least 75% of the required phosphorus nutrient reductions are achieved on-site. If at least 75% of the required phosphorus nutrient reductions ~~can not~~ cannot be met on-site, and the operator can demonstrate to the satisfaction of the VSMP authority that (i) alternative site designs have been considered that may accommodate on-site best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on-site, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of off-site compliance options.

C. Notwithstanding subsections A and B of this section, offsite options shall not be allowed:

- 1. Unless the selected offsite option achieves the necessary nutrient reductions prior to the commencement of the operator's land-disturbing activity. In the case of a phased project, the operator may acquire or achieve offsite nutrient reductions prior to the commencement of each phase of land-disturbing activity in an amount sufficient for each phase.
- 2. In contravention of local water quality-based limitations at the point of discharge that are (i) consistent with the determinations made pursuant to subsection B of § 62.1-

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44.19:7 of the Code of Virginia, (ii) contained in a municipal separate storm sewer system (MS4) program plan accepted by the department, or (iii) as otherwise may be established or approved by the board.

D. In order to meet the requirements of ~~4VAC50-60-66~~ 9VAC25-870-66, offsite options described in subdivisions 1 and 2 of subsection A of this section may be utilized.

~~4VAC50-60-72.~~ 9VAC25-870-72. **Design storms and hydrologic methods.**

A. Unless otherwise specified, the prescribed design storms are the one-year, two-year, and 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time series shall be used for the precipitation data.

B. Unless otherwise specified, all hydrologic analyses shall be based on the existing watershed characteristics and how the ultimate development condition of the subject project will be addressed.

C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in this part.

D. For drainage areas of 200 acres or less, the VSMP authority may allow for the use of the Rational Method for evaluating peak discharges.

E. For drainage areas of 200 acres or less, the VSMP authority may allow for the use of the Modified Rational Method for evaluating volumetric flows to stormwater conveyances.

~~4VAC50-60-74.~~ 9VAC25-870-74. **Stormwater harvesting.**

In accordance with ~~§ 40.1-603.4~~ 62.1-44.15:28 of the Code of Virginia, stormwater harvesting is encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing water closets and urinals, and other water handling systems to the extent such systems are consistent with federal, state, and local regulations.

~~4VAC50-60-76.~~ 9VAC25-870-76. **Linear development projects.**

Linear development projects shall control postdevelopment stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan developed in accordance with these regulations.

~~4VAC50-60-85.~~ 9VAC25-870-85. **Stormwater management impoundment structures or facilities.**

A. Stormwater management wet ponds and extended detention ponds that are not covered by the Impounding Structure Regulations (4VAC50-20) shall, at a minimum, be

engineered for structural integrity for the 100-year storm event.

B. Construction of stormwater management impoundment structures or facilities may occur in karst areas only after a study of the geology and hydrology of the area has been conducted to determine the presence or absence of karst features that may be impacted by stormwater runoff and BMP placement.

C. Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set out in ~~4VAC50-60-63~~ 9VAC25-870-63 and the water quantity criteria set out in ~~4VAC50-60-66.~~ 9VAC25-870-66. Permanent stormwater management impoundment structures or facilities shall only be constructed in karst features after completion of a geotechnical investigation that identifies any necessary modifications to the BMP to ensure its structural integrity and maintain its water quality and quantity efficiencies. The person responsible for the land-disturbing activity is encouraged to screen for known existence of heritage resources in the karst features. Any Class V Underground Injection Control Well registration statements for stormwater discharges to improved sinkholes shall be included in the SWPPP.

~~4VAC50-60-92.~~ 9VAC25-870-92. **Comprehensive stormwater management plans.**

A locality's VSMP authority may develop comprehensive stormwater management plans to be approved by the department that meet the water quality objectives, quantity objectives, or both of this chapter:

1. Such plans shall ensure that offsite reductions equal to or greater than those that would be required on each contributing site are achieved within the same HUC or within another locally designated watershed. Pertaining to water quantity objectives, the plan may provide for implementation of a combination of channel improvement, stormwater detention, or other measures that are satisfactory to the locality's VSMP authority to prevent downstream erosion and flooding.
2. If the land use assumptions upon which the plan was based change or if any other amendments are deemed necessary by the locality's VSMP authority, such authority shall provide plan amendments to the department for review and approval.
3. During the plan's implementation, the locality's VSMP authority shall document nutrient reductions accredited to the BMPs specified in the plan.
4. State and federal agencies may develop comprehensive stormwater management plans, and may participate in locality-developed comprehensive stormwater management plans where practicable and permitted by the locality's VSMP authority.

Part II C

Technical Criteria for Regulated Land-Disturbing Activities:

Grandfathered Projects and Projects Subject to the Provisions of ~~4VAC50-60-47.1~~ 9VAC25-870-47 B

~~4VAC50-60-93.1~~, 9VAC25-870-93, Definitions.

For the purposes of Part II C only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

"Adequate channel" means a channel that will convey the designated frequency storm event without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

"Aquatic bench" means a 10-foot to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.

"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16% or a calculated watershed-specific value for the average land cover condition as approved by the Chesapeake Bay Local Assistance Board prior to September 13, 2011.

"Bioretention basin" means a water quality BMP engineered to filter the water quality volume (i) through an engineered planting bed consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed and (ii) into the in-situ material.

"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.

"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

"Grassed swale" means an earthen conveyance system which is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.

"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.

"Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.

"Shallow marsh" means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area to maintain the desired water surface elevations to support emergent vegetation.

"Stormwater detention basin" or "detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.

"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding or stream channel erosion.

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"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.

"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.

"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.

"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration, and absorption, and is dedicated for that purpose.

"Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the impervious surface of the land development project.

4VAC50-60-94. 9VAC25-870-94. Applicability.

This part specifies the technical criteria for regulated land-disturbing activities that are not subject to the technical criteria of Part II B in accordance with ~~4VAC50-60-48~~ 9VAC25-870-48.

4VAC50-60-95. 9VAC25-870-95. General.

A. Determination of flooding and channel erosion impacts to receiving streams due to land-disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed that also contributes to that point of discharge.

B. The specified design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.

C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.

D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws, regulations, and ordinances. Evidence of approval of all necessary permits shall be presented.

E. Impounding structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be

engineered for structural integrity during the 100-year storm event.

F. Predevelopment and postdevelopment runoff rates shall be verified by calculations that are consistent with good engineering practices.

G. Outflows from a stormwater management facility or stormwater conveyance system shall be discharged to an adequate channel.

H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land-disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.

I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan.

J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided ~~to the extent~~ whenever possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59.

K. Natural channel characteristics shall be preserved to the maximum extent practicable.

L. Land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law (~~§ 10.1-560 et seq. of the Code of Virginia~~) and attendant regulations.

M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in resource protection areas defined in the Chesapeake Bay Preservation Act provided such facilities are allowed and constructed in accordance with the Stormwater Management Act (~~§ 10.1-603.2 et seq. of the Code of Virginia~~) and this chapter, and provided that (i) the local government has conclusively established that the location of the facility within the resource protection area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with ~~4VAC50-60-92~~ 9VAC25-870-92 or with a VSMP that has been approved prior to July 1, 2012, by the board, the Chesapeake Bay Local Assistance Board prior to its abolishment on July 1, 2012, or the Board of Conservation and Recreation; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of

Engineers, ~~the Virginia Department of Conservation and Recreation, the Virginia Department of Environmental Quality the department,~~ and the Virginia Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a resource protection area.

4VAC50-60-96. 9VAC25-870-96. Water quality.

A. Compliance with the water quality criteria may be achieved by applying the performance-based criteria or the technology-based criteria to either the site or a planning area.

B. Performance-based criteria. For land-disturbing activities, the calculated postdevelopment nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 1 of this section to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:

1. Situation 1 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is less than the average land cover condition.

Requirement: No reduction in the after disturbance pollutant discharge is required.

2. Situation 2 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the average land cover condition.

3. Situation 3 consists of land-disturbing activities where the existing percent impervious cover is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant discharge based on existing conditions less 10% or (ii) the pollutant discharge based on the average land cover condition, whichever is greater.

4. Situation 4 consists of land-disturbing activities where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.

C. Technology-based criteria. For land-disturbing activities, the postdeveloped stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the postdeveloped condition percent impervious cover as specified in Table 1 of this section. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 1 or those found in ~~4VAC50-60-65 9VAC25-870-65.~~ Design standards and specifications for the BMPs in Table 1 that meet the required target pollutant removal efficiency are available in the ~~1990~~ 1999 Virginia Stormwater Management Handbook. Other approved BMPs available on the Virginia Stormwater BMP Clearinghouse website at <http://www.vwrr.vt.edu/swe> Website may also be utilized.

Table 1*

Water Quality BMP*	Target Phosphorus Removal Efficiency	Percent Impervious Cover
Vegetated filter strip	10%	16-21%
Grassed Swale	15%	
Constructed wetlands	20%	22-37%
Extended detention (2 x WQ Vol)	35%	
Retention basin I (3 x WQ Vol)	40%	
Bioretention basin	50%	38-66%
Bioretention filter	50%	
Extended detention-enhanced	50%	
Retention basin II (4 x WQ Vol)	50%	
Infiltration (1 x WQ Vol)	50%	
Sand filter	65%	67-100%
Infiltration (2 x WQ Vol)	65%	
Retention basin III (4 x WQ Vol with aquatic bench)	65%	

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*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the ~~VSMP authority~~ local program administrator or the department. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the ~~VSMP authority~~ local program administrator or the department.

4VAC50-60-97, 9VAC25-870-97, Stream channel erosion.

A. Properties and receiving waterways downstream of any land-disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including, but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The VSMP authority shall require compliance with subdivision 19 of ~~4VAC50-30-40~~ 9VAC25-840-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to ~~Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia~~ the Erosion and Sediment Control Law.

C. The locality's VSMP authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land-disturbing activities or where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional waters. Therefore, in lieu of the reduction of the two-year postdeveloped peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm.

D. In addition to subsections B and C of this section, a locality's VSMP authority by local ordinance may in accordance with § 62.1-44.15:33 of the Code of Virginia, or the board by state regulation may, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include, but are not limited to, the following:

1. Criteria and procedures for channel analysis and classification.
2. Procedures for channel data collection.
3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.
4. Criteria for the selection of proposed natural or manmade channel linings.

4VAC50-60-98, 9VAC25-870-98, Flooding.

A. Downstream properties and waterways shall be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including,

but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The 10-year postdeveloped peak rate of runoff from the development site shall not exceed the 10-year predeveloped peak rate of runoff.

C. In lieu of subsection B of this section, localities may, by ordinance in accordance with § 62.1-44.15:33 of the Code of Virginia, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors, or other downstream conveyance factors as appropriate.

D. Linear development projects shall not be required to control postdeveloped stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.

4VAC50-60-99, 9VAC25-870-99, Regional (watershed-wide) stormwater management plans.

Water quality requirements and where allowed, water quantity requirements, may be achieved in accordance with sections ~~4VAC50-60-69~~ 9VAC25-870-69 and ~~4VAC50-60-92~~ 9VAC25-870-92.

Part III

General Provisions Applicable to VSMPs and VSMP Authorities

4VAC50-60-100, 9VAC25-870-100, Applicability.

This part establishes the board's procedures for the authorization of a VSMP, the board's procedures for the administration of a VSMP by a locality's VSMP authority or by other VSMP authorities where the procedures may be applicable, and board and department oversight authorities for a VSMP.

4VAC50-60-102, 9VAC25-870-102, Authority.

If an authorized entity pursuant to ~~§ 10.1-603.3~~ 62.1-44.15:27 of the Code of Virginia has adopted a VSMP in accordance with the Virginia Stormwater Management Act (~~§ 10.1-603.2 et seq. of the Code of Virginia~~) and the board has deemed such program adoption consistent with the Virginia Stormwater Management Act and these regulations in accordance with ~~§ 10.1-603.3~~ 62.1-44.15:27 of the Code of Virginia, the board may authorize the entity to administer a VSMP. Pursuant to ~~§ 10.1-603.4~~ 62.1-44.15:28 of the Code of Virginia, the board is required to establish standards and procedures for such an authorization.

~~4VAC50-60-103.~~ 9VAC25-870-103. VSMP authority requirements for Chesapeake Bay Preservation Act land-disturbing activities.

A. A VSMP authority shall regulate runoff associated with Chesapeake Bay Preservation Act land-disturbing activities in accordance with the following:

1. ~~Such~~ After June 30, 2014, such land-disturbing activities shall not require completion of a registration statement or require coverage under the General Permit for Discharges of Stormwater from Construction Activities but shall be subject to the technical criteria and program and administrative requirements set out in ~~4VAC50-60-51~~ 9VAC25-870-51.
2. A VSMP authority permit, where applicable, shall be issued permitting the land-disturbing activity.
3. The VSMP authority shall regulate such land-disturbing activities in compliance with the:
 - a. Program requirements in ~~4VAC50-60-104~~ 9VAC25-870-104;
 - b. Plan review requirements in ~~4VAC50-60-108~~ 9VAC25-870-108 with the exception of subsection D of ~~4VAC50-60-108~~ 9VAC25-870-108;
 - c. Long-term stormwater management facility requirements of ~~4VAC50-60-112~~ 9VAC25-870-112;
 - d. Inspection requirements of ~~4VAC50-60-114~~ 9VAC25-870-114 with the exception of subdivisions A 3 and A 4 of ~~4VAC50-60-114~~ 9VAC25-870-114;
 - e. Enforcement components of ~~4VAC50-60-116~~ 9VAC25-870-116;
 - f. Hearing requirements of ~~4VAC50-60-118~~ 9VAC25-870-118;
 - g. Exception conditions of ~~4VAC50-60-122~~ 9VAC25-870-122 excluding subsection C of ~~4VAC50-60-122~~ 9VAC25-870-122 which is not applicable; and
 - h. Reporting and recordkeeping requirements of ~~4VAC50-60-126~~ 9VAC25-870-126 with the exception of subdivision B 3 of ~~4VAC50-60-126~~ 9VAC25-870-126.

B. A locality's VSMP authority shall adopt an ordinance, and other VSMP authorities shall provide program documentation, that incorporates the components of this section.

C. In accordance with subdivision A 5 of § ~~40.1-603.4~~ 62.1-44.15:28 of the Code of Virginia, a locality's VSMP authority may collect a permit issuance fee from the applicant of \$290 and an annual maintenance fee of \$50 for such land-disturbing activities.

Part III A

Programs Operated by a VSMP Authority

~~4VAC50-60-104.~~ 9VAC25-870-104. Criteria for programs operated by a VSMP authority.

A. All VSMP authorities shall require compliance with the provisions of Part II (~~4VAC50-60-40 et seq.~~) (9VAC25-870-40 et seq.) of this chapter.

B. When a locality's VSMP authority has adopted requirements more stringent than those imposed by this chapter in accordance with § ~~40.1-603.7~~ 62.1-44.15:33 of the Code of Virginia or implemented a comprehensive stormwater management plan, the department shall consider such requirements in its review of state projects within that locality in accordance with Part IV (~~4VAC50-60-160 et seq.~~) (9VAC25-870-160 et seq.) of this chapter.

C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state or federal project, unless authorized by separate statute.

D. A VSMP authority may require, excluding state and federal entities, the submission of a reasonable performance bond or other financial surety and provide for the release of such sureties in accordance with the criteria set forth in § ~~40.1-603.8~~ 62.1-44.15:34 of the Code of Virginia.

~~4VAC50-60-106.~~ 9VAC25-870-106. Additional requirements for VSMP authorities.

A. A locality's VSMP authority shall adopt ordinances, and other VSMP authorities shall provide program documentation, that ensure compliance with the requirements set forth in ~~4VAC50-60-460~~ 9VAC25-870-460 L.

B. The locality's VSMP authority shall adopt ordinances, and other VSMP authorities shall provide program documentation, at least as stringent as the provisions of the General Permit for Discharges of Stormwater from Construction Activities.

~~4VAC50-60-108~~ 9VAC25-870-108. Stormwater management plan review.

A. A VSMP authority shall review and approve stormwater management plans.

B. A VSMP authority shall approve or disapprove a stormwater management plan according to the following:

1. The VSMP authority shall determine the completeness of a plan in accordance with ~~4VAC50-60-55~~ 9VAC25-870-55, and shall notify the applicant of any determination, within 15 calendar days of receipt. Where available to the applicant, electronic communication may be considered communication in writing.

a. If within those 15 calendar days the plan is deemed to be incomplete, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.

b. If a determination of completeness is made and communicated to the applicant within the 15 calendar

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days, an additional 60 calendar days from the date of the communication will be allowed for the review of the plan.

c. If a determination of completeness is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a total of 60 calendar days from the date of submission will be allowed for the review of the plan.

d. The VSMP authority shall review, within 45 calendar days of the date of resubmission, any plan that has been previously disapproved.

2. During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this chapter and of the VSMP authority. Where available to the applicant, electronic communication may be considered communication in writing.

3. If a plan meeting all requirements of this chapter and of the VSMP authority is submitted and no action is taken within the time specified above, the plan shall be deemed approved.

C. Each approved plan may be modified in accordance with the following:

1. Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the VSMP authority. The VSMP authority shall have 60 calendar days to respond in writing either approving or disapproving such requests.

2. Based on an inspection, the VSMP authority may require amendments to the approved stormwater management plan to address any deficiencies within a time frame set by the ~~stormwater program administrative~~ VSMP authority.

D. Upon the development of an online reporting system by the department, but no later than July 1, 2014, a VSMP authority shall then be required to obtain evidence of state permit coverage, where it is required, prior to providing approval to begin land disturbance.

E. The VSMP authority shall require the submission of a construction record drawing for permanent stormwater management facilities in accordance with ~~4VAC50-60-55~~ 9VAC25-870-55. A VSMP authority may elect not to require construction record drawings for stormwater management facilities for which maintenance agreements are not required pursuant to ~~4VAC50-60-112~~ 9VAC25-870-112.

~~4VAC50-60-112.~~ 9VAC25-870-112. Long-term maintenance of permanent stormwater management facilities.

A. The VSMP authority shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to state permit termination or earlier as required by the VSMP authority and shall at a minimum:

1. Be submitted to the VSMP authority for review and approval prior to the approval of the stormwater management plan;
2. Be stated to run with the land;
3. Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
4. Provide for inspections and maintenance and the submission of inspection and maintenance reports to the VSMP authority; and
5. Be enforceable by all appropriate governmental parties.

B. At the discretion of the VSMP authority, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the VSMP authority that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the VSMP authority.

~~4VAC50-60-114.~~ 9VAC25-870-114. Inspections.

A. The VSMP authority shall inspect the land-disturbing activity during construction for:

1. Compliance with the approved erosion and sediment control plan;
2. Compliance with the approved stormwater management plan;
3. Development, updating, and implementation of a pollution prevention plan; and
4. Development and implementation of any additional control measures necessary to address a TMDL.

B. The VSMP authority shall establish an inspection program that ensures that stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Inspection programs shall:

1. Be approved by the board;
2. Ensure that each stormwater management facility is inspected by the VSMP authority, or its designee, not to include the owner, except as provided in subsections C and D of this section, at least once every five years; and
3. Be documented by records.

C. The VSMP authority may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the board.

D. If a recorded instrument is not required pursuant to ~~4VAC50-60-112~~ 9VAC25-870-112, a VSMP authority shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the VSMP authority.

~~4VAC50-60-116~~ 9VAC25-870-116. Enforcement.

A. A locality's VSMP authority shall incorporate components from subdivisions 1 and 2 of this subsection.

1. Informal and formal administrative enforcement procedures may include:
 - a. Verbal warnings and inspection reports;
 - b. Notices of corrective action;
 - c. Consent special orders and civil charges in accordance with subdivision 7 6 of § ~~40.1-603.2-1~~ 62.1-44.15:25 and § ~~40.1-603.14~~ 62.1-44.15:48 D 2 of the Code of Virginia;
 - d. Notices to comply in accordance with § ~~40.1-603.11~~ 62.1-44.15:37 of the Code of Virginia;
 - e. Special orders in accordance with subdivision 7 6 of § ~~40.1-603.2-1~~ 62.1-44.15:25 of the Code of Virginia;
 - f. Emergency special orders in accordance with subdivision 7 6 of § ~~40.1-603.2-1~~ 62.1-44.15:25 of the Code of Virginia; and
 - g. Public notice and comment periods for proposed settlements and consent special orders pursuant to ~~4VAC50-60-660~~ 9VAC25-870-660.
2. Civil and criminal judicial enforcement procedures may include:
 - a. Schedule of civil penalties in accordance with § ~~40.1-603.14~~ 62.1-44.15:48 of the Code of Virginia;
 - b. Criminal penalties in accordance with § ~~40.1-603.14~~ 62.1-44.15:48 B and C of the Code of Virginia; and
 - c. Injunctions in accordance with §§ ~~40.1-603.12:4~~, ~~40.1-603.2-1~~ 62.1-44.15:25, 62.1-44.15:42, and ~~40.1-603.14~~ 62.1-44.15:48 D 1 of the Code of Virginia.

B. A locality's VSMP authority shall develop policies and procedures that outline the steps to be taken regarding

enforcement actions under the Stormwater Management Act and attendant regulations and local ordinances.

C. Pursuant to § ~~40.1-603.14~~ 62.1-44.15:48 A of the Code of Virginia, the locality's VSMP authority ~~shall use the following schedule of civil penalties for enforcement actions.~~ ~~The court~~ has the discretion to impose a maximum penalty of \$32,500 per violation per day in accordance with § ~~40.1-603.14~~ 62.1-44.15:48 A of the Code of Virginia. Such ~~violation~~ penalty may reflect the degree of harm caused by the violation. ~~The court may~~ and take into account the economic benefit to the violator from noncompliance. ~~Such violations~~ Violations include, but are not limited to:

1. No state permit registration;
2. No SWPPP;
3. Incomplete SWPPP;
4. SWPPP not available for review;
5. No approved erosion and sediment control plan;
6. Failure to install stormwater BMPs or erosion and sediment controls;
7. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
8. Operational deficiencies;
9. Failure to conduct required inspections;
10. Incomplete, improper, or missed inspections.

D. Pursuant to subdivision 2 of § ~~40.1-603.2-1~~ 62.1-44.15:25 of the Code of Virginia, authorization to administer a VSMP program shall not remove from the board the authority to enforce the provisions of the Act and attendant regulations.

E. The department may terminate state permit coverage during its term and require application for an individual state permit or deny a state permit renewal application for failure to comply with state permit conditions or on its own initiative in accordance with the Act and this chapter.

F. Pursuant to § ~~40.1-603.14~~ 62.1-44.15:48 A of the Code of Virginia, civil penalties recovered by a locality's VSMP authority shall be paid into the treasury of the locality in which the violation occurred and are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

G. The ~~department~~ VSMP authority may ~~provide use~~ provide additional guidance concerning suggested penalty amounts ~~in its Stormwater Management Enforcement Manual~~ provided by the department.

~~4VAC50-60-118~~ 9VAC25-870-118. Hearings.

The VSMP authority shall ensure that any permit applicant, permittee, or person subject to state permit requirements under the Act aggrieved by any action of the VSMP authority taken without a formal hearing, or by inaction of the VSMP

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authority, shall have a right to a hearing pursuant to § ~~10.1-603.12:6~~ 62.1-44.15:44 of the Code of Virginia and shall ensure that all hearings held under this chapter shall be conducted in a manner consistent with § ~~10.1-603.12:7~~ 62.1-44.26 of the Code of Virginia or as otherwise provided by law. The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to decisions rendered by localities but appeals shall be conducted in accordance with local appeal procedures.

~~4VAC50-60-122.~~ 9VAC25-870-122. **Exceptions.**

A. A VSMP authority may grant exceptions to the provisions of Part II B or Part II C of this chapter. An exception may be granted provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.

C. Under no circumstance shall the VSMP authority grant an exception to the requirement that the land-disturbing activity obtain required state permits, nor approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, except where allowed under Part II C (~~4VAC50-60-146~~ 9VAC25-870-93 et seq.) of this chapter.

D. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options available through ~~4VAC50-60-69~~ 9VAC25-870-69 have been considered and found not available.

E. A record of all exceptions granted shall be maintained by the VSMP authority in accordance with ~~4VAC50-60-126~~ 9VAC25-870-126.

~~4VAC50-60-126.~~ 9VAC25-870-126. **Reports and recordkeeping.**

A. On a fiscal year basis (July 1 to June 30), a VSMP authority shall report to the department by October 1 of each year in a format provided by the department. The information to be provided shall include the following:

1. Information on each permanent stormwater management facility completed during the fiscal year to include type of stormwater management facility, geographic coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;
2. Number and type of enforcement actions during the fiscal year; and
3. Number of exceptions granted during the fiscal year.

B. A VSMP authority shall keep records in accordance with the following:

1. Project records, including approved stormwater management plans, shall be kept for three years after state permit termination or project completion.
2. Stormwater management facility inspection records shall be documented and retained for at least five years from the date of inspection.
3. Construction record drawings shall be maintained in perpetuity or until a stormwater management facility is removed.
4. All registration statements submitted in accordance with ~~4VAC50-60-59~~ 9VAC25-870-59 shall be documented and retained for at least three years from the date of project completion or state permit termination.

Part III B

Department of ~~Conservation and Recreation~~ Environmental Quality Procedures for Review of VSMPs

~~4VAC50-60-142.~~ 9VAC25-870-142. **Authority and applicability.**

This part specifies the criteria that the department will utilize in reviewing a VSMP authority's administration of a VSMP pursuant to § ~~10.1-603.12~~ 62.1-44.15:38 of the Code of Virginia following the board's approval of such program in accordance with the Act and this chapter.

~~4VAC50-60-144.~~ 9VAC25-870-144. **Virginia stormwater management program review.**

A. The department shall review each board-approved VSMP at least once every five years on a review schedule approved by the board. The department may review a VSMP on a more frequent basis if deemed necessary by the board and shall notify the VSMP authority if such review is scheduled.

B. The review of a board-approved VSMP shall consist of the following:

1. ~~An interview between department staff and~~ Consultation with the VSMP administrator or designee;
2. A review of the local ordinance(s) and other applicable documents;
3. A review of a subset of the plans approved by the VSMP authority for consistency of application including exceptions granted and calculations or other documentation that demonstrates that required nutrient reductions are achieved using appropriate on-site and off-site compliance options;
4. A review of the funding and staffing plan developed in accordance with ~~4VAC50-60-148~~ 9VAC25-870-148;
5. An inspection of regulated activities; and
6. A review of enforcement actions and an accounting of amounts recovered through enforcement actions where applicable.

C. ~~To the extent practicable, the~~ The department ~~will~~ shall coordinate the ~~reviews~~ once per five year review with its

other program reviews for the same entity to avoid redundancy.

D. The department shall provide results and compliance recommendations to the board in the form of a corrective action ~~agreement~~ plan and schedule if deficiencies are found within 120 days of the completion of a review otherwise the board may find the program compliant.

E. The board shall determine if the VSMP and ordinances where applicable are consistent with the Act and state stormwater management regulations and notify the VSMP authority of its findings. ~~If such findings indicate that the program is consistent with the Act and attendant regulations, the findings shall be provided to the VSMP authority at least 21 days in advance of the meeting where the board will take action on the VSMP. If such findings indicate that the program is inconsistent with the Act and attendant regulations, the findings shall be provided to the VSMP authority at least 35 days in advance of the meeting where the board will take action on the VSMP. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern the review activities and proceedings of the board and the judicial review thereof.~~

F. If the board determines that the deficiencies noted in the review will cause the VSMP to be out of compliance with the Act and attendant regulations, the board shall notify the VSMP authority concerning the deficiencies and provide a reasonable period of time in accordance with § ~~40.1-603.12~~ 62.1-44.15:38 of the Code of Virginia for corrective action to be taken. If the VSMP authority agrees to the corrective action approved by the board, the VSMP will be considered to be conditionally compliant with the Act and attendant regulations until a subsequent finding of compliance is issued by the board. If the VSMP authority fails to implement the necessary compliance actions identified by the board within the specified time, the board may take action pursuant to § ~~40.1-603.12~~ 62.1-44.15:38 of the Code of Virginia.

Part III C

Virginia Soil and Water Conservation State Water Control Board Authorization Procedures for Virginia Stormwater Management Programs

~~4VAC50-60-146.~~ 9VAC25-870-146. Authority and applicability.

Subdivision A 1 of § ~~40.1-603.4~~ 62.1-44.15:28 of the Code of Virginia requires that the board establish standards and procedures for ~~for~~ administering a VSMP. In accordance with that requirement, and with the further authority conferred upon the board by the Virginia Stormwater Management Act (§ ~~10.1-603.2~~ et seq. of the Code of Virginia), this part specifies the procedures the board will utilize in authorizing a VSMP authority to administer a VSMP.

~~4VAC50-60-148.~~ 9VAC25-870-148. Virginia stormwater management program administrative requirements.

A. A VSMP shall provide for the following:

1. Identification of the authority accepting complete registration statements and of the authorities completing plan review, plan approval, inspection, and enforcement;
2. Submission and approval of erosion and sediment control plans in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations and the submission and approval of stormwater management plans;
3. Requirements to ensure compliance with ~~4VAC50-60-54, 4VAC50-60-55, and 4VAC50-60-56~~ 9VAC25-870-54, 9VAC25-870-55, and 9VAC25-870-56;
4. Requirements for inspections and monitoring of construction activities by the operator for compliance with local ordinances;
5. Requirements for long-term inspection and maintenance of stormwater management facilities;
6. Collection, distribution to the state if required, and expenditure of fees;
7. Enforcement procedures and civil penalties where applicable;
8. Policies and procedures to obtain and release bonds, if applicable; and
9. Procedures for complying with the applicable reporting and recordkeeping requirements in ~~4VAC50-60-126~~ 9VAC25-870-126.

B. A locality's VSMP authority shall adopt and enforce an ordinance(s) that ~~incorporates~~ incorporate(s) the components set out in subdivisions 1 through 5 and 7 of subsection A of this section. Other VSMP authorities shall provide supporting documentation that ~~incorporate~~ incorporates the components set out in subdivisions 1 through 5 of subsection A of this section in a format acceptable to the department.

~~4VAC50-60-150.~~ 9VAC25-870-150. Authorization procedures for Virginia stormwater management programs.

A. A locality required to adopt a VSMP in accordance with § ~~40.1-603.3~~ 62.1-44.15:27 A of the Code of Virginia or a town electing to adopt its own VSMP in accordance with § ~~40.1-603.3~~ 62.1-44.15:27 B of the Code of Virginia, must submit to the board an application package which, at a minimum, contains the following:

1. The draft VSMP ordinance(s) as required in ~~4VAC50-60-148~~ 9VAC25-870-148;
2. A funding and staffing plan;
3. The policies and procedures including, but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other public or private entities for the administration, plan review, inspection, and enforcement components of the program; and
4. Such ordinances, plans, policies, and procedures must account for any town lying within the county as part of the locality's VSMP program unless such towns choose to adopt their own program.

Regulations

B. Upon receipt of an application package, the board or its designee shall have 30 calendar days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria set out in subsection A of this section, the board or its designee must identify to the VSMP authority applicant in writing the reasons the application package is deemed deficient.

C. Upon receipt of a complete application package, the board or its designee shall have 120 calendar days for the review of the application package, unless an extension of time, not to exceed 12 months unless otherwise specified by the board in accordance with § ~~40.1-603.3~~ 62.1-44.15:27 M of the Code of Virginia, is requested by the department, provided the VSMP authority applicant has made substantive progress. During the 120-day review period, the board or its designee shall either approve or disapprove the application, or notify the locality of a time extension for the review, and communicate its decision to the VSMP authority applicant in writing. If the application is not approved, the reasons for not approving the application shall be provided to the VSMP authority applicant in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Act and this chapter.

D. A VSMP authority applicant in accordance with § ~~40.1-603.3~~ 62.1-44.15:27 of the Code of Virginia shall submit a complete application package for the board's review pursuant to a schedule set by the board in accordance with § ~~40.1-603.3~~ 62.1-44.15:27 and shall adopt a VSMP consistent with the Act and this chapter within the timeframe established pursuant to § ~~40.1-603.3~~ 62.1-44.15:27 or otherwise established by the board.

E. A town or other authorized entity not required to adopt a VSMP in accordance with § ~~40.1-603.3~~ 62.1-44.15:27 A of the Code of Virginia but electing to adopt a VSMP may notify the board ~~at any regular meeting of the board~~. Such notification shall include a proposed schedule for adoption of a local stormwater management program on or after July 1, 2014, and within a timeframe agreed upon by the board.

Part IV

Technical Criteria and State Permit Application Requirements for State Projects

~~4VAC50-60-160. 9VAC25-870-160.~~ **Technical criteria and requirements for state projects.**

A. This part specifies technical criteria and administrative procedures for all state projects.

B. Stormwater management state permit applications prepared for state projects shall comply with the technical criteria outlined in Part II (~~4VAC50-60-40~~) (9VAC25-870-40 et seq.) of this chapter and, to the ~~maximum~~ largest extent practicable, any locality's VSMP authority's technical requirements adopted pursuant to the Act. It shall be the responsibility of the state agency to demonstrate that the locality's VSMP authority's technical requirements are not ~~practical~~ practicable for the project under consideration.

C. The department may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria.

D. As a minimum, a stormwater management state permit application shall contain the following:

1. The location and the design of the proposed stormwater management facilities.
2. Overall site plan with pre-developed and post-developed condition drainage area maps.
3. Comprehensive hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms, considered individually.
4. Calculations verifying compliance with the water quality requirements.
5. A description of the requirements for maintenance of the stormwater management facilities and a recommended schedule of inspection and maintenance.
6. The identification of a person or persons who will be responsible for maintenance.
7. All stormwater management and erosion and sediment control plans associated with a state permit application shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia and attendant regulations.

~~4VAC50-60-170. 9VAC25-870-170.~~ **Requirements for state stormwater management annual standards and specifications.**

A. Standards and specifications may, and after June 30, 2014, shall, be submitted to the department by a state agency on an annual basis. Such standards and specifications shall be consistent with the requirements of the Act, ~~and this chapter, including the General Permit for Discharges of Stormwater from Construction Activities (4VAC50-60-1100 et seq. 9VAC25-880), and the Erosion and Sediment Control Law (§ 40.1-560 et seq. of the Code of Virginia)~~ and associated regulations. Each project constructed in accordance with the requirements of the Act, this chapter, and where required standards and specifications shall obtain coverage issued under the state general permit prior to land disturbance. State agency stormwater management standards and specifications describe how land-disturbing activities shall be conducted and shall include, but are not limited to:

1. Technical criteria to meet the requirements of the Act and this chapter;
2. Provisions for the preparation of individual stormwater management and erosion and sediment control plans for each project. In addition, the individual plans, to the maximum extent practicable, shall comply with any locality's VSMP authority's technical requirements adopted

pursuant to the Act. It shall be the responsibility of the state agency to demonstrate that the locality's VSMP authority's technical requirements are not ~~practical~~ practicable for the project under consideration;

3. Provisions for the long-term responsibility and maintenance of stormwater management control devices and other techniques specified to manage the quantity and quality of runoff, including an inspection and maintenance schedule, shall be developed and implemented;

4. Provisions for erosion and sediment control and stormwater management program administration, plan design, review and approval, and construction inspection and enforcement;

5. Provisions for ensuring that responsible personnel and contractors obtain certifications or qualifications for erosion and sediment control and stormwater management comparable to those required for VSMP authorities;

6. Implementation of a project tracking and notification system to the department of all land-disturbing activities covered under the Act and this chapter; and

7. Requirements for documenting on-site changes as they occur to ensure compliance with the requirements of the Act and this chapter.

B. Copies of such stormwater management specifications and standards including, but not limited to, design manuals, technical guides and handbooks, shall be submitted.

~~4VAC50-60-180.~~ 9VAC25-870-180. **Administrative procedures: stormwater management permit applications.**

A. Within 30 days after receipt of a complete state permit application (registration statement) submitted by a state agency, the department shall issue or deny the state permit.

1. The department shall transmit its decision in writing to the state agency that submitted the state permit application.
2. Denied state permit applications shall be revised and resubmitted to the department.

B. Approval of a state permit application (registration statement) for a state project shall be subject to the following conditions:

1. The state agency shall comply with all applicable requirements of the state permit and this chapter, and shall certify that all land clearing, construction, land development, and drainage will be done according to the state permit.
2. The land development shall be conducted only within the area specified in the state permit.
3. No changes may be made to a plan for which a state permit has been issued without review and written approval by the department.
4. The department shall be notified one week prior to the pre-construction meeting and one week prior to the commencement of land-disturbing activity.

5. The department shall conduct random inspections of the project to ensure compliance with the state permit.

6. The department shall require inspections and reports from the state agency responsible for compliance with the state permit and to determine if the measures required in the state permit provide effective stormwater management.

C. Compliance with the state permit shall be subject to the following conditions:

1. Where inspection by the responsible state agency reveals deficiencies in carrying out a permitted activity, the responsible state agency shall ensure compliance with the issued state permit, state permit conditions, and plan specifications.

2. Where inspections by department personnel reveal deficiencies in carrying out the state permit, the responsible state agency shall be issued a notice to comply, with corrective actions specified and the deadline within which the work shall be performed.

3. Whenever the Commonwealth or any of its agencies fail to comply within the time provided in a notice to comply, the director may petition the secretary of a given secretariat or an agency head for a given state agency for compliance. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution.

4. Where compliance will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

5. The department may also seek compliance through other means specified in the Act and this chapter.

9VAC25-870-190. (Reserved)

~~4VAC50-60-200.~~ 9VAC25-870-200. **Administrative procedures: maintenance and inspections.**

A. Responsibility for the operation and maintenance of stormwater management facilities shall remain with the state agency and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each state project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. At a minimum, a stormwater management facility shall be inspected by the responsible state agency on an annual basis and after any storm which causes the capacity of the facility principal spillway to be exceeded.

C. During construction of the stormwater management facilities, the department shall make inspections on a random basis.

Regulations

D. The department shall require inspections and reports from the state agency responsible for ensuring compliance with the state permit and to determine if the measures required in the state permit provide effective stormwater management.

E. Inspection reports shall be maintained as part of the land disturbance project file.

Part V Reporting

~~4VAC50-60-210.~~ 9VAC25-870-210. **Reporting on stormwater management.**

State agencies shall report annually, on a schedule to be specified, to the department on the extent to which stormwater management programs have reduced nonpoint source pollution to the Commonwealth's waters and mitigated the effects of localized flooding. The report shall provide the following: data on the number and types of stormwater management facilities installed in the preceding year, the drainage area or watershed size served, the receiving stream or hydrologic unit, a summary of monitoring data, if any, and other data useful in determining the effectiveness of the programs and BMP technologies in current use. VSMP authorities shall report in accordance with ~~4VAC50-60-126~~ 9VAC25-870-126.

9VAC25-870-220 through 9VAC25-870-290. (Reserved)

Part VI

General Program Requirements Related to MS4s and Land-Disturbing Activities

~~4VAC50-60-300.~~ 9VAC25-870-300. **Exclusions.**

The following discharges do not require state permits:

1. Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or development.
2. Discharges of dredged or fill material into surface waters that are regulated under § 404 of the CWA.
3. The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with state permits until all discharges of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other

discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.

4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 (~~2000~~) (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (~~2000~~) (Pollution by Oil and Hazardous Substances).

5. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including stormwater runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.

6. Return flows from irrigated agriculture.

7. Discharges into a privately owned treatment works, except as the State Water Control Board may otherwise require.

~~4VAC50-60-310.~~ 9VAC25-870-310. **Prohibitions.**

A. Except in compliance with a state permit issued by the board pursuant to ~~Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of the Virginia Stormwater Management Act,~~ it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.

B. Any person in violation of subsection A of this section, who discharges or causes or allows a discharge of stormwater into or upon state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section, shall notify the department of the discharge immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge. The written report shall contain:

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

C. No state permit may be issued:

1. When the conditions of the state permit do not provide for compliance with the applicable requirements of the CWA or the Act, or regulations promulgated under the CWA or the Act;
2. When the state permit applicant is required to obtain a state or other appropriate certification under § 401 of the CWA and that certification has not been obtained or waived;
3. When the regional administrator has objected to issuance of the state permit;
4. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;
5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;
6. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b) of the CWA;
8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:
 - a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the board determines state permit issuance to be in the public interest; or
 - b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.
9. To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the Act and §§ 301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the department has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:
 - a. There are sufficient remaining pollutant load allocations to allow for the discharge; and
 - b. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards.

The board may waive the submission of information by the new source or new discharger required by this subdivision if the board determines that it already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph is to be included in the fact sheet to the state permit under ~~4VAC50-60-520~~ 9VAC25-870-520.

~~4VAC50-60-320.~~ 9VAC25-870-320. **Effect of a state permit.**

A. Except for any toxic effluent standards and prohibitions imposed under § 307 of the CWA and standards for sewage sludge use or disposal under § 405(d) of the CWA, compliance with a state permit during its term constitutes compliance, for purposes of enforcement, with the Act and with §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) of the CWA. However, a state permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in this chapter.

B. The issuance of a state permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a state permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

~~4VAC50-60-330.~~ 9VAC25-870-330. **Continuation of expiring state permits.**

A. The state permit shall expire at the end of its term, except that the conditions of an expired state permit continue in force until the effective date of a new state permit if:

1. The permittee has submitted a timely application as required by this chapter, which is a complete application for a new state permit; and
2. The board, through no fault of the permittee, does not issue a new state permit with an effective date on or before the expiration date of the previous state permit.

B. State permits continued under this section remain fully effective and enforceable.

C. When the permittee is not in compliance with the conditions of the expiring or expired state permit the board may choose to do any or all of the following:

1. Initiate enforcement action based upon the state permit which has been continued;
2. Issue a notice of intent to deny the new state permit. If the state permit is denied, the owner or operator would then be required to cease the activities authorized by the continued state permit or be subject to enforcement action for operating without a state permit;
3. Issue a new state permit with appropriate conditions; or
4. Take other actions authorized by this chapter.

Regulations

~~4VAC50-60-340.~~ 9VAC25-870-340. **Confidentiality of information.**

A. The board, the department, or the VSMP authority may require every state permit applicant or state permittee to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the Act and this chapter. Any personal information shall not be disclosed except to an appropriate official of the board, department, or VSMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). However:

1. Disclosure of records of the department, the board, or the VSMP authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions is prohibited. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the department, the board, or the VSMP authority.

2. Any secret formula, secret processes, or secret methods other than effluent data submitted to the department pursuant to this chapter may be claimed as confidential by the submitter in accordance with 40 CFR 122.7 (~~2000~~). Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae," "secret processes" "secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

3. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

B. Claims of confidentiality for the following information will be denied:

1. The name and address of any state permit applicant or state permittee;
2. State permit applications, state permits, and effluent data.

C. Information required by state permit application forms provided by the department may not be claimed confidential. This includes information submitted on the forms themselves

and any attachments used to supply information required by the forms.

~~4VAC50-60-350.~~ 9VAC25-870-350. **Guidance documents.**

The board may develop and use guidance, as appropriate, to implement technical and regulatory details of the state permit program. Such guidance is distinguished from regulation by the fact that it is not binding on either the board or permittees. If a more appropriate methodology than that called for in guidance is available in a given situation, the more appropriate methodology shall be used to the extent it is consistent with applicable regulations and the Stormwater Management Act.

Part VII

State Permit Applications

~~4VAC50-60-360.~~ 9VAC25-870-360. **Application for a state permit.**

A. Duty to apply. Any person who discharges or proposes to discharge stormwater into or upon state waters from municipal separate storm sewer systems or land-disturbing activities and who does not have an effective state permit, except persons covered by general permits, excluded from the requirement for a state permit by this chapter, shall submit a complete application in accordance with this section.

B. Who applies. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a state permit.

C. Time to apply. Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the board. Stormwater discharges from large construction activities and stormwater discharges associated with small construction activities shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90-day or 180-day requirements to avoid delay.

D. Duty to reapply. All state permittees with a currently effective state permit shall submit a new application at least 180 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 applications to be submitted later than the expiration date of the existing state permit.

E. Completeness. The board shall not issue a state permit before receiving a complete application for a state permit except for general permits. An application for a state permit is complete when the board receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a state permit shall be judged independently of the status of any

other state permit application or state permit for the same facility or activity.

F. Information requirements. All applicants for state permits shall provide the following information using the application form provided by the department-;

1. The activities conducted by the state permit applicant which require it to obtain a state permit;
2. Name, mailing address, and location of the facility for which the application is submitted;
3. Up to four SIC codes which best reflect the principal products or services provided by the facility;
4. The operator's name, address, telephone number, email address, ownership status, and status as federal, state, private, public, or other entity;
5. Whether the facility is located on Indian lands;
6. A listing of all permits or construction approvals received-~~or~~, applied for, or to be applied for under any of the following programs:
 - a. Hazardous Waste Management program under ~~RCRA~~ the Resource Conservation and Recovery Act (RCRA) (42 USC § 6921);
 - b. UIC program under ~~SDWA~~ the Safe Drinking Water Act (SDWA) (42 USC § 300h);
 - c. VPDES program under the CWA and the State Water Control Law;
 - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC § 4701 et seq.);
 - e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);
 - f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC § 4701 et seq.);
 - g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC § 14 et seq.);
 - h. Dredge or fill permits under § 404 of the CWA;
 - i. A state permit under the CWA and the Virginia Stormwater Management Act; and
 - j. Other relevant environmental permits, including state permits-;
7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, which depicts: the facility and (i) each of its intake and discharge structures; (ii) each of its hazardous waste treatment, storage, or disposal facilities; (iii) each well where fluids from the facility are injected underground; and (iv) those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the state permit applicant in the map area; and
8. A brief description of the nature of the business.

G. Variance requests. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.
 - a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:
 - (1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft state permit; or
 - (2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.
 - b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.
2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided, however, that a § 301(g) variance may only be requested for ammonia, chlorine, color, iron, total phenols (when determined by the administrator to be a pollutant covered by § 301(b)(2)(F) of the CWA) and any other pollutant that the administrator lists under § 301(g)(4) of the CWA) must be made as follows:
 - a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:
 - (1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the state permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a § 301(c) or § 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and
 - (2) Submitting a completed request no later than the close of the public comment period for the draft state permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 ~~(2000)~~—have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed

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180 days before EPA must make a decision (unless the Regional Administrator establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft state permit on the state permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a state permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft state permit. A copy of the request shall be sent simultaneously to the department.

H. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsection G of this section, the board may notify a state permit applicant before a draft state permit is issued that the draft state permit will likely contain limitations which are eligible for variances. In the notice the board may require the state permit applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 (~~2000~~) applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the state permit application has been submitted. The draft or final state permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions G 2 a (2) or G 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

I. Recordkeeping. State permit applicants shall keep records of all data used to complete state permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

4VAC50-60-370. 9VAC25-870-370. Signatories to state permit applications and reports.

A. All state permit applications shall be signed as follows:

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

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

3. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

B. All reports required by state permits, and other information requested by the board shall be signed by a person described in subsection A of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in subsection A of this section;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

3. The written authorization is submitted to the department.

C. If an authorization under subsection B of this section 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 subsection B of this section must be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

D. Any person signing a document under subsection A or B of this section 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."

~~4VAC50-60-380.~~ 9VAC25-870-380. Stormwater discharges.

A. State permit requirements.

1. Prior to October 1, 1994, discharges composed entirely of stormwater shall not be required to obtain a state permit except:

- a. A discharge with respect to which a state permit has been issued prior to February 4, 1987;
- b. A stormwater discharge associated with large construction activity;
- c. A discharge from a large municipal separate storm sewer system;
- d. A discharge from a medium municipal separate storm sewer system; or
- e. A discharge that either the board or the regional administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to surface waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances that do not require a state permit under subdivision 2 of this subsection or agricultural stormwater runoff that is exempted from the definition of point source.

The board may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the board may consider the following factors:

- (1) The location of the discharge with respect to surface waters;
- (2) The size of the discharge;
- (3) The quantity and nature of the pollutants discharged to surface waters; and
- (4) Other relevant factors.

2. The board may not require a state permit for discharges of stormwater runoff from mining operations or oil and gas

exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows that are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and that are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, by-product or waste products located on the site of such operations.

3. a. State permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

b. The board may either issue one system-wide state permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct state permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

c. The operator of a discharge from a municipal separate storm sewer that is part of a large or medium municipal separate storm sewer system must either:

(1) Participate in a state permit application (to be a state permittee or a state co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system that covers all, or a portion of all, discharges from the municipal separate storm sewer system;

(2) Submit a distinct state permit application that only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

(3) A regional authority may be responsible for submitting a state permit application under the following guidelines:

(a) The regional authority together with state permit co-applicants shall have authority over a stormwater management program that is in existence, or shall be in existence at the time Part 1 of the application is due;

(b) The state permit applicant or co-applicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application;

(c) Each of the operators of municipal separate storm sewers within large or medium municipal separate storm sewer systems, that are under the purview of the designated regional authority, shall comply with the application requirements of subsection C of this section.

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d. One state permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The board may issue one system-wide state permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

e. State permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the state permit, including different management programs for different drainage areas that contribute stormwater to the system.

f. State co-permittees need only comply with state permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

4. In addition to meeting the requirements of subsection B of this section, an operator of a stormwater discharge associated with a large construction activity that discharges through a large or medium municipal separate storm sewer system shall submit to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, that best reflects the principal products or services provided by each facility; and any existing state permit number.

5. The board may issue state permits for municipal separate storm sewers that are designated under subdivision A 1 e of this section on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue state permits for individual discharges.

6. Conveyances that discharge stormwater runoff combined with municipal sewage are point sources that must obtain separate VPDES permits in accordance with the procedures of ~~4VAC50-60-360~~ 9VAC25-31 and are not subject to the provisions of this section.

7. Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this subsection shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III or Title VI of the CWA.

8. a. On and after October 1, 1994, for discharges composed entirely of stormwater, that are not required by subdivision 1 of this subsection to obtain a state permit, operators shall be required to obtain a state permit only if:

(1) The discharge is from a small MS4 required to be regulated pursuant to ~~4VAC50-60-400~~ 9VAC25-870-400 B;

(2) The discharge is a stormwater discharge associated with small construction activity as defined in ~~4VAC50-60-10~~ 9VAC25-870-10;

(3) The board or the EPA regional administrator determines that stormwater controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

(4) The board or the EPA regional administrator determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

b. Operators of small MS4s designated pursuant to subdivisions 8 a (1), (3), and (4) of this subsection shall seek coverage under a state permit in accordance with ~~4VAC50-60-400~~ 9VAC25-870-400 C through E. Operators of nonmunicipal sources designated pursuant to subdivisions 8 a (2), (3), and (4) of this subsection shall seek coverage under a state permit in accordance with subdivision B 1 of this section.

c. Operators of stormwater discharges designated pursuant to subdivisions 8 a (3) and (4) of this subsection shall apply to the board for a state permit within 180 days of receipt of notice, unless permission for a later date is granted by the board.

B. Application requirements for stormwater discharges associated with large and small construction activity.

1. Dischargers of stormwater associated with large and small construction activity are required to apply for an individual state permit or seek coverage under a promulgated stormwater general permit. Facilities that are required to obtain an individual state permit, or any discharge of stormwater that the board is evaluating for designation under subdivision A 1 e of this section and is not a municipal separate storm sewer, shall submit a state application in accordance with the requirements of ~~4VAC50-60-360~~ 9VAC25-870-360 as modified and supplemented by the provisions of this subsection.

a. The operator of an existing or new stormwater discharge that is associated with a large or small construction activity shall provide a narrative description of:

(1) The location (including a map) and the nature of the construction activity;

(2) The total area of the site and the area of the site that is expected to undergo excavation during the life of the state permit;

(3) Proposed measures, including best management practices, to control pollutants in stormwater discharges

during construction, including a brief description of applicable state and VESCP requirements;

(4) Proposed measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable state or local VESCP requirements;

(5) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the state permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

(6) The name of the receiving water.

(7) Location of Chesapeake Bay Preservation Areas.

b. State permit applicants shall provide such other information the board may reasonably require to determine whether to issue a state permit.

C. Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the board under subdivision A 1 e of this section, may submit a jurisdiction-wide or system-wide state permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a state permit coapplicant to the same application. State permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under subdivision A 1 e of this section shall include;

1. Part 1 of the application shall consist of:

a. The state permit applicants' name, address, telephone number ~~of contact person, and email address;~~ ownership status, ~~and;~~ status as a state or local government entity; and the name, address, telephone number, and email address of a contact person;

b. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in subdivision 2 a of this subsection, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria;

c. Source identification.

(1) A description of the historic use of ordinances, guidance or other controls that limited the discharge of nonstormwater discharges to any publicly owned treatment works serving the same area as the municipal separate storm sewer system.

(2) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000, if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the state permit application. The following information shall be provided:

(a) The location of known municipal storm sewer system outfalls discharging to surface waters;

(b) A description of the land use activities (e.g., divisions indicating undeveloped, residential, commercial, agricultural, and industrial uses) accompanied with estimates of population densities and projected growth for a 10-year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(c) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(d) The location and the state permit number of any known discharge to the municipal storm sewer that has been issued a state permit;

(e) The location of major structural controls for stormwater discharge (retention basins, detention basins, major infiltration devices, etc.); and

(f) The identification of publicly owned parks, recreational areas, and other open lands;

d. Discharge characterization.

(1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

(2) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

(3) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

(a) Assessed and reported in § 305(b) of the CWA reports submitted by the state, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of the State Water Control Law and the CWA goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

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(b) Listed under §§ 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or § 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

(c) Listed in State Nonpoint Source Assessments required by § 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

(d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under § 314(a) of the CWA (include the following: ~~A~~ a description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

(e) Areas of concern of the Great Lakes identified by the International Joint Commission;

(f) Designated estuaries under the National Estuary Program under § 320 of the CWA;

(g) Recognized by the state permit applicant as highly valued or sensitive waters;

(h) Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

(i) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

(4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the state permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24-hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of nonstormwater discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136 (2000), the state permit applicant shall provide a description of the method used including the name of the

manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(a) A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be ~~overlayed~~ overlaid on a map of the municipal storm sewer system, creating a series of cells;

(b) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

(d) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(e) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

(f) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

(g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in subdivisions 1 d (4) (a) through (f) of this subsection, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the state permit applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the state permit applicant will

then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

(5) Information and a proposed program to meet the requirements of subdivision 2 c of this subsection. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under subdivision 2 c (1) of this subsection, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, and a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see subdivision 1 d (3) of this subsection) to the extent practicable;

e. Management programs.

(1) A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to, procedures to control pollution resulting from construction activities, floodplain management controls, wetland protection measures, best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under state law as well as local requirements.

(2) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented; and

f. Fiscal resources. A description of the financial resources currently available to the municipality to complete Part 2 of the state permit application. A description of the municipality's budget for existing stormwater programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for stormwater programs.

2. Part 2 of the application shall consist of:

a. A demonstration that the state permit applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts that authorizes or enables the state permit applicant at a minimum to:

(1) Control through ordinance, state permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by stormwater discharges

associated with industrial activity and the quality of stormwater discharged from sites of industrial activity;

(2) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

(3) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than stormwater;

(4) Control through interagency agreements among state permit coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(5) Require compliance with conditions in ordinances, state permits, contracts or orders; and

(6) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with state permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer;

b. The location of any major outfall that discharges to surface waters that was not reported under subdivision 1 c (2) (a) of this subsection. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) that best reflects the principal products or services provided by each facility that may discharge, to the municipal separate storm sewer, stormwater associated with industrial activity;

c. When quantitative data for a pollutant are required under subdivision 2 c (1) (c) of this subsection, the state permit applicant must collect a sample of effluent in accordance with ~~4VAC50-60-390~~ 9VAC25-870-390 and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (~~2000~~). When no analytical method is approved the state permit applicant may use any suitable method but must provide a description of the method. The state permit applicant must provide information characterizing the quality and quantity of discharges covered in the state permit application, including:

(1) Quantitative data from representative outfalls designated by the board (based on information received in Part 1 of the application, the board shall designate between five and 10 outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls) covered in the application, the board shall designate all outfalls developed as follows:

(a) For each outfall or field screening point designated under this subsection, samples shall be collected of stormwater discharges from three storm events occurring at least one month apart in accordance with the requirements at ~~4VAC50-60-390~~ 9VAC25-870-390 (the board may allow exemptions to sampling three storm

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events when climatic conditions create good cause for such exemptions);

(b) A narrative description shall be provided of the date and duration of the storm event or events sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(c) For samples collected and described under subdivisions 2 c (1) (a) and (1) (b) of this subsection, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of 40 CFR Part 122 Appendix D (~~2000~~), and for the following pollutants:

Total suspended solids (TSS)

Total dissolved solids (TDS)

~~COD~~ Chemical oxygen demand (COD)

~~BOD₅~~ Biochemical oxygen demand (BOD₅)

Oil and grease

Fecal coliform

Fecal streptococcus

pH

Total Kjeldahl nitrogen

Nitrate plus nitrite

Dissolved phosphorus

Total ammonia plus organic nitrogen

Total phosphorus

(d) Additional limited quantitative data required by the board for determining state permit conditions (the board may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to ensure representativeness);

(2) Estimates of the annual pollutant load of the cumulative discharges to surface waters from all identified municipal outfalls and the event mean concentration of the cumulative discharges to surface waters from all identified municipal outfalls during a storm event (as described under ~~4VAC50-60-390~~ 9VAC25-870-390) for BOD₅, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods;

(3) A proposed schedule to provide estimates for each major outfall identified in either subdivision 2 b or 1 c

(2) (a) of this subsection of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under subdivision 2 c (1) of this subsection; and

(4) A proposed monitoring program for representative data collection for the term of the state permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment;

d. A proposed management program that covers the duration of the state permit. It shall include a comprehensive planning process that involves public participation and, where necessary, intergovernmental coordination to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions that are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each state permit coapplicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the board when developing state permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(1) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the state permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(b) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing

construction site runoff are addressed in subdivision 2 d (4) of this subsection;

(c) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(d) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from stormwater is feasible;

(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under subdivision 2 d (3) of this subsection); and

(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer that will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities;

(2) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate state permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(a) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of nonstormwater discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to surface waters: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration to separate storm sewers, uncontaminated pumped groundwater, 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, and street wash water (program descriptions shall address

discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to surface waters);

(b) A description of procedures to conduct on-going field screening activities during the life of the state permit, including areas or locations that will be evaluated by such field screens;

(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of nonstormwater (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (Methylene Blue Active Substances—MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

(d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

(3) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to § 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA, 42 USC § 11023), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

(b) Describe a monitoring program for stormwater discharges associated with the industrial facilities identified in subdivision 2 d (3) of this subsection, to be implemented during the term of the state permit, including the submission of quantitative data on the

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following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing separate VPDES permit for a facility; oil and grease, COD, pH, BOD₅, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under ~~4VAC50-60-390~~ 9VAC25-870-390 F and G; and

(4) A description of a program to implement and maintain structural and nonstructural best management practices to reduce pollutants in stormwater runoff from construction sites to the municipal storm sewer system, which shall include:

(a) A description of procedures for site planning that incorporate consideration of potential water quality impacts;

(b) A description of requirements for nonstructural and structural best management practices;

(c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures that consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(d) A description of appropriate educational and training measures for construction site operators;

e. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal stormwater quality management program. The assessment shall also identify known impacts of stormwater controls on groundwater;

f. For each fiscal year to be covered by the state permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under subdivisions 2 c and d of this subsection. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds;

g. Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and

h. Where requirements under subdivisions 1 d (5), 2 b, 2 c (2), and 2 d of this subsection are not practicable or are not applicable, the board may exclude any operator of a discharge from a municipal separate storm sewer that is designated under subdivision A 1 e of this section, or that is located in the counties listed in 40 CFR Part 122 Appendix H or Appendix I ~~(2000)~~ (except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties) from such requirements. The board shall not exclude the operator of a discharge from a municipal separate storm

sewer identified in 40 CFR Part 122 Appendix F, G, H or I ~~(2000)~~ from any of the state permit application requirements under this subdivision except where authorized under this subsection.

D. Petitions.

1. Any operator of a municipal separate storm sewer system may petition the appropriate authority, ~~the Virginia Soil and Water Conservation Board~~ or the State Water Control Board, to require a separate state permit for any discharge into the municipal separate storm sewer system.

2. Any person may petition the board to require a state permit for a discharge which is composed entirely of stormwater which contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

3. Any person may petition the board for the designation of a large, medium or small municipal separate storm sewer system as defined by this chapter.

4. The board shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4, in which case the board shall make a final determination on the petition within 180 days after its receipt.

~~4VAC50-60-390.~~ 9VAC25-870-390. Effluent sampling procedures.

State permit applicants for discharges from large and small municipal storm sewers or municipal storm sewers designated under ~~4VAC50-60-380~~ 9VAC25-870-380 A 1 e shall provide the following information to the department, using application forms provided by the department.

A. Information on stormwater discharges that is to be provided as specified in ~~4VAC50-60-380~~ 9VAC25-870-380. When quantitative data for a pollutant are required, the state permit applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 ~~(2000)~~. When no analytical method is approved the state permit applicant may use any suitable method but must provide a description of the method. When an a state permit applicant has two or more outfalls with substantially identical effluents, the board may allow the state permit applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in e subsections E and £ F of this ~~subdivision~~ section that a state permit applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of

one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than stormwater discharges, the board may waive composite sampling for any outfall for which the state permit applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged.

B. For stormwater discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all state permit applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a stormwater discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes. However, a minimum of one grab sample may be taken for stormwater discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For stormwater discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in ~~4VAC50-60-380~~ 9VAC25-870-380 C 1. For all stormwater state permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in ~~4VAC50-60-380~~ 9VAC25-870-380 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The board may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136 (2000), and additional time for submitting data on a case-by-case basis. A state permit applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated stormwater runoff from the facility.)

C. Every state permit applicant must report quantitative data for every outfall for the following pollutants:

- Biochemical oxygen demand (BOD₅)
- Chemical oxygen demand
- Total organic carbon
- Total suspended solids
- Ammonia (as N)
- Temperature (both winter and summer)
- pH

D. The board may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subsection C of this section if the state permit applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a state permit can be obtained with less stringent requirements.

E. Each state permit applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A (2000)) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

1. The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D (2000) for the state permit applicant's industrial category or categories unless the state permit applicant qualifies as a small business ~~under subdivision 8 of this subsection~~. Table II of 40 CFR Part 122 Appendix D (2000) lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure that uses gas chromatography/mass spectrometry. A determination that a state permit applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the state permit applicant's inclusion in that category for any other purposes; and
2. The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2000) (the toxic metals, cyanide, and total phenols).

F. 1. Each state permit applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (2000) (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the state permit applicant must report quantitative data. For every pollutant discharged that is not so limited in an effluent limitations guideline, the state permit applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

2. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table

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II or Table III of 40 CFR Part 122 Appendix D (~~2000~~) (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under ~~subdivision 7~~ subsection E of this ~~subsection~~ section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the state permit applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the state permit applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the state permit applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. A state permit applicant qualifying as a small business ~~under subdivision 8 of this subsection~~ is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (~~2000~~) (the organic toxic pollutants).

G. Each state permit applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (~~2000~~) (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the state permit applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

H. Each state permit applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or
2. Knows or has reason to believe that TCDD is or may be present in an effluent.

~~4VAC50-60-400.~~ 9VAC25-870-400. Small municipal separate storm sewer systems.

A. Objectives of the stormwater regulations for small MS4s.

1. Subsections A through G of this section are written in a "readable regulation" format that includes both rule requirements and guidance ~~that is not legally binding~~. The recommended guidance is distinguished from the regulatory requirements by putting the guidance in a separate subdivision headed by the word "Note."
2. Under the statutory mandate in § 402(p)(6) of the Clean Water Act, the purpose of this portion of the stormwater

program is to designate additional sources that need to be regulated to protect water quality and to establish a comprehensive stormwater program to regulate these sources.

3. Stormwater runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways including by changing natural hydrologic patterns and by elevating pollutant concentrations and loadings. Stormwater runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

4. The board strongly encourages partnerships and the watershed approach as the management framework for efficiently, effectively, and consistently protecting and restoring aquatic ecosystems and protecting public health.

B. As an operator of a small MS4, am I regulated under the state's stormwater program?

1. Unless you qualify for a waiver under subdivision 3 of this subsection, you are regulated if you 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. Your small MS4 is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or

b. You are designated by the board, including where the designation is pursuant to subdivisions C 3 a and b of this section or is based upon a petition under ~~4VAC50-60-380~~ 9VAC25-870-380 D.

2. You may be the subject of a petition to the board to require a state permit for your discharge of stormwater. If the board determines that you need a state permit, you are required to comply with subsections C through E of this section.

3. The board may waive the requirements otherwise applicable to you if you meet the criteria of subdivision 4 or 5 of this subsection. If you receive a waiver under this section, you may subsequently be required to seek coverage under a state permit in accordance with subdivision C 1 of this section if circumstances change. (See also subdivision E 2 of this section).

4. The board may waive state permit coverage if your MS4 serves a population of less than 1,000 within the urbanized area and you meet the following criteria:

a. Your system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the board; and

b. If you discharge any pollutants that have been identified as a cause of impairment of any water body to

which you discharge, stormwater controls are not needed based on wasteload allocations that are part of an ~~EPA-approved or established~~ approved "total maximum daily load" (TMDL) that addresses the pollutants of concern.

5. The board may waive state permit coverage if your MS4 serves a population under 10,000 and you meet the following criteria:

- a. The board has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4;
- b. For all such waters, the board has determined that stormwater controls are not needed based on wasteload allocations that are part of an ~~EPA-approved established~~ approved TMDL that addresses the pollutants of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;
- c. For the purpose of subdivision 5 of this subsection, 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 your MS4; and
- d. The board has determined that future discharges from your 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.

C. If I am an operator of a regulated small MS4, how do I apply for a state permit and when do I have to apply?

- 1. If you operate a regulated small MS4 under subsection B of this section, you must seek coverage under a state permit issued by the board.
- 2. You must seek authorization to discharge under a general or individual state permit, as follows:
 - a. If the board has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you must submit a registration statement that includes the information on your best management practices and measurable goals required by subdivision D 4 of this section. You may file your own registration statement, or you and other municipalities or governmental entities may jointly submit a registration statement. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, you must submit a registration statement that describes which minimum measures you will implement and identify the entities that will implement the other minimum measures within the area served by your MS4. The general permit will explain any other steps necessary to obtain permit authorization.

b. (1) If you are seeking authorization to discharge under an individual state permit and wish to implement a program under subsection D of this section, you must submit an application to the board that includes the information required under ~~4VAC50-60-360~~ 9VAC25-870-360 F and subdivision D 4 of this section, an estimate of square mileage served by your small MS4, and any additional information that the board requests. A storm sewer map that satisfies the requirement of subdivision D 2 c (1) of this section will satisfy the map requirement in ~~4VAC50-60-360~~ 9VAC25-870-360 F 7.

(2) If you are seeking authorization to discharge under an individual state permit and wish to implement a program that is different from the program under subsection D of this section, you will need to comply with the state permit application requirements of ~~4VAC50-60-380~~ 9VAC25-870-380 C. You must submit both parts of the application requirements in ~~4VAC50-60-380~~ 9VAC25-870-380 C 1 and 2 by March 10, 2003. You do not need to submit the information required by ~~4VAC50-60-380~~ 9VAC25-870-380 C 1 b and C 2 regarding your legal authority, unless you intend for the state permit writer to take such information into account when developing your other state permit conditions.

(3) If allowed by the board, you and another regulated entity may jointly apply under either subdivision 2 b (1) or (2) of this subsection to be state co-permittees under an individual state permit.

c. If your small MS4 is in the same urbanized area as a medium or large MS4 with a state permit and that other MS4 is willing to have you participate in its stormwater program, you and the other MS4 may jointly seek a modification of the other MS4 state permit to include you as a limited state co-permittee. As a limited state co-permittee, you will be responsible for compliance with the state permit's conditions applicable to your jurisdiction. If you choose this option you will need to comply with the state permit application requirements of ~~4VAC50-60-380~~ 9VAC25-870-380, rather than the requirements of subsection D of this section. You do not need to comply with the specific application requirements of ~~4VAC50-60-380~~ 9VAC25-870-380 C 1 c and d and ~~4VAC50-60-380~~ 9VAC25-870-380 C 2 c (discharge characterization). You may satisfy the requirements in ~~4VAC50-60-380~~ 9VAC25-870-380 C 1 e and 2 d (identification of a management program) by referring to the other MS4's stormwater management program.

d. NOTE: In referencing an MS4's stormwater management program, you should briefly describe how the existing plan will address discharges from your small MS4 or would need to be supplemented in order to adequately address your discharges. You should also explain your role in coordinating stormwater pollutant

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control activities in your MS4 and detail the resources available to you to accomplish the plan.

3. If you operate a regulated small MS4:

a. Designated under subdivision B 1 a of this section, you must apply for coverage under a state permit or apply for a modification of an existing state permit under subdivision 2 c of this subsection ~~by March 10, 2003~~ within 180 days of notice, unless the board grants a later date.

b. Designated under subdivision B 1 b of this section, you must apply for coverage under a state permit or apply for a modification of an existing ~~VPDES state~~ permit under subdivision 2 c of this subsection within 180 days of notice, unless the board grants a later date.

D. As an operator of a regulated small MS4, what will my MS4 state permit require?

1. Your MS4 state permit will require at a minimum that you develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, the Virginia Stormwater Management Act, and the State Water Control Law. Your stormwater management program must include the minimum control measures described in subdivision 2 of this subsection unless you apply for a state permit under ~~4VAC50-60-380~~ 9VAC25-870-380 C. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the stormwater management program required pursuant to this section and the provisions of the state permit required pursuant to subsection C of this section constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. The board will specify a time period of up to five years from the date of state permit issuance for you to develop and implement your program.

2. Minimum control measures.

a. Public education and outreach on stormwater impacts.

(1) You must 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.

(2) NOTE: You may use stormwater educational materials provided by the state, your tribe, EPA, environmental, public interest or trade organizations, or

other MS4s. The public education program should inform individuals and households about the steps they can take to reduce stormwater pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. The board recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. The board recommends that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include: distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school-age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. In addition, the board recommends that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. You are encouraged to tailor your outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

b. Public involvement/participation.

(1) You must, at a minimum, comply with state, tribal, and local public notice requirements when implementing a public involvement/participation program.

(2) The board recommends that the public be included in developing, implementing, and reviewing your stormwater management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local stormwater management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)

c. Illicit discharge detection and elimination.

(1) You must develop, implement and enforce a program to detect and eliminate illicit discharges (as defined in ~~4VAC50-60-10~~ 9VAC25-870-10) into your small MS4.

(2) You must:

(a) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all surface waters that receive discharges from those outfalls;

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

(c) Develop and implement a plan to detect and address nonstormwater discharges, including illegal dumping, to your system; and

(d) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(3) You need to address the following categories of nonstormwater discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)-(2000)), uncontaminated pumped groundwater, 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, and street wash water. (Discharges or flows from fire-fighting activities are excluded from the effective prohibition against nonstormwater and need only be addressed where they are identified as significant sources of pollutants to surface waters.)

(4) NOTE: The board recommends that the plan to detect and address illicit discharges include the following four components: (i) procedures for locating priority areas likely to have illicit discharges, (ii) procedures for tracing the source of an illicit discharge, (iii) procedures for removing the source of the discharge, and (iv) procedures for program evaluation and assessment. The board recommends visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling; a program to promote, publicize, and facilitate public reporting of illicit connections or discharges; and distribution of outreach materials.

d. Construction site stormwater runoff control.

(1) You must develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to your 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. Reduction of stormwater discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the board waives requirements for stormwater discharges associated with small construction activity in accordance with the definition in ~~4VAC50-60-10~~ 9VAC25-870-10, you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

(2) Your program must include the development and implementation of, at a minimum:

(a) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state, tribal, or local law;

(b) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(c) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(d) Procedures for site plan review which incorporate consideration of potential water quality impacts;

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

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

(3) NOTE: Examples of sanctions to ensure compliance include nonmonetary penalties, fines, bonding requirements and/or state permit denials for noncompliance. The board recommends that procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with VESCP requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. You are encouraged to provide appropriate educational and training measures for construction site operators. You may wish to require a stormwater

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pollution prevention plan for construction sites within your jurisdiction that discharge into your system. (See ~~4VAC50-60-460~~ 9VAC25-870-460 L and subdivision E 2 of this section.) The board may recognize that another government entity may be responsible for implementing one or more of the minimum measures on your behalf.

e. Post-construction stormwater management in new development and redevelopment.

(1) You must develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

(2) You must:

(a) Develop and implement strategies that include a combination of structural and/or nonstructural best management practices (BMPs) appropriate for your community;

(b) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state, tribal or local law; and

(c) Ensure adequate long-term operation and maintenance of BMPs.

(3) NOTE: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. The board recommends that the BMPs chosen be appropriate for the local community, minimize water quality impacts, and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, the board encourages you to participate in locally based watershed planning efforts that attempt to involve a diverse group of stakeholders, including interested citizens. When developing a program that is consistent with this measure's intent, the board recommends that you adopt a planning process that identifies the municipality's program goals (e.g., minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (e.g., adopt a combination of structural and/or nonstructural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing your program, you should consider assessing existing ordinances, policies, programs and studies that address stormwater runoff quality. In addition to assessing these existing documents and programs, you should provide opportunities to the public to participate in the development of the program. Nonstructural BMPs are preventative actions that involve management and source

controls such as: (i) policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; (ii) policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; (iii) education programs for developers and the public about project designs that minimize water quality impacts; and (iv) measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. The board recommends that you ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Stormwater technologies are constantly being improved, and the board recommends that your requirements be responsive to these changes, developments or improvements in control technologies.

f. Pollution prevention/good housekeeping for municipal operations.

(1) You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, state, tribe, or other organizations, your program must 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 stormwater system maintenance.

(2) NOTE: The board recommends that, at a minimum, you consider the following in developing your program: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and nonstructural stormwater controls to reduce floatables and other pollutants discharged from your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by

you, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all stormwater management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

3. If an existing VSMP requires you to implement one or more of the minimum control measures of subdivision 2 of this subsection, the board may include conditions in your state permit that direct you to follow that VSMP's requirements rather than the requirements of subdivision 2 of this subsection. A VSMP is a local, state or tribal municipal stormwater management program that imposes, at a minimum, the relevant requirements of subdivision 2 of this subsection.

4. a. In your state permit application (either a registration statement for coverage under a general permit or an individual permit application), you must identify and submit to the board the following information:

(1) The best management practices (BMPs) that you or another entity will implement for each of the stormwater minimum control measures provided in subdivision 2 of this subsection;

(2) The measurable goals for each of the BMPs including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action; and

(3) The person or persons responsible for implementing or coordinating your stormwater management program.

b. If you obtain coverage under a general permit, you are not required to meet any measurable goals identified in your registration statement in order to demonstrate compliance with the minimum control measures in subdivisions 2 c through f of this subsection unless, prior to submitting your registration statement, EPA or the board has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, you still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.

c. NOTE: Either EPA or the board will provide a menu of BMPs. You may choose BMPs from the menu or select others that satisfy the minimum control measures.

5. a. You must comply with any more stringent effluent limitations in your state permit, including state permit requirements that modify or are in addition to the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The board may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

b. NOTE: The board strongly recommends that until the evaluation of the stormwater program in subsection G of this section, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.

6. You must comply with other applicable state permit requirements, standards and conditions established in the individual or general permit developed consistent with the provisions of 9VAC25-31-190 through 9VAC25-31-250, as appropriate.

7. Evaluation and assessment.

a. You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals. The board may determine monitoring requirements for you in accordance with monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.

b. You must keep records required by the state permit for at least three years. You must submit your records to the department only when specifically asked to do so. You must make your records, including a description of your stormwater management program, available to the public at reasonable times during regular business hours (see ~~4VAC50-60-340~~ 9VAC25-870-340 for confidentiality provision). You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.

c. Unless you are relying on another entity to satisfy your state permit obligations under subdivision E 1 of this section, you must submit annual reports to the department for your first state permit term. For subsequent state permit terms, you must submit reports in years two and four unless the department requires more frequent reports. Your report must include:

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

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(2) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(3) A summary of the stormwater activities you plan to undertake during the next reporting cycle;

(4) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

(5) Notice that you are relying on another governmental entity to satisfy some of your state permit obligations (if applicable).

E. As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

1. You may rely on another entity to satisfy your state permit obligations to implement a minimum control measure if:

a. The other entity, in fact, implements the control measure;

b. The particular control measure, or component thereof, is at least as stringent as the corresponding state permit requirement; and

c. The other entity agrees to implement the control measure on your behalf. In the reports you must submit under subdivision D 7 c of this section, you must also specify that you rely on another entity to satisfy some of your state permit obligations. If you are relying on another governmental entity regulated under the state permit program to satisfy all of your state permit obligations, including your obligation to file periodic reports required by subdivision D 7 c of this section, you must note that fact in your registration statement, but you are not required to file the periodic reports. You remain responsible for compliance with your state permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, the board encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your state permit.

2. In some cases, the board may recognize, either in your individual permit or in a general permit, that another governmental entity is responsible under a state permit for implementing one or more of the minimum control measures for your small MS4. Where the board does so, you are not required to include such minimum control measure(s) in your stormwater management program. Your state permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

F. As an operator of a regulated small MS4, what happens if I don't comply with the application or state permit requirements in subsections C through E of this section?

State permits are enforceable under the Clean Water Act and the Virginia Stormwater Management Act. Violators may be subject to the enforcement actions and penalties described in Clean Water Act §§ 309(b), (c), and (g) and 505 or under §§ ~~10.1-603.12:1~~ 62.1-44.15:39 through ~~10.1-603.14~~ 62.1-44.15:48 of the Code of Virginia. Compliance with a state permit issued pursuant to § 402 of the Clean Water Act is deemed compliance, for purposes of §§ 309 and 505, with §§ 301, 302, 306, 307, and 403, except any standard imposed under § 307 for toxic pollutants injurious to human health. If you are covered as a state co-permittee under an individual permit or under a general permit by means of a joint registration statement, you remain subject to the enforcement actions and penalties for the failure to comply with the terms of the state permit in your jurisdiction except as set forth in subdivision E 2 of this section.

G. Will the small MS4 stormwater program regulations at subsections B through F of this section change in the future?

~~The board will evaluate the small MS4 regulations at subsections B through F of this section after December 10, 2012, and make any necessary revisions. (EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES MS4 stormwater program. The board will reevaluate the regulations based on data from the EPA NPDES MS4 stormwater program, from research on receiving water impacts from stormwater, and the effectiveness of best management practices (BMPs), as well as other relevant information sources.)~~

~~4VAC50-60-410. 9VAC25-870-410.~~ **General permits.**

A. The board may issue a general permit in accordance with the following:

1. The general permit shall be written to cover one or more categories or subcategories of discharges, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:

a. Designated planning areas under §§ 208 and 303 of CWA;

b. Sewer districts or sewer authorities;

c. City, county, or state political boundaries;

d. State highway systems;

e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;

f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

g. Any other appropriate division or combination of boundaries.

2. The general permit may be written to regulate one or more categories within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are stormwater point sources.

3. Where sources within a specific category of dischargers are subject to water quality-based limits imposed pursuant to ~~4VAC50-60-460~~ 9VAC25-870-460, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers covered by the permit.

5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this chapter.

2. Authorization to discharge.

a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers seeking coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A discharger who fails to submit a notice of intent in accordance with the terms of the state permit is not authorized to discharge, under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of this subsection, contains a provision that a notice of intent is not required or the board notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this chapter.

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream or streams. All notices of intent shall be signed in accordance with ~~4VAC50-60-370~~ 9VAC25-870-370.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date or dates when a discharger is authorized to discharge under the state permit.

d. General permits shall specify whether a discharger that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the state permit, is authorized to discharge in accordance with the state permit either upon receipt of the notice of intent by the department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the board.

Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Stormwater discharges associated with small construction activity may, at the discretion of the board, be authorized to discharge under a general permit without submitting a notice of intent where the board finds that a notice of intent requirement would be inappropriate. In making such a finding, the board shall consider the (i) type of discharge, (ii) expected nature of the discharge, (iii) potential for toxic and conventional pollutants in the discharges, (iv) expected volume of the discharges, (v) other means of identifying discharges covered by the state permit, and (vi) estimated number of discharges to be covered by the state permit. The board shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The board may notify a discharger that it is covered by a general permit, even if the discharger has not submitted a notice of intent to be covered. A discharger so notified may request an individual permit under subdivision 3 c of this subsection.

3. Requiring an individual permit.

a. The board may require any discharger authorized by a general permit to apply for and obtain an individual permit. Any interested person may request the board to take action under this subdivision. Cases where an individual permit may be required include the following:

(1) The discharger is not in compliance with the conditions of the general permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;

(4) A water quality management plan, established by the State Water Control Board pursuant to 9VAC25-720, containing requirements applicable to such point sources is approved;

(5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(6) The discharge(s) is a significant contributor of pollutants. In making this determination, the board may consider the following factors:

(a) The location of the discharge with respect to surface waters;

(b) The size of the discharge;

(c) The quantity and nature of the pollutants discharged to surface waters; and

(d) Other relevant factors;

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b. State permits required on a case-by-case basis.

(1) The board may determine, on a case-by-case basis, that certain stormwater discharges, and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the board decides that an individual permit is required under this subsection, except as provided in subdivision 3 b (3) of this subsection, the board shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the board. The question whether the designation was proper will remain open for consideration during the public comment period for the draft state permit and in any subsequent public hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a stormwater discharge under this subsection, the board may require the discharger to submit a state permit application or other information regarding the discharge under the Act and § 308 of the CWA. In requiring such information, the board shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a state permit under ~~4VAC50-60-380~~ 9VAC25-870-380 A 1 within 60 days of notice or under ~~4VAC50-60-380~~ 9VAC25-870-380 A 8 within 180 days of notice, unless permission for a later date is granted by the board. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft state permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under ~~4VAC50-60-360~~ 9VAC25-870-360 with reasons supporting the request. The request shall be processed under the applicable parts of this chapter. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual permit is issued to an owner or operator otherwise subject to a general permit, the applicability of the general permit to the individual permit state permittee is automatically terminated on the effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the

individual permit, the general permit shall apply to the source.

~~4VAC50-60-420. 9VAC25-870-420. New sources and new dischargers discharges.~~

A. Criteria for new source determination.

1. Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in this chapter, and

a. It is constructed at a site at which no other source is located; ~~or~~

b. It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the board shall consider such factors as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source.

2. A source meeting the requirements of subdivisions 1 a, b, or c of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.

3. Construction on a site at which an existing source is located results in a state permit modification subject to ~~4VAC50-60-630~~ 9VAC25-870-630 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivisions 1 b or c of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

4. Construction of a new source has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous on-site construction program:

(1) Any placement, assembly, or installation of facilities or equipment; or

(2) Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under the paragraph.

B. Effect of compliance with new source performance standards. The provisions of this subsection do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this subdivision.

1. Except as provided in subdivision 2 of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under § 301(b)(2) of the CWA for the soonest ending of the following periods:

- a. Ten years from the date that construction is completed;
- b. Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or
- c. The period of depreciation or amortization of the facility for the purposes of § 167 or § 169 (or both) of the Internal Revenue Code of 1954 (26 USC 167 and 26 USC 169, respectively).

2. The protection from more stringent standards of performance afforded by subdivision 1 of this subsection does not apply to:

- a. Additional or more stringent state permit conditions that are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under the Act and § 307(a) of the CWA; or
- b. Additional state permit conditions controlling toxic pollutants or hazardous substances that are not controlled by new source performance standards. This includes state permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

3. When a separate VPDES or state permit issued to a source with a protection period under subdivision 1 of this subsection will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of § 301 of the CWA and any other then applicable requirements of the CWA and the Act immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than three years before the expiration of the protection period.

4. The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a

recommencing discharger shall install and have in operating condition, and shall start-up all pollution control equipment required to meet the conditions of its state permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all state permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a state permit containing a compliance schedule under ~~4VAC50-60-490~~ 9VAC25-870-490 A 2.

5. After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

Part VIII State Permit Conditions

~~4VAC50-60-430.~~ 9VAC25-870-430. **Conditions applicable to all state permits.**

The following conditions apply to all state permits. Additional conditions applicable to state permits are in ~~4VAC50-60-440~~ 9VAC25-870-440. All conditions applicable to state permits shall be incorporated into the state permits either expressly or by reference. If incorporated by reference, a specific citation to this regulation must be given in the state permit.

A. The state permittee shall comply with all conditions of the state permit. Any state permit noncompliance constitutes a violation of the Act and the CWA, except that noncompliance with certain provisions of the state permit may constitute a violation of the Act but not the CWA. 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 state permittee shall comply with effluent standards or prohibitions established under § 307(a) of the CWA for toxic pollutants within the time provided in the chapters that establish these standards or prohibitions, even if the state permit has not yet been modified to incorporate the requirement.

B. If the state permittee wishes to continue an activity regulated by the state permit after the expiration date of the state permit, the state permittee must apply for and obtain a new state permit.

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

D. The state permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the state permit that has a reasonable likelihood of adversely affecting human health or the environment.

E. The state permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the

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state permittee to achieve compliance with the conditions of the state permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a state permittee only when the operation is necessary to achieve compliance with the conditions of the state permit.

F. State permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the state permittee 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.

G. State permits do not convey any property rights of any sort, or any exclusive privilege.

H. The state permittee 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 the state permit or to determine compliance with the state permit. The board may require the state permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the Act. The state permittee shall also furnish to the department upon request, copies of records required to be kept by the state permit.

I. The state permittee shall allow the director 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 state permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the state permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the state permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the state permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring state permit compliance or as otherwise authorized by the CWA and the Act, any substances or parameters at any location.

J. Monitoring and records.

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

2. The state permittee 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 the state permit, and records of all data used to complete the application for the state permit, for a period of at least three years from the date of the sample, measurement, report or application. 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 state permittee, or as requested by the board.

3. Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individual or individuals who performed the sampling or measurements;
- c. The date or dates analyses were performed;
- d. The individual or individuals who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 ~~(2000)~~ or alternative EPA approved methods, unless other test procedures have been specified in the state permit. Analyses performed according to test procedures approved under 40 CFR Part 136 shall be performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

K. All applications, reports, or information submitted to the VSMP authority and department shall be signed and certified as required by ~~4VAC50-60-370~~ 9VAC25-870-370.

L. Reporting requirements.

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

- a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in ~~4VAC50-60-420~~ 9VAC25-870-420 A; or
- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in the state permit.

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

3. State permits are not transferable to any person except after notice to the department. ~~The board may require modification or revocation and reissuance of state permits to change the name of the state permittee and incorporate such other requirements as may be necessary under the Act or the CWA in accordance with 9VAC25-870-620.~~

4. Monitoring results shall be reported at the intervals specified in the state permit.

a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the department.

b. If the state permittee monitors any pollutant specifically addressed by the state permit more frequently than required by the state permit using test procedures approved under 40 CFR Part 136 (2000) or as otherwise specified in the 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.

c. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

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

6. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and such discharge enters or could be expected to enter state waters, the state ~~permittee~~ permittee shall promptly notify, in no case later than 24 hours, ~~the Department of Environmental Quality and~~ the department by telephone after the discovery of such 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 state permittee shall reduce the report to writing and shall submit it to the ~~Department of Environmental Quality and~~ the department within five days of discovery of the discharge in accordance with subdivision 7 a of this subsection. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

- a. Unusual spillage of materials resulting directly or indirectly from processing operations;
- b. Breakdown of processing or accessory equipment;
- c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as sewer lines or wastewater pump stations); and
- d. Flooding or other acts of nature.

7. Twenty-four hour reporting.

a. The state permittee shall report any noncompliance which may endanger health or the environment. Any

information shall be provided orally within 24 hours from the time the state permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the state permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; 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 steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

b. The following shall be included as information which must be reported within 24 hours under this subdivision:

- (1) Any unanticipated bypass that exceeds any effluent limitation in the state permit.
- (2) Any upset that exceeds any effluent limitation in the state permit.
- (3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the state permit to be reported within 24 hours.

c. The board may waive the written report on a case-by-case basis for reports under this subdivision if the oral report has been received within 24 hours.

8. The state permittee shall report all instances of noncompliance not reported under subdivisions 4, 5, 6, and 7 of this subsection, in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in subdivision 7 of this subsection.

9. Where the state permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a state permit application or in any report to the department, it shall promptly submit such facts or information.

M. Bypass.

1. The state permittee 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 subdivisions 2 and 3 of this subsection.

2. Notice.

- a. Anticipated bypass. If the state permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.
- b. Unanticipated bypass. The state permittee shall submit notice of an unanticipated bypass as required in subdivision L 7 of this section (24-hour notice).

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a state permittee for bypass, unless:

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(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 state permittee submitted notices as required under subdivision 2 of this subsection.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in subdivision 3 a of this subsection.

N. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based state permit effluent limitations if the requirements of subdivision 2 of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. A state permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the state permittee can identify the cause or causes of the upset;

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

c. The state permittee submitted notice of the upset as required in subdivision L 7 b (2) of this section (24-hour notice); and

d. The state permittee complied with any remedial measures required under subsection D of this section.

3. In any enforcement proceeding the state permittee seeking to establish the occurrence of an upset has the burden of proof.

~~4VAC50-60-440.~~ 9VAC25-870-440. **Additional conditions applicable to municipal separate storm sewer System state permits.**

In addition to those conditions set forth in ~~4VAC50-60-430~~ 9VAC25-870-430, the operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the board under ~~4VAC50-60-380~~ 9VAC25-870-380 A 1 e must submit an annual report by a date specified in the state permit for such system. The report shall include:

1. The status of implementing the components of the stormwater management program that are established as state permit conditions;

2. Proposed changes to the stormwater management programs that are established as state permit conditions. Such proposed changes shall be consistent with ~~4VAC50-60-380~~ 9VAC25-870-380 C 2 d;

3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the state permit application;

4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

5. Annual expenditures and budget for year following each annual report;

6. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and

7. Identification of water quality improvements or degradation.

~~4VAC50-60-450.~~ 9VAC25-870-450. **Establishing state permit conditions.**

A. In addition to conditions required in all state permits, the board shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Stormwater Management Act, the State Water Control Law, the CWA, and attendant regulations. These shall include conditions under ~~4VAC50-60-480~~ 9VAC25-870-480 (duration of state permits), ~~4VAC50-60-490~~ 9VAC25-870-490 (schedules of compliance) and ~~4VAC50-60-460~~ 9VAC25-870-460 (monitoring).

B. 1. An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a state permit. An applicable requirement is also any requirement that takes effect prior to the modification or revocation and reissuance of a state permit to the extent allowed in Part X of this chapter.

2. New or reissued state permits, and to the extent allowed under Part X of this chapter modified or revoked and reissued state permits, shall incorporate each of the applicable requirements referenced in ~~4VAC50-60-460~~ 9VAC25-870-460 and ~~4VAC50-60-470~~ 9VAC25-870-470.

C. All state permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the state permit.

~~4VAC50-60-460.~~ 9VAC25-870-460. **Establishing limitations, standards, and other state permit conditions.**

In addition to the conditions established under ~~4VAC50-60-450~~ 9VAC25-870-450 A, each state permit shall include conditions meeting the following requirements when applicable.

A. 1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under § 301 of the CWA, on new source performance standards promulgated under § 306 of CWA, on case-by-case effluent limitations determined under § 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of ~~4VAC50-60-420~~ 9VAC25-870-420 B (protection period).

2. The board may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a state permit to forego sampling of a pollutant found at 40 CFR Subchapter N ~~(2000)~~ if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the state permit and is not available during the term of the first state permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued state permit or modification of a reissued state permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier state permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the state permit as an express state permit condition and the reasons supporting the grant must be documented in the state permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

B. Other effluent limitations and standards under §§ 301, 302, 303, 307, 318 and 405 of the CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under § 307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the state permit, the board shall institute proceedings under this chapter to modify or revoke and reissue the state permit to conform to the toxic effluent standard or prohibition.

C. Water quality standards and state requirements. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under §§ 301, 304, 306, 307, 318 and 405 of the CWA necessary to:

1. Achieve water quality standards established under the State Water Control Law and § 303 of the CWA, including state narrative criteria for water quality.

a. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the board determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality standard, including Virginia narrative criteria for water quality.

b. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Virginia water quality standard, the board shall use procedures that account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

c. When the board determines, using the procedures in subdivision 1 b of this subsection, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Virginia numeric criteria within a Virginia water quality standard for an individual pollutant, the state permit must contain effluent limits for that pollutant.

d. Except as provided in this subdivision, when the board determines, using the procedures in subdivision 1 b of this subsection, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Virginia water quality standard, the state permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the board demonstrates in the fact sheet or statement of basis of the state permit, using the procedures in subdivision 1 b of this subsection, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Virginia water quality standards.

e. Where Virginia has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable Virginia water quality standard, the board must establish effluent limits using one or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the board demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed Virginia criterion, or an explicit policy or

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regulation interpreting Virginia's narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under § 307(a) of the CWA, supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The state permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The fact sheet required by ~~4VAC50-60-520~~ 9VAC25-870-520 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The state permit requires all effluent and ambient monitoring necessary to show that during the term of the state permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The state permit contains a reopener clause allowing the board to modify or revoke and reissue the state permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

f. When developing water quality-based effluent limits under this subdivision the board shall ensure that:

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR 130.7 (~~2000~~);

2. Attain or maintain a specified water quality through water quality related effluent limits established under the State Water Control Law and § 302 of the CWA;

3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under the State Water Control Law and § 401 of the CWA;

4. Conform to applicable water quality requirements under § 401(a)(2) of the CWA when the discharge affects a state other than Virginia;

5. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under the Act or regulations in accordance with § 301(b)(1)(C) of the CWA;

6. Ensure consistency with the requirements of a Water Quality Management plan established by the State Water Control Board pursuant to 9VAC25-720 and approved by EPA under § 208(b) of the CWA;

7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M (~~2000~~), for ocean discharges; or

8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 CFR Part 125, Subpart D (~~2000~~).

D. Technology-based controls for toxic pollutants. Limitations established under subsections A, B, or C of this section, to control pollutants meeting the criteria listed in subdivision 1 of this subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An explanation of the development of these limitations shall be included in the fact sheet.

1. Limitations must control all toxic pollutants that the board determines (based on information reported in a permit application or in a notification required by the state permit or on other information) are or may be discharged at a level greater than the level that can be achieved by the technology-based treatment requirements appropriate to the state permittee; or

2. The requirement that the limitations control the pollutants meeting the criteria of subdivision 1 of this subsection will be satisfied by:

a. Limitations on those pollutants; or

b. Limitations on other pollutants that, in the judgment of the board, will provide treatment of the pollutants under subdivision 1 of this subsection to the levels required by the Stormwater Management Act, the State Water Control Law, and 40 CFR Part 125, Subpart A (~~2000~~).

E. A notification level that exceeds the notification level of ~~4VAC50-60-440~~ 9VAC25-870-440 A 1 a, b, or c, upon a petition from the state permittee or on the board's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the state permittee.

F. Twenty-four-hour reporting. Pollutants for which the state permittee must report violations of maximum daily discharge limitations under ~~4VAC50-60-430~~ 9VAC25-870-430 L 7 b (3) (24-hour reporting) shall be listed in the state permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

G. Durations for state permits, as set forth in ~~4VAC50-60-480~~ 9VAC25-870-480.

H. Monitoring requirements. ~~The following monitoring requirements:~~

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);
2. Required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity including, when appropriate, continuous monitoring;
3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in ~~4VAC50-60-430~~ 9VAC25-870-430 and in subdivisions 5 through 8 of this subsection. Reporting shall be no less frequent than specified in the above regulation;
4. To assure compliance with state permit limitations, requirements to monitor:
 - a. The mass (or other measurement specified in the state permit) for each pollutant limited in the state permit;
 - b. The volume of effluent discharged from each outfall;
 - c. Other measurements as appropriate including pollutants; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; or as determined to be necessary on a case-by-case basis pursuant to the Stormwater Management Act, the State Water Control Law, and § 405(d)(4) of the CWA; ~~and~~
 - d. According to test procedures approved under 40 CFR Part 136 ~~(2000)~~ for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the state permit for pollutants with no approved methods; and
 - e. With analyses performed according to test procedures approved under 40 CFR Part 136 being performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).
5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;
6. Requirements to report monitoring results for stormwater discharges associated with industrial activity that are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;
7. Requirements to report monitoring results for stormwater discharges (other than those addressed in subdivision 6 of this subsection) shall be established on a

case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a state permit for such a discharge must require:

- a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a stormwater discharge and evaluate whether measures to reduce pollutant loading identified in a stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the state permit or whether additional control measures are needed;
 - b. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the state permit, and identifying any incidents of noncompliance;
 - c. Such report and certification be signed in accordance with ~~4VAC50-60-370~~ 9VAC25-870-370; and
8. State permits which do not require the submittal of monitoring result reports at least annually shall require that the state permittee report all instances of noncompliance not reported under ~~4VAC50-60-430~~ 9VAC25-870-430 L 1, 4, 5, 6, and 7 at least annually.
- I. Best management practices to control or abate the discharge of pollutants when:
1. Authorized under § 402(p) of the CWA for the control of stormwater discharges;
 2. Numeric effluent limitations are infeasible; or
 3. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Stormwater Management Act, the State Water Control Law, and the CWA.
- J. Reissued state permits.
1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA, a state permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under § 304(b) of the CWA subsequent to the original issuance of such state permit, to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous state permit. In the case of effluent limitations established on the basis of § 301(b)(1)(C) or § 303(d) or (e) of the CWA, a state permit may not be renewed, reissued, or modified to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous state permit except in compliance with § 303(d)(4) of the CWA.
 2. Exceptions. A state permit with respect to which subdivision 1 of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:
 - a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance that

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justify the application of a less stringent effluent limitation;

b. (1) Information is available that was not available at the time of state permit issuance (other than revised regulations, guidance, or test methods) and that would have justified the application of a less stringent effluent limitation at the time of state permit issuance; or

(2) The board determines that technical mistakes or mistaken interpretations of the Act were made in issuing the state permit under § 402(a)(1)(B) of the CWA;

c. A less stringent effluent limitation is necessary because of events over which the state permittee has no control and for which there is no reasonably available remedy;

d. The state permittee has received a state permit modification under the Stormwater Management Act, the State Water Control Law, and §§ 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or § 316(a) of the CWA; or

e. The state permittee has installed the treatment facilities required to meet the effluent limitations in the previous state permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified state permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of state permit renewal, reissuance, or modification).

Subdivision 2 b of this subsection shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the Act or the CWA or for reasons otherwise unrelated to water quality.

3. In no event may a state permit with respect to which subdivision 2 of this subsection applies be renewed, reissued, or modified to contain an effluent limitation that is less stringent than required by effluent guidelines in effect at the time the state permit is renewed, reissued, or modified. In no event may such a state permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a Virginia water quality standard applicable to such waters.

K. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with ~~4VAC50-60-570~~ 9VAC25-870-570.

L. Qualifying state, tribal, or local programs.

1. For stormwater discharges associated with small construction activity identified in ~~4VAC50-60-10~~ 9VAC25-870-10, the board may include state permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. Where a qualifying state, tribal, or local program does not include one or more of the elements in this subdivision, then the board must include those elements as conditions in the state permit. A qualifying state, tribal, or local erosion and sediment control program is one that includes:

a. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

b. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

c. Requirements for construction site operators to develop and implement a stormwater pollution prevention plan. A stormwater pollution prevention plan includes site descriptions; descriptions of appropriate control measures; copies of approved state, tribal or local requirements; maintenance procedures; inspection procedures; and identification of nonstormwater discharges; and

d. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

2. For stormwater discharges from construction activity that does not meet the definition of a small construction activity, the board may include state permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. A qualifying state, tribal or local erosion and sediment control program is one that includes the elements listed in subdivision 1 of this subsection and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the state permit writer.

~~4VAC50-60-470.~~ 9VAC25-870-470. **Calculating state permit conditions.**

A. State permit effluent limitations, monitoring requirements, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under ~~4VAC50-60-460~~ 9VAC25-870-460.

B. All state permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of total

recoverable metal as defined in 40 CFR Part 136 (2000) unless:

1. An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or
2. In establishing state permit limitations on a case-by-case basis under 40 CFR 125.3 (2000), it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA, Stormwater Management Act and the State Water Control Law; or
3. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

C. Discharges that are not continuous, as defined in ~~4VAC50-60-10~~ 9VAC25-870-10, shall be particularly described and limited, considering the following factors, as appropriate:

1. Frequency;
2. Total mass;
3. Maximum rate of discharge of pollutants during the discharge; and
4. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

D. Mass Limitations.

1. All pollutants limited in state permits shall have limitations, standards or prohibitions expressed in terms of mass except:
 - a. For pH, temperature, radiation, or other pollutants that cannot appropriately be expressed by mass;
 - b. When applicable standards and limitations are expressed in terms of other units of measurement; or
 - c. If in establishing technology-based state permit limitations on a case-by-case basis, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and state permit conditions ensure that dilution will not be used as a substitute for treatment.
2. Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the state permit shall require the state permittee to comply with both limitations.

~~4VAC50-60-480.~~ 9VAC25-870-480. **Duration of state permits.**

A. State permits shall be effective for a fixed term not to exceed five years.

B. Except as provided in ~~4VAC50-60-330~~ 9VAC25-870-330, the term of a state permit shall not be extended by modification beyond the maximum duration specified in this section.

C. The board may issue any state permit for a duration that is less than the full allowable term under this section.

D. A state permit may be issued to expire on or after the statutory deadline set forth in §§ 301(b)(2) (A), (C), and (E) of the CWA, if the state permit includes effluent limitations to meet the requirements of §§ 301(b)(2) (A), (C), (D), (E) and (F) of the CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved.

~~4VAC50-60-490.~~ 9VAC25-870-490. **Schedules of compliance.**

A. The state permit may, when appropriate, specify a schedule of compliance leading to compliance with the Act, the CWA and regulations.

1. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.
2. The first state permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommending dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.
3. Schedules of compliance may be established in state permits for existing sources that are reissued or modified to contain new or more restrictive water quality-based effluent limitations. The schedule may allow a reasonable period of time, not to exceed the term of the state permit, for the discharger to attain compliance with the water quality-based limitations.
4. Except as provided in subdivision B 1 b of this section, if a state permit establishes a schedule of compliance that exceeds one year from the date of state permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

- a. The time between interim dates shall not exceed one year.
- b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the state permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

5. The state permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the state permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if subdivision 4 b of this subsection is applicable.

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B. A state permit applicant or state permittee may cease conducting regulated activities (by ~~terminating~~ termination of direct discharge for sources) rather than continuing to operate and meet state permit requirements as follows:

1. If the state permittee decides to cease conducting regulated activities at a given time within the term of a state permit that has already been issued:
 - a. The state permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or
 - b. The state permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the state permit;
2. If the decision to cease conducting regulated activities is made before issuance of a state permit whose term will include the termination date, the state permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline;
3. If the state permittee is undecided whether to cease conducting regulated activities, the board may issue or modify a state permit to contain two schedules as follows:
 - a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;
 - b. One schedule shall lead to timely compliance with applicable requirements no later than the statutory deadline;
 - c. The second schedule shall lead to cessation of regulated activities by a date that will ensure timely compliance with applicable requirements no later than the statutory deadline; and
 - d. Each state permit containing two schedules shall include a requirement that after the state permittee has made a final decision under subdivision 3 a of this subsection it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities; and
4. The state permit applicant's or state permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the board, such as a resolution of the board of directors of a corporation.

Part IX
Public Involvement

~~4VAC50-60-500. 9VAC25-870-500. Draft state permits.~~

A. Once an application for an individual state permit is complete, the board shall tentatively decide whether to prepare a draft individual state permit or to deny the application.

B. If the board tentatively decides to deny the individual state permit application, the owner shall be advised of that decision and of the changes necessary to obtain approval. The owner may withdraw the application prior to board action. If the application is not withdrawn or modified to obtain the tentative approval to issue, the board shall provide public notice and opportunity for a public hearing prior to board action on the application.

C. If the board tentatively decides to issue a general permit, a draft general permit shall be prepared under subsection D of this section.

D. If the board decides to prepare a draft state permit, the draft state permit shall contain the following information:

1. All conditions under ~~4VAC50-60-430~~ 9VAC25-870-430 and ~~4VAC50-60-450~~ 9VAC25-870-450;
2. All compliance schedules under ~~4VAC50-60-490~~ 9VAC25-870-490;
3. All monitoring requirements under ~~4VAC50-60-460~~ 9VAC25-870-460; and
4. Effluent limitations, standards, prohibitions and conditions under ~~4VAC50-60-430~~ 9VAC25-870-430, ~~4VAC50-60-440~~ 9VAC25-870-440, and ~~4VAC50-60-460~~ 9VAC25-870-460, and all variances that are to be included.

~~4VAC50-60-510. 9VAC25-870-510. Statement of basis.~~

A statement of basis shall be prepared for every draft state permit for which a fact sheet under ~~4VAC50-60-520~~ 9VAC25-870-520 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft state permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the state permit applicant and, on request, to any other person.

~~4VAC50-60-520. 9VAC25-870-520. Fact sheet.~~

A. A fact sheet shall be prepared for every draft individual state permit for a major facility or activity, for every general permit, for every draft state permit that incorporates a variance or requires an explanation under subsection B 8 of this section, and for every draft state permit that the board finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft state permit. The board shall send this fact sheet to the state permit applicant and, on request, to any other person.

B. The fact sheet shall include, when applicable:

1. A brief description of the type of facility or activity that is the subject of the draft state permit;
2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;
3. A brief summary of the basis for the draft state permit conditions including references to applicable statutory or regulatory provisions;
4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;
5. A description of the procedures for reaching a final decision on the draft state permit including:
 - a. The beginning and ending dates of the comment period for the draft state permit and the address where comments will be received;
 - b. Procedures for requesting a public hearing and the nature of that hearing; and
 - c. Any other procedures by which the public may participate in the final decision;
6. Name ~~and~~, telephone number, and email address of a person to contact for additional information;
7. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;
8. When the draft state permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:
 - a. Limitations to control toxic pollutants;
 - b. Limitations on indicator pollutants;
 - c. Technology-based limitations set on a case-by-case basis;
 - d. Limitations to meet the criteria for state permit issuance under ~~4VAC50-60-310~~ 9VAC25-870-310; or
 - e. Waivers from monitoring requirements granted under ~~4VAC50-60-460~~ 9VAC25-870-460 A; and
9. When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

~~4VAC50-60-530~~, 9VAC25-870-530. **Public notice of draft state permit actions and public comment period.**

A. Scope.

1. The board shall give public notice that the following actions have occurred:

- a. A draft state permit has been prepared under ~~4VAC50-60-500D~~ 9VAC25-870-500 D;
- b. A public hearing has been scheduled under ~~4VAC50-60-550~~ 9VAC25-870-550; or
- c. A new source determination has been made under ~~4VAC50-60-420~~ 9VAC25-870-420.

2. No public notice is required when a request for an individual state permit modification, revocation and reissuance, or termination is denied under ~~4VAC50-60-610~~ 9VAC25-870-610 B. Written notice of that denial shall be given to the requester and to the state permittee. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.
3. Public notices may describe more than one draft state permit or draft state permit actions.

B. Timing.

1. Public notice of the preparation of a draft state permit required under subsection A of this section shall allow at least 30 days for public comment.
2. Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft state permit and the two notices may be combined.)

C. Methods. Public notice of activities described in subdivision A 1 of this section shall be given by the following methods:

1. By mailing, either by electronic or postal delivery, a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subdivision may waive his rights to receive notice for any classes and categories of permits):
 - a. The state permit applicant (except for general permits when there is no state permit applicant);
 - b. Any other agency that the board knows has issued or is required to issue a VPDES permit;
 - c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes);
 - d. Any state agency responsible for plan development under § 208(b)(2), 208(b)(4) or § 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;
 - e. Persons on a mailing list developed by:
 - (1) Including those who request in writing to be on the list;
 - (2) Soliciting persons for area lists from participants in past state permit proceedings in that area; and

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(3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press, and in such publications as EPA regional and state funded newsletters, environmental bulletins, or state law journals. (The board may update the mailing list from time to time by requesting written indication of continued interest from those listed. The board may delete from the list the name of any person who fails to respond to such a request.);

f. (1) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(2) Each state agency having any authority under state law with respect to the construction or operation of such facility;

2. By publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge. The cost of public notice shall be paid by the owner; and

3. Any other 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.

D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

a. Name and address of the office processing the state permit action for which notice is being given;

b. Name and address of the state permittee or state permit applicant and, if different, of the facility or activity regulated by the state permit, except in the case of draft general permits;

c. A brief description of the business conducted at the facility or activity described in the individual state permit application or the draft state permit, for general permits when there is no application;

d. Name, address ~~and~~, telephone number, and email address of a person from whom interested persons may obtain further information, including copies of the draft state permit ~~or draft general permit, as the case may be~~, statement of basis or fact sheet, and the application;

e. A brief description of the procedures for submitting comments and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final individual or general state permit decision;

f. ~~A~~ For an individual state permit, a general description of the location of each existing or proposed discharge point and the name of the receiving water. ~~For draft~~

~~general permits, this requirement will be satisfied by a map or description of the state permit area; and~~

g. Any additional information considered necessary or proper.

2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public hearing under ~~4VAC50-60-550~~ 9VAC25-870-550 shall contain the following information:

a. Reference to the date of previous public notices relating to the draft state permit;

b. Date, time, and place of the public hearing;

c. A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and

d. A concise statement of the issues raised by the persons requesting the public hearing.

E. In addition to the general public notice described in subdivision D 1 of this section, all persons identified in subdivisions C 1 a through 1 d of this section shall be mailed, either by electronic or postal delivery, a copy of the fact sheet or statement of basis, the individual state permit application (if any) and the draft state permit (if any).

~~4VAC50-60-540.~~ 9VAC25-870-540. Public comments and requests for public hearings.

During the public comment period provided under ~~4VAC50-60-530~~ 9VAC25-870-530, any interested person may submit written comments on the draft state permit and may request a public hearing, if no public hearing has already been scheduled. A request for a public hearing shall be in writing and shall ~~state the nature of the issues proposed to be raised in the public hearing~~ meet the requirements of § 62.1-44.15:02 B of the Code of Virginia. All comments shall be considered in making the final decision and shall be answered as provided in ~~4VAC50-60-560~~ 9VAC25-870-560.

~~4VAC50-60-550.~~ 9VAC25-870-550. Public hearings.

~~A. 1. The board shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft state permit or state permits.~~

~~2. The board may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the state permit decision.~~ A. 1. Procedures for public hearings and permits before the board are those set forth in § 62.1-44.15:02 of the Code of Virginia.

~~3. 2.~~ Public notice of the public hearing shall be given as specified in ~~4VAC50-60-530 of this chapter~~ 9VAC25-870-530.

~~4. 3.~~ Any public hearing convened pursuant to this section shall be held in the geographical area of the proposed discharge, or in another appropriate area. Related groups of individual state permit applications may be considered at any such public hearing.

B. Any person may submit oral or written statements and data concerning the draft individual state permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. ~~The public comment period for the draft state permit shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the public hearing.~~

C. A ~~tape~~ recording or written transcript of the hearing shall be made available to the public.

~~4VAC50-60-560.~~ 9VAC25-870-560. Response to comments.

A. At the time that a final individual or general state permit is issued, the board shall issue a response to comments. This response shall:

1. Specify which provisions, if any, of the draft individual or general state permit have been changed in the final individual or general state permit decision, and the reasons for the change; and
2. Briefly describe and respond to all significant comments on the draft state permit raised during the public comment period, or during any public hearing.

B. The response to comments shall be available to the public.

~~4VAC50-60-570.~~ 9VAC25-870-570. Conditions requested by the Corps of Engineers and other government agencies.

A. If during the comment period for a draft state permit, the district engineer advises the department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a an individual or general state permit, the individual or general state permit shall be denied and the individual state permit applicant so notified. If the district engineer ~~advised~~ advises the department that imposing specified conditions upon the individual or general state permit is necessary to avoid any substantial impairment of anchorage or navigation, then the board shall include the specified conditions in the individual or general state permit. Review or appeal of denial of a an individual or general state permit or of conditions specified by the district engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the individual or general state permit for the duration of that stay.

B. If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the department in writing that the imposition of specified conditions upon the individual or general state permit is necessary to avoid substantial

impairment of fish, shellfish, or wildlife resources, the board may include the specified conditions in the individual or general state permit to the extent they are determined necessary to carry out the provisions of this regulation, the Act and of the CWA.

C. In appropriate cases the board may consult with one or more of the agencies referred to in this section before issuing a draft state permit and may reflect their views in the statement of basis, the fact sheet, or the draft state permit.

~~4VAC50-60-580.~~ 9VAC25-870-580. Decision on variances.

A. The board may grant or deny requests for variances requested pursuant to ~~4VAC50-60-360~~ 9VAC25-870-360 G 4, subject to EPA objection. Decisions on these variances shall be made according to the criteria of 40 CFR Part 125, Subpart H (~~2000~~).

B. The board may deny, or forward to the regional administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

1. A variance based on the economic capability of the individual state permit applicant submitted pursuant to ~~4VAC50-60-360~~ 9VAC25-870-360 G 2; or
2. A variance based on water quality related effluent limitations submitted pursuant to ~~4VAC50-60-360~~ 9VAC25-870-360 G 3.

C. If the EPA approves the variance, the board may prepare a draft individual state permit incorporating the variance. Any public notice of a draft individual state permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

D. The board may deny or forward to the administrator with a written concurrence a completed request for:

1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline was based, made according to the criteria and standards of 40 CFR Part 125, Subpart D (~~2000~~); or
2. A variance based upon certain water quality factors submitted pursuant to ~~4VAC50-60-360~~ 9VAC25-870-360 G 2.

E. If the administrator approves the variance, the board may prepare a draft individual state permit incorporating the variance. Any public notice of a draft individual state permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

~~4VAC50-60-590.~~ 9VAC25-870-590. Appeals of variances.

When the board issues a an individual state permit on which EPA has made a variance decision, separate appeals of the individual state permit and of the EPA variance decision are possible.

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~~4VAC50-60-600.~~ 9VAC25-870-600. Computation of time.

A. Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

B. Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

C. If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

D. Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him by mail or by electronic or postal delivery, three days shall be added to the prescribed time.

Part X

Transfer, Modification, Revocation and Reissuance, and Termination of State Permits

~~4VAC50-60-610.~~ 9VAC25-870-610. **Modification, revocation and reissuance, or termination of state permits.**

A. State permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the state permittee) or upon the board's initiative. When the department receives any information (for example, inspects the facility, receives information submitted by the state permittee as required in the state permit, receives a request for modification or revocation and reissuance, or conducts a review of the state permit file) it may determine whether one or more of the causes listed in this section for modification or revocation and reissuance, or both, exist. However, state permits may only be modified, revoked and reissued, or terminated for the reasons specified in ~~4VAC50-60-630~~ 9VAC25-870-630 or ~~4VAC50-60-650~~ 9VAC25-870-650. All requests shall be in writing and shall contain facts or reasons supporting the request. If cause does not exist under these sections, the board shall not modify, revoke and reissue or terminate the state permit. If a state permit modification satisfies the criteria for minor modifications, the state permit may be modified without a draft state permit or public review. Otherwise, a draft state permit must be prepared and other procedures in Part IX (~~4VAC50-60-500~~ 9VAC25-870-500 et seq.) followed.

B. If the board decides the request is not justified, it shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or public hearings.

C. 1. If the board tentatively decides to modify or revoke and reissue a state permit, it shall prepare a draft state permit incorporating the proposed changes. The board may request additional information and, in the case of a modified state permit, may require the submission of an updated application.

In the case of revoked and reissued state permits, the board shall require the submission of a new application.

2. In a state permit modification under this section, only those conditions to be modified shall be reopened when a new draft state permit is prepared. All other aspects of the existing state permit shall remain in effect for the duration of the unmodified state permit. When a state permit is revoked and reissued under this section, the entire state permit is reopened just as if the state permit had expired and was being reissued and the state permit is reissued for a new term. During any revocation and reissuance proceeding the state permittee shall comply with all conditions of the existing state permit until a new final state permit is reissued.

3. Minor modifications as defined in ~~4VAC50-60-640~~ 9VAC25-870-640 are not subject to the requirements of this section.

D. If the board tentatively decides to terminate a state permit under ~~4VAC50-60-650~~ 9VAC25-870-650, where the state permittee objects, it shall ~~issue a notice of intent to terminate. A notice of intent to terminate is a type of draft state permit that follows the same procedures as any draft state permit do so in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).~~

~~4VAC50-60-620.~~ 9VAC25-870-620. **Transfer of state permits.**

A. Except as provided in subsection B of this section, a state permit may be transferred by the state permittee 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 state permittee and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the CWA.

B. Automatic transfers. As an alternative to transfers under subsection A of this section, any state permit may be automatically transferred to a new state permittee if:

1. The current state permittee notifies the department at least 30 days in advance of the proposed transfer date in subdivision 2 of this subsection;

2. The notice includes a written agreement between the existing and new state permittees containing a specific date for transfer of state permit responsibility, coverage, and liability between them; and

3. The board does not notify the existing state permittee and the proposed new state permittee of its intent to modify or revoke and reissue the state permit. A modification under this subdivision may also be a minor modification. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subdivision 2 of this subsection.

~~4VAC50-60-630~~, 9VAC25-870-630. **Modification or revocation and reissuance of state permits.**

A. Causes for modification. The following are causes for modification but not revocation and reissuance of state permits except when the state permittee requests or agrees.

1. There are material and substantial alterations or additions to the permitted facility or activity that occurred after state permit issuance that justify the application of state permit conditions that are different or absent in the existing state permit.

2. The department has received new information. State permits may be modified during their terms for this cause only if the information was not available at the time of state permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different state permit conditions at the time of issuance. For general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger state permits this cause shall include any significant information derived from effluent testing required on the state permit application after issuance of the state permit.

3. The standards or regulations on which the state permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the state permit was issued. State permits may be modified during their terms for this cause only as follows:

a. For promulgation of amended standards or regulations, when:

(1) The state permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards;

(2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the state permit condition was based, or has approved a state action with regard to a water quality standard on which the state permit condition was based; and

(3) A state permittee requests modification in accordance with this chapter within 90 days after Federal Register notice of the action on which the request is based;

b. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the state permit condition was based and a request is filed by the state permittee in accordance with this chapter within 90 days of judicial remand; or

c. For changes based upon modified state certifications of state permits.

4. The board determines good cause exists for modification of a compliance schedule, such as an act of God, strike,

flood, or materials shortage or other events over which the state permittee has little or no control and for which there is no reasonably available remedy. However, in no case may a compliance schedule be modified to extend beyond an applicable CWA statutory deadline.

5. When the state permittee has filed a request for a variance pursuant to ~~4VAC50-60-360~~ 9VAC25-870-360 G within the time specified in this chapter.

6. When required to incorporate an applicable CWA § 307(a) toxic effluent standard or prohibition.

7. When required by the reopener conditions in a state permit that are established under ~~4VAC50-60-460~~ 9VAC25-870-460 B.

8. Upon failure to notify another state whose waters may be affected by a discharge.

9. When the level of discharge of any pollutant that is not limited in the state permit exceeds the level that can be achieved by the technology-based treatment requirements appropriate to the state permittee.

10. To establish a notification level as provided in ~~4VAC50-60-460~~ 9VAC25-870-460 E.

11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining state permit conditions.

12. When the discharger has installed the treatment technology considered by the state permit writer in setting effluent limitations imposed under the Act and § 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified state permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

13. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in ~~4VAC50-60-400~~ 9VAC25-870-400 D 2 when:

a. The state permit does not include such measures based upon the determination that another entity was responsible for implementation of the requirements; and

b. The other entity fails to implement measures that satisfy the requirements.

B. Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a state permit:

1. Cause exists for termination under ~~4VAC50-60-650~~ 9VAC25-870-650, and the board determines that modification or revocation and reissuance is appropriate; or

2. The department has received notification of a proposed transfer of the state permit. A state permit also may be

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modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new state permittee.

~~4VAC50-60-640. 9VAC25-870-640.~~ **Minor modifications of individual state permits.**

Upon the consent of the state permittee, the board may modify a an individual state permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part IX of this chapter. Any individual state permit modification not processed as a minor modification under this section must be made for cause and with draft state permit and public notice. Minor modifications may only:

1. Correct typographical errors;
2. Require more frequent monitoring or reporting by the state permittee;
3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing individual state permit and does not interfere with attainment of the final compliance date requirement;
4. Allow for a change in ownership or operational control of a facility where the board determines that no other change in the individual state permit is necessary, provided that a written agreement containing a specific date for transfer of individual state permit responsibility, coverage, and liability between the current and new individual state permittees has been submitted to the department;
5. a. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge.
b. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with state permit limits.

~~4VAC50-60-650. 9VAC25-870-650.~~ **Termination of state permits.**

A. The following are causes for terminating a state permit during its term, or for denying a an individual state permit, or coverage under a general permit renewal application, after ~~public~~ notice and opportunity for a ~~public~~ hearing by the board.

1. The state permittee has violated any regulation or order of the board or department, any order of the VSMP authority, any provision of the Virginia Stormwater Management Act or this chapter, or any order of a court, where such violation results in the unreasonable degradation of properties, water quality, stream channels, and other natural resources, or the violation is representative of a pattern of serious or repeated violations that in the opinion of the board, demonstrates the state

permittee's disregard for or inability to comply with applicable laws, regulations, state permit conditions, orders, rules, or requirements;

2. Noncompliance by the state permittee with any condition of the state permit;
3. The state permittee's failure to disclose fully all relevant material facts, or the state permittee's misrepresentation of any relevant material facts in applying for a state permit, or in any other report or document required under the Act or this chapter;
4. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by state permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge controlled by the state permit; or
6. The activity for which the state permit was issued causes unreasonable degradation of properties, water quality, stream channels, and other natural resources
7. There exists a material change in the basis on which the state permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or land-disturbing activity controlled by the state permit necessary to prevent unreasonable degradation of properties, water quality, stream channels, and other natural resources.

B. The board shall follow the applicable procedures in this chapter in terminating any state permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW or a PVOTW (but not by land application or disposal into a well), the board may terminate the state permit by notice to the state permittee. Termination by notice shall be effective 30 days after notice is sent, unless the state permittee objects within that time. If the state permittee objects during that period, the board shall follow the applicable procedures for termination under ~~4VAC50-60-640 9VAC25-870-610~~ D. Expedited state permit termination procedures are not available to state permittees that are subject to pending state or federal enforcement actions including citizen suits brought under state or federal law. If requesting expedited state permit termination procedures, a state permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law.

Part XI

Enforcement of State Permits

~~4VAC50-60-660. 9VAC25-870-660.~~ **Enforcement.**

- A. The board may enforce the provisions of this chapter by:
1. Issuing directives in accordance with the Act;
 2. Issuing special orders in accordance with the Act;

3. Issuing emergency special orders in accordance with the Act;
4. Seeking injunction, mandamus or other appropriate remedy as authorized by the Act;
5. Seeking civil penalties under the Act; or
6. Seeking remedies under the Act, the CWA or under other laws including the common law.

B. The board encourages citizen participation in all its activities, including enforcement. In particular:

1. The board will investigate citizen complaints and provide written response to all signed, written complaints from citizens concerning matters within the board's purview;
2. The board will not oppose intervention in any civil enforcement action when such intervention is authorized by statute or Supreme Court rule; and
3. At least 30 days prior to the final settlement of any civil enforcement action or the issuance of any consent special order, the board will publish public notice of such settlement or order in a newspaper of general circulation in the county, city or town in which the discharge is located, and in The Virginia Register of Regulations. This notice will identify the owner, specify the enforcement action to be taken and specify where a copy of the settlement or order can be obtained. A consent special order is a special order issued without a public hearing and with the written consent of the affected owner. For the purpose of this chapter, an emergency special order is not a consent special order. The board shall consider all comments received during the comment period before taking final action.

C. When a state permit is amended solely to reflect a new owner, and the previous owner had been issued a consent special order that, at the time of state permit amendment was still in full force and effect, a consent special order issued to the new owner does not have to go to public notice provided that:

- ~~a.~~ 1. The state permit amendment does not have to go to public notice; and
- ~~b.~~ 2. The terms of the new consent order are the same as issued to the previous owner.

D. Notwithstanding subdivision B 3 of this subsection, a special order may be issued by agreement at a board meeting without further notice when a ~~public~~ hearing has been scheduled to issue a special order to the affected owner, whether or not the ~~public~~ hearing is actually held.

Part XII
Miscellaneous

~~4VAC50-60-670.~~ 9VAC25-870-670. **Delegation of authority.**

~~Upon the U.S. Environmental Protection Agency's authorization for delegation of program authority to the~~

~~board, the~~ The director, or his designee, may perform any act of the board provided under the Act and this chapter, except as limited by § ~~10.1-603.2:1~~ 62.1-44.14 of the Code of Virginia.

~~4VAC50-60-680.~~ 9VAC25-870-680. **Transition.**

Upon the effective date of this chapter the following will occur:

1. All applications received after the effective date of this chapter will be processed in accordance with these procedures.
- ~~2. A National Pollutant Discharge Elimination System Permit issued by the board has the same effect as a state permit.~~
- ~~3.~~ 2. State permits issued by the ~~State Water Control~~ Soil and Water Conservation Board allowing the discharge of stormwater into ~~state~~ surface waters from municipal separate storm sewer systems or land-disturbing activities that have not expired or been revoked or terminated before or on the program transfer date to the board shall continue to remain in effect until their specified expiration dates.

9VAC25-870-690. **(Reserved)**

Part XIII
Fees

~~4VAC50-60-700.~~ 9VAC25-870-700. **Purpose.**

Sections ~~10.1-603.4~~ 62.1-44.15:28 and ~~10.1-603.5~~ 62.1-44.15:31 of the Code of Virginia authorize the establishment of a statewide fee schedule, including administrative charges for state agencies, for stormwater management for land-disturbing activities and for municipal separate storm sewer systems. This part establishes the fee assessment and the collection and distribution systems for those fees. The fees shall be established for individual permits or coverage under the General Permit for Discharges of Stormwater from Construction Activities (state permits for stormwater management for land-disturbing activities) to cover all costs associated with the implementation of a VSMP by a VSMP authority that has been approved by the board and by the department. Such fee attributes include the costs associated with plan review, registration statement review, permit issuance, state-coverage verification, inspections, reporting, database management, and compliance activities associated with the land-disturbing activities as well as for program oversight costs. Fees shall also be established for state permit maintenance, modification, and transfer.

Fees collected pursuant to this part shall be in addition to any general fund appropriations made to the department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the department and the VSMP authority to fully carry out their responsibilities under the Act, this chapter, local ordinances, or standards and specifications where applicable.

When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the authority

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to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in ~~4VAC50-60-820~~ 9VAC25-870-820 as available to the department for program oversight responsibilities pursuant to § ~~10.1-603.4~~ 62.1-44.15:28 A 5 a of the Code of Virginia. Accordingly, should a VSMP authority demonstrate to the board its ability to fully and successfully implement a VSMP without a full implementation of the fees set out in this part, the board may authorize the administrative establishment of a lower fee for that program provided that such reduction shall not reduce the amount of fees due to the department for its program oversight and shall not affect the fee schedules set forth herein.

A VSMP authority may establish greater fees than those base fees specified by this part should it be demonstrated to the board that such greater fees are necessary to properly administer the VSMP. Any fee increases established by the VSMP authority beyond those base fees established in this part shall not be subject to the fee distribution formula set out in ~~4VAC50-60-780~~ 9VAC25-870-780. Nothing in this part shall prohibit a locality from establishing other local fees authorized by the Code of Virginia related to stormwater management within their jurisdictions.

A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under the Act, this chapter, ordinances, or annual standards and specifications.

As part of its program oversight, the department shall periodically assess the revenue generated by both the VSMP authorities and the department to ensure that the fees have been appropriately set and the fees may be adjusted through periodic regulatory actions should significant deviations become apparent.

~~4VAC50-60-720. 9VAC25-870-720. Authority.~~

The authority for this part is §§ ~~10.1-603.4~~ 62.1-44.15:28 and ~~10.1-603.4:1~~ 62.1-44.15:29 of the Code of Virginia and ~~enactment clause 7 governing the transfer of the relevant provisions of Fees for Permits and Certificates Regulations, 9VAC25-20, in accordance with Chapter 372 of the 2004 Virginia Acts of Assembly.~~

~~4VAC50-60-730. 9VAC25-870-730. Applicability.~~

A. This part applies to:

1. All persons seeking coverage of a MS4 under a new state permit. The fee due shall be as specified under ~~4VAC50-60-800~~ 9VAC25-870-800.
2. All operators who request that an existing MS4 individual permit be modified, except as specifically exempt under ~~4VAC50-60-740~~ 9VAC25-870-740. The fee due shall be as specified under ~~4VAC50-60-810~~ 9VAC25-870-810.
3. All persons seeking coverage under the General Permit for Discharges of Stormwater From Construction Activities or a person seeking an Individual Permit for Discharges of

Stormwater From Construction Activities. The fee due shall be as specified under ~~4VAC50-60-820~~ 9VAC25-870-820.

4. All state permittees who request modifications to or transfers of their existing registration statement for coverage under a General Permit for Discharges of Stormwater From Construction Activities or of an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under ~~4VAC50-60-825~~ 9VAC25-870-825 in addition to any additional fees necessary pursuant to ~~4VAC50-60-820~~ 9VAC25-870-820 due to an increase in acreage.

5. Reinspection fees assessed by the department to recoup the costs associated with each visit to a land-disturbing project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection. The fee due shall be as specified under ~~4VAC50-60-790~~ 9VAC25-870-790.

6. Business transaction costs assessed associated with processing credit card payments.

B. Persons who are applicants for an individual Municipal Separate Stormwater Sewer System permit as a result of existing state permit revocation shall be considered an applicant for a new state permit. The fee due shall be as specified under ~~4VAC50-60-800~~ 9VAC25-870-800.

Persons whose coverage under the General Permit for Discharges of Stormwater From Construction Activities has been revoked shall reapply for an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under ~~4VAC50-60-820~~ 9VAC25-870-820.

C. State and state permit coverage maintenance fees may apply to each state permit holder. The fee due shall be as specified under ~~4VAC50-60-830~~ 9VAC25-870-830.

~~4VAC50-60-740. 9VAC25-870-740. Exemptions.~~

A. No state permit application fees will be assessed to:

1. State permittees who request minor modifications to state permits as defined in ~~4VAC50-60-10~~ 9VAC25-870-10 or other minor amendments at the discretion of the VSMP authority.
2. State permittees whose state permits are modified or amended at the request of the VSMP authority or department by the board. This does not include errors in the registration statement identified by the VSMP authority, department, or board or errors related to the acreage of the site.

B. State permit modifications at the request of the state permittee resulting in changes to stormwater management plans that require additional review by the VSMP authority shall not be exempt pursuant to this section and shall be subject to fees specified under ~~4VAC50-60-825~~ 9VAC25-870-825.

~~4VAC50-60-750, 9VAC25-870-750.~~ Due dates for state permits.

A. Requests for a state permit, state permit modification, or general permit coverage shall not be processed until the fees required pursuant to this part are paid in accordance with ~~4VAC50-60-760~~ 9VAC25-870-760.

B. Individual permit or general permit coverage maintenance fees shall be paid annually to the department or the VSMP authority, as applicable, ~~by the anniversary date of individual permit issuance or general permit coverage.~~ No state permit will be reissued or automatically continued without payment of the required fee. Individual permit or general permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

Permit maintenance fees for MS4 individual operators who currently pay a state permit maintenance fee that is permits or MS4 general permit coverages are due by October 1 of each year shall continue to pay the maintenance fee by October 1 until their current state permit expires. Upon reissuance of the MS4 individual permit, maintenance fees shall be paid on the anniversary date of the reissued state permit. Effective April 1, 2014, any operator whose permit or general permit coverage (including operators whose permits or general permit coverages have been administratively continued) is effective as of April 1 of any given year shall pay the permit maintenance fee or fees to the department or the VSMP authority by October 1 of that same year.

Permit maintenance fees for discharges of stormwater from construction activities pursuant to 9VAC25-870-830 are due by April 1 of each year. After approval of a VSMP authority, including the department when acting in that capacity, any owner whose permit or general permit coverage authorizing discharges of stormwater from construction activities (including owners whose permits or general permit coverages have been administratively continued) is effective as of the effective date of the VSMP authority shall pay the permit maintenance fee or fees to the department or the VSMP authority by April 1 of that same year.

~~4VAC50-60-760, 9VAC25-870-760.~~ Method of payment.

A. Fees shall be collected utilizing, where practicable, an online payment system. Until such system is operational, fees, as applicable, shall be, at the discretion of the department, submitted electronically or be paid by check, draft or postal money order payable to:

1. The Treasurer of Virginia, for a MS4 individual or general permit or for a coverage issued by the department under the General Permit for Discharges of Stormwater from Construction Activities or Individual Permit for Discharges of Stormwater from Construction Activities, and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the fee. The Department of ~~Conservation and Recreation~~ Environmental Quality may provide a means to pay fees

electronically. Fees not submitted electronically shall be sent to the ~~following address until December 31, 2012:~~ Virginia Department of Environmental Quality.

~~Virginia Department of Conservation and Recreation
Division of Finance, Accounts Payable
203 Governor Street
Richmond, VA 23219~~

~~Fees not submitted electronically shall be sent to the following address after December 31, 2012:~~

~~Virginia Department of Conservation and Recreation
Division of Finance, Accounts Payable
600 East Main Street
24th Floor
Richmond, VA 23219~~

2. The VSMP authority, for VSMP operational costs of the VSMP authority under the General Permit for Discharges of Stormwater From Construction Activities, and must be in U.S. currency.

B. When fees are collected electronically pursuant to this part through credit cards, business transaction costs associated with processing such payments may be additionally assessed.

C. Required information for state permits or state permit coverage: All applicants, unless otherwise specified by the department, shall submit the following information along with the fee payment or utilize the ~~Department of Conservation and Recreation~~ department Permit Application Fee Form:

1. Applicant name, address and daytime phone number.
2. Applicant Federal Identification Number (FIN), if applicable.
3. The name of the facility/activity, and the facility/activity location.
4. The type of state permit applied for.
5. Whether the application is for a new state permit issuance, state permit reissuance, state permit maintenance, or state permit modification.
6. The amount of fee submitted.
7. The existing state permit number, if applicable.
8. Other information as required by the VSMP authority.

~~4VAC50-60-770, 9VAC25-870-770.~~ Incomplete payments and late payments.

All incomplete payments will be deemed as nonpayments. The department or the VSMP authority, as applicable, shall provide notification to the state applicant of any incomplete payments.

Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of the Code of

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Virginia and is calculated on a monthly basis at the applicable periodic rate.

A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account.

The department and the VSMP authority are entitled to all remedies available under the Code of Virginia in collecting any past due amount.

4VAC50-60-780. 9VAC25-870-780. Deposit and use of fees.

A. All fees collected by the department or board pursuant to this chapter shall be deposited into the Virginia Stormwater Management Fund and shall be used and accounted for as specified in § ~~40.1-603.4~~ 62.1-44.15:29 of the Code of Virginia. Fees collected by the department or board shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

B. All fees collected by a VSMP authority pursuant to this chapter shall be subject to accounting review and shall be used solely to carry out the VSMP authority's responsibilities pursuant to the Act, Part II and Part III A of this chapter, local ordinances, or annual standards and specifications.

Pursuant to subdivision A 5 a of § ~~40.1-603.4~~ 62.1-44.15:28 of the Code of Virginia, whenever the board has authorized the administration of a VSMP by a VSMP authority, 28% of the total revenue generated by the statewide stormwater management fees collected in accordance with ~~4VAC50-60-820~~ 9VAC25-870-820 shall be remitted on a schedule determined by the department to the State Treasurer for deposit in the Virginia Stormwater Management Fund unless otherwise collected electronically. If the VSMP authority waives or reduces any fee due in accordance with ~~4VAC50-60-820~~ 9VAC25-870-820, the VSMP authority shall remit the 28% portion that would be due to the Virginia Stormwater Management Fund if such fee were charged in full. Any fee increases established by the VSMP authority beyond the base fees established in this part shall not be subject to the fee distribution formula.

4VAC50-60-790. 9VAC25-870-790. General.

A. The fees for individual permits, general permit coverage, state permit or registration statement modification, or state permit transfers are considered separate actions and shall be assessed a separate fee, as applicable.

B. Until July 1, 2014, the department is authorized to assess a \$125 reinspection fee for each visit to a project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection.

4VAC50-60-800. 9VAC25-870-800. Fee schedules for municipal separate storm sewer system new state permit issuance.

The following fee schedule applies to state permit applications for issuance of a new individual municipal separate storm sewer system permit or coverage under a MS4

General Permit. All regulated MS4s that apply for joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out below.

Municipal Stormwater / MS4 Individual (Large and Medium)	\$16,000
Municipal Stormwater / MS4 Individual (Small)	\$8,000
Municipal Stormwater / MS4 General Permit (Small)	\$4,000

4VAC50-60-810. 9VAC25-870-810. Fee schedules for major modification of MS4 individual permits requested by the operator.

The following fee schedule applies to state applications for major modification of an individual MS4 permit requested by the state permittee:

Municipal Stormwater / MS4 Individual (Large and Medium)	\$5,000
Municipal Stormwater / MS4 Individual (Small)	\$2,500

4VAC50-60-820. 9VAC25-870-820. Fees for an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities.

The following fees apply to coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the department prior to a VSMP authority being approved by the board in the area where the applicable land-disturbing activity is located, or where the department has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency for which it has approved annual standards and specifications.

General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than five acres)	\$750
General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)	\$450
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre) (Fee valid until July 1, 2014)	\$200

The following fees apply to coverage under the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency that does not file annual standards and specifications or an individual permit issued by the board or coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the board. For coverage under the General Permit for Discharges of Stormwater from Construction Activities, no more than 50% of the base fee set out in this part shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted for review in accordance with ~~4VAC50-60-108~~ 9VAC25-870-108. The remaining base fee balance shall be due prior to the issuance of coverage under the General Permit for Discharges of Stormwater from Construction Activities.

When a site or sites are purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees ("total fee to be paid by applicant" column) in accordance with the disturbed acreage of their site or sites according to the following table.

Fee type	Total fee to be paid by applicant (includes both VSMP authority and department portions where applicable)	Department portion of "total fee to be paid by applicant" (based on 28% of total fee paid *)
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$290	\$0
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or	\$290	\$81

sale with land-disturbance acreage less than one acre)		
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)	\$2,700	\$756
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$3,400	\$952
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$4,500	\$1,260
General / Stormwater Management - Large Construction	\$6,100	\$1,708

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Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)		
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	\$9,600	\$2,688
Individual Permit for Discharges of Stormwater from Construction Activities (This will be administered by the department)	\$15,000	\$15,000
* If the project is completely administered by the department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the department.		

4VAC50-60-825. 9VAC25-870-825. Fees for the modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities.

The following fees apply to modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities issued by the board. If the state permit modifications result in changes to stormwater management plans that require additional review by the VSMP authority, such reviews shall be subject to the fees set out in this section. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the state permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial state permit fee paid and the state permit fee that would have applied for the

total disturbed acreage in ~~4VAC50-60-820~~ 9VAC25-870-820. No modification or transfer fee shall be required until such board-approved programs exist. No modification fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency that is administering a project in accordance with approved annual standards and specifications but shall apply to all other state or federal agency projects.

General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than one acre)	\$20
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one and less than five acres)	\$200
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$250
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$300
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$450
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	\$700
Individual Permit for Discharges of Stormwater from Construction Activities	\$5,000

4VAC50-60-830. 9VAC25-870-830. State permit maintenance fees.

The following annual permit maintenance fees apply to each state permit identified below, including expired state permits that have been administratively continued. With respect to the

General Permit for Discharges of Stormwater from Construction Activities, these fees shall apply until the state permit coverage is terminated, and shall only be effective when assessed by a VSMP authority including the department when acting in that capacity that has been approved by the board. No maintenance fee shall be required for a General Permit for Discharges of Stormwater from Construction Activities until such board approved programs exist. No maintenance fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency that is administering a project in accordance with approved annual standards and specifications but shall apply to all other state or federal agency projects. All regulated MS4s who are issued joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out below:

Municipal Stormwater / MS4 Individual (Large and Medium)	\$8,800
Municipal Stormwater / MS4 Individual (Small)	\$6,000
Municipal Stormwater / MS4 General Permit (Small)	\$3,000
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$50
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre)	\$50
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance equal to or greater than one acre and less than five acres)	\$400
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$500
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater	\$650

than 10 acres and less than 50 acres)	
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater 100 acres)	\$1,400
Individual Permit for Discharges from Construction Activities	\$3,000

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

FORMS (4VAC50-60) (9VAC25-870)

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

~~[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 \(03/09\).](#)~~

[Application Form 1 - General Information, Consolidated Permits Program, EPA Form 3510-1 \(rev. 08/90\)](#)

[Construction Activity Operator Permit Fee Form, DEQ 199-213, \(eff. 08/13\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (4VAC50-60) (9VAC25-870)

[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. R14-3668; Filed August 30, 2013, 3:18 p.m.

Regulations

Final Regulation

REGISTRAR'S NOTICE: Enactment 7 of Chapters 756 and 793 of the 2013 Acts of Assembly transfers the powers related to administration and implementation of the Virginia Stormwater Management Act, the Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act from the Virginia Soil and Water Conservation Board to the State Water Control Board. Pursuant to enactment 8 of Chapters 756 and 793, initial actions of the State Water Control Board to adopt, with necessary amendments, the regulations implementing these programs are exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

Title of Regulation: 9VAC25-880. General Permit for Discharges of Stormwater from Construction Activities (adding 9VAC25-880-1 through 9VAC25-880-100).

Statutory Authority: § 62.1-44.15:25 of the Code of Virginia.

Effective Date: October 23, 2013.

Agency Contact: William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4347, TTY (804) 698-4021, or email william.norris@deq.virginia.gov.

Summary:

The regulatory action reflects changes made by Chapters 756 and 793 of the 2013 Acts of Assembly transferring regulations dealing with oversight of water quality planning, stormwater management, erosion and sediment control, and the Chesapeake Bay Preservation Areas. These conforming amendments change the chapter and section numbers so that the General Permit for Discharges of Stormwater from Construction Activities appears under the State Water Control Board in the Virginia Administrative Code and update the agency name, Code of Virginia citations, and Virginia Administrative Code cross references to reflect the change in administration of the program from the Department of Conservation and Recreation and Virginia Soil and Water Conservation Board to the Department of Environmental Quality and State Water Control Board. In addition, the amendments (i) update to July 1, 2009, the Code of Federal Regulations incorporated by reference into the regulation and the forms necessary for permitting of discharges from construction activities; (ii) adjust the notification requirements for terminating state permit coverage; (iii) add a provision delegating certain authority of the State Water Control Board to the Director of the Department of Environmental Quality; and (iv) make clarifying changes.

Part XIV CHAPTER 880

GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES

~~4VAC50-60-1100.~~ 9VAC25-880-1. Definitions.

The words and terms used in this ~~part~~ chapter shall have the meanings defined in the Virginia Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia), ~~and this chapter, and 9VAC25-870~~ unless the context clearly indicates otherwise, except as otherwise specified in this section. Terms not defined in the Act, this chapter, or ~~this section~~ 9VAC25-870 shall have the meaning attributed to them in the federal Clean Water Act (33 USC § 1251 et seq.) (CWA). For the purposes of this ~~part~~ chapter:

"Commencement of construction" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities (e.g., stockpiling of fill material).

"Final stabilization" means that one of the following situations has occurred:

1. All soil disturbing activities at the site have been completed and a permanent vegetative cover has been established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform (e.g., evenly distributed), mature enough to survive, and will inhibit erosion.
2. For individual lots in residential construction, final stabilization can occur by either:
 - a. The homebuilder completing final stabilization as specified in subdivision 1 of this definition; or
 - b. The homebuilder establishing temporary stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and informing the homeowner of the need for, and benefits of, final stabilization.
3. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters, and areas that are not being returned to their preconstruction agricultural use must meet the final stabilization criteria specified in subdivision 1 or 2 of this definition.

"Minimize" means to prevent, reduce, or eliminate using practicable control measures to meet the conditions of this state permit.

~~4VAC50-60-1110.~~ 9VAC25-880-10. Purpose.

This general permit regulation authorizes stormwater discharges from regulated construction activities. For the

purposes of this ~~part~~ chapter, these discharges are defined as stormwater discharges associated with large construction activity, and stormwater discharges associated with small construction activity. Stormwater discharges associated with other types of industrial activity shall not have coverage under this general permit. This general permit covers only discharges through a point source to state waters or through a municipal or nonmunicipal separate storm sewer system to state waters. Stormwater discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization are not authorized by this state permit. The goal of this state permit is to minimize the discharge of stormwater pollutants from construction activity by requiring that the operator plan and implement appropriate control measures.

9VAC25-880-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the United States set forth in the Code of Federal Regulations is referenced and incorporated herein, that regulation shall be as it exists and has been published in the July 1, 2009, update.

4VAC50-60-1120. 9VAC25-880-20. Effective date of the permit.

This general permit is effective on July 1, 2009. The general permit will expire on June 30, 2014.

4VAC50-60-1130. 9VAC25-880-30. Authorization to discharge.

A. Any operator governed by this general permit is authorized to discharge to state waters of the Commonwealth of Virginia in accordance with ~~4VAC50-60-1150~~ 9VAC25-880-50 A 4 provided that the operator has filed a complete and accurate registration statement in accordance with ~~4VAC50-60-1150~~ 9VAC25-880-50, submitted any fees required by Part XIII of 9VAC25-870 (4VAC50-60-700 9VAC25-870-700 et seq. (Part XIII)) unless exempted pursuant to ~~4VAC60-60-1150~~ 9VAC25-880-50 A 3 (a), complied with the requirements of ~~4VAC50-60-1150~~ 9VAC25-880-50, complies with the requirements of ~~4VAC50-60-1180~~ 9VAC25-880-80 through ~~4VAC50-60-1190~~ 9VAC25-880-90, and:

1. Prior to commencing construction, the operator shall obtain approval of an erosion and sediment control plan from the VESCP authority in the locality in which the construction activity is to occur unless the operator receives from the VESCP authority an "agreement in lieu of a plan" as defined in ~~4VAC50-30-10~~ 9VAC25-840-10, or is exempt from the requirement to submit an erosion and sediment control plan by the Erosion and Sediment Control Law (§ ~~10.1-560 et seq. of the Code of Virginia~~) and Erosion and Sediment Control Regulations (~~4VAC50-30~~ 9VAC25-840);

2. The stormwater discharge authorized by this state permit may be combined with other sources of stormwater that are not required to be covered under a state permit, so long as the combined discharge is in compliance with this state permit. Any discharge authorized by a different state or a VPDES permit may be commingled with discharges authorized by this state permit so long as all such discharges comply with all applicable state permits;

3. Discharges to waters for which a "total maximum daily load" (TMDL) wasteload allocation has been established are not eligible for coverage under this general permit unless they are otherwise authorized in accordance with ~~4VAC50-60-1170~~ 9VAC25-880-70 Section II D 6 and consistent with the requirements and assumptions of the wasteload allocations in the TMDL; and

4. Discharges to waters that have been identified as impaired in the 2008 § 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under this general permit unless they are otherwise authorized in accordance with ~~4VAC50-60-1170~~ 9VAC25-880-70 Section I H.

B. In addition to other prohibitions, the following discharges are not eligible for coverage under this general permit:

1. Discharges for which the operator has been required to obtain an individual permit according to ~~4VAC50-60-410~~ 9VAC25-870-410 B;

2. Discharges to state waters specifically named in other ~~State Water Control Board~~ board regulations or policies that prohibit such discharges; and

3. Stormwater discharges that the department in consultation with the State Water Control Board determines cause, may reasonably be expected to cause, or contribute to a violation of water quality standards (9VAC25-260).

C. This state permit may also be used to authorize stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

1. The support activity is directly related to a construction site that is required to have state permit coverage for discharges of stormwater associated with construction activity;

2. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and

3. Appropriate control measures that will be implemented to minimize pollutant discharges from the support activity are identified in a stormwater pollution prevention plan covering the discharges from the support activity areas.

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D. Support activities located off-site are not required to be covered under this general permit. Discharges of stormwater from off-site support activities may be authorized under another state or a VPDES permit. Where stormwater discharges from off-site support activities are not authorized under this general permit, the land area of the off-site support activity need not be included in determining the total land disturbance acreage of the construction activity seeking general permit coverage.

E. 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.

F. The department may allow exceptions to technical criteria contained in the state permit in accordance with Part III of ~~this chapter~~ 9VAC25-870 (9VAC25-870-100 et seq.).

~~4VAC50-60-1140.~~ 9VAC25-880-40. Virginia erosion and sediment control programs.

VESCP requirements may be incorporated by reference into the Stormwater Pollution Prevention Plan (SWPPP) required by ~~4VAC50-60-1170~~ 9VAC25-880-70 of this state permit. Where a VESCP does not include one or more of the elements in this section, then the operator must include those elements as part of the SWPPP required by ~~4VAC50-60-1170~~ 9VAC25-880-70 of this permit. A VESCP is one that is approved by the board, meets the requirements of ~~4VAC50-60-460~~ 9VAC25-870-460 L and includes:

1. Requirements for construction site operators to implement appropriate erosion and sediment control measures;
2. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; and
3. Requirements for construction site operators to develop and implement a SWPPP in accordance with ~~4VAC50-60-1170~~ 9VAC25-880-70 Section II.

~~4VAC50-60-1150.~~ 9VAC25-880-50. State permit application (registration statement).

A. Deadlines for submitting registration statement.

1. Except as provided in subdivision 3 of this subsection, operators must submit a complete and accurate registration statement in accordance with the requirements of this section prior to the issuance of coverage under the general permit that authorizes the commencement of land-disturbing activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).
2. For stormwater discharges from construction activities where the operator changes, the new operator must submit a complete registration statement or transfer form prior to

assuming operational control over site specifications or commencing work on-site.

3. In order to continue state permit coverage, operators of ongoing construction activity projects as of July 1, 2009, that received authorization to discharge for those projects under the construction stormwater general permit issued in 2004 must:

- a. Submit a complete and accurate registration statement by June 1, 2009. Provided that a complete and accurate registration statement is submitted by the June 1 reapplication date, the state permit application (registration statement) fee will be waived for land-disturbing activities for which the department initially issued state permit coverage on or after July 1, 2008; and
- b. Update their stormwater pollution prevention plan to comply with the requirements of this general permit within 30 days after the date of coverage under this general permit.

4. Effective date of state permit coverage. The operator of a construction activity is authorized to discharge stormwater under the terms and conditions of this state permit 15 business days following submission of a complete and accurate registration statement to the VSMP authority as the administering entity for the board unless notification of coverage is made by the department at an earlier time. For the purposes of this state permit, a registration statement that is mailed is considered to be submitted once it is postmarked. Operators are not authorized to discharge if the registration statement is incomplete or incorrect, or if the discharge(s) was not eligible for coverage under this state permit.

NOTE: A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the General Permit for Stormwater Discharges from Construction Activities prior to submitting the registration statement. By signing the registration statement the operator certifies that the SWPPP has been prepared.

5. Late notifications. Operators are not prohibited from submitting registration statements after initiating clearing, grading, excavation activities, or other land-disturbing activities. When a late registration statement is submitted, authorization for discharges shall not occur until coverage under the general permit is issued. The department reserves the right to take enforcement action for any unpermitted discharges that occur between the commencement of construction and discharge authorization.

B. Registration statement. The operator shall submit a registration statement on the official department form that shall contain the following information:

1. Name, mailing address ~~and~~, telephone number, and email address of the construction activity operator. No more than one operator may receive coverage under each registration statement.

(NOTE: The state permit will be issued to this operator, and the certification in subdivision 12 of this subsection must be signed by the appropriate person associated with this operator);

2. Name and location of the construction activity, including town, city, or county, and all off-site support activities to be covered under the state permit. If a street address is unavailable, provide latitude and longitude;

3. Status of the activity: federal, state, public, or private;

4. Nature of the construction activity (e.g., commercial, industrial, residential, agricultural, oil and gas, etc.);

5. Name of the receiving water(s) and HUC. Direct discharges to any receiving water identified as impaired on the 2008 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL WLA has been established for stormwater discharges from a construction activity shall be noted;

6. If the discharge is through a municipal separate storm sewer system (MS4), the name of the municipal operator of the storm sewer;

7. Estimated project start date and completion date;

8. Total land area of development and estimated area to be disturbed by the construction activity (to the nearest one-tenth of an acre);

9. Whether the area to be disturbed by the construction activity is part of a larger common plan of development or sale;

10. An indication of whether nutrient offsets are intended to be acquired in accordance with ~~§ 40.1-603.8:1~~ 62.1-44.15:35 of the Code of Virginia;

11. A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the General Permit for Stormwater Discharges from Construction Activities prior to submitting the registration statement. By signing the registration statement the operator certifies that the SWPPP has been prepared; and

12. The following certification: "I certify under penalty of law that I have read and understand this registration statement and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated 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 in accordance with ~~4VAC50-60-1170~~ 9VAC25-880-70, Section III K.

D. Where to submit. The registration statement shall be submitted to the VSMP authority as the administering entity for the board.

E. Registration statements in the custody of the VSMP authority or the department are subject to requests made pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

~~4VAC50-60-1160.~~ 9VAC25-880-60. **Termination of state permit coverage.**

A. Requirements. The operator shall submit a notice of termination on the official department form after one or more of the following conditions have been met:

1. Necessary ~~postconstruction~~ post-construction control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator is responsible;

2. Another operator has assumed control over all areas of the site that have not been finally stabilized and obtained coverage for the ongoing discharge;

3. Coverage under an alternative VPDES or state permit has been obtained; or

4. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

The notice of termination must be submitted within 30 days of one of the above conditions being met. Authorization to discharge terminates at midnight on the date that the notice of termination is submitted for the conditions set forth in subdivisions 2 through 4 of this subsection. Termination of authorizations to discharge for the conditions set forth in subdivision 1 of this subsection shall be effective upon notification from the department that the provisions of subdivision 1 of this subsection have been met or 60 days after submittal of the notice of terminations, whichever occurs first.

B. Notice of termination. The notice of termination shall contain the following information:

1. Name, mailing address ~~and~~, telephone number, and email address of the construction activity operator.

2. Name and location of the construction activity. If a street address is unavailable, latitude and longitude shall be provided.

3. The stormwater general permit number.

4. The basis for submission of the notice of termination, pursuant to subsection A of this section.

5. Where applicable, a list of the permanent control measures (both structural and nonstructural) that were installed at the construction activity site. For each control measure that was installed, the following information shall be included:

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- a. Type of permanent control measure installed and the date that it became functional as a permanent control measure;
 - b. Geographic location (county or city and Hydrologic Unit Code). Latitude and longitude may additionally be included if available;
 - c. Waterbody the control measure discharges into; and
 - d. Number of acres treated (to the nearest one-tenth of an acre).
6. Where applicable, the following information related to participation in a regional stormwater management plan:
- a. Type of regional facility or facilities to which the site contributes;
 - b. Geographic location of any regional facility to which the site contributes (county or city and Hydrologic Unit Code);
 - c. Geographic location of the site (county or city and Hydrologic Unit Code). Latitude and longitude may additionally be included if available; and
 - d. Number of acres treated by a regional facility.
7. Where applicable, the following information related to nutrient offsets that were acquired in accordance with ~~§ 10.1-603.8:1~~ § 62.1-44.15:35 of the Code of Virginia:
- a. Name of the broker from which offsets were acquired;
 - b. Geographic location (county or city and Hydrologic Unit Code) of the broker's offset generating facility;
 - c. Number of nutrient offsets acquired (lbs. per acre per year); and
 - d. Nutrient reductions achieved on site (lbs. per acre per year).
8. The following certification: "I certify under penalty of law that I have read and understand this notice of termination and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated 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 notice of termination shall be signed in accordance with ~~4VAC50-60-1170~~ 9VAC25-880-70 Section III K.
- D. Where to submit. The notice of termination shall be submitted to the VSMP authority as the administering entity for the board.
- E. Termination by the department in coordination with the VSMP authority. The department in coordination with the VSMP authority may terminate coverage under this state

permit during its term and require application for an individual permit or deny a state permit renewal application on its own initiative in accordance with the Act ~~and~~, this chapter, and 9VAC25-870.

~~4VAC50-60-1170.~~ **9VAC25-880-70. General permit.**

Any operator whose registration statement is accepted by the department will receive the following state permit and shall comply with the requirements in it and be subject to all requirements of the Virginia Stormwater Management Act (~~Chapter 6, Article 1.1 (§ 10.1-603.1 et seq.) of Title 10.1 of the Code of Virginia~~) and the Virginia Stormwater Management Program (VSMP) ~~Permit~~ Regulations (~~4VAC50-60~~ 9VAC25-870). No more than one operator may receive coverage under each registration statement.

General Permit No.: VAR10

Effective Date: July 1, 2009

Expiration Date: June 30, 2014

GENERAL PERMIT FOR DISCHARGES OF
STORMWATER FROM CONSTRUCTION ACTIVITIES
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 attendant regulations, operators of construction activities covered by this state permit with stormwater discharges are authorized to discharge to state waters, including discharges to a regulated MS4 system, within the boundaries of the Commonwealth of Virginia, except those specifically named in State Water Control Board ~~and Virginia Soil and Water Conservation Board~~ regulations that prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Section I - Discharge Authorization and Special Conditions, Section II - Stormwater Pollution Prevention Plan, and Section III - Conditions Applicable ~~To~~ to All State Permits as set forth herein.

SECTION I
DISCHARGE AUTHORIZATION AND SPECIAL
CONDITIONS

A. Coverage under this state permit.

1. During the period beginning with the date of coverage under this general permit and lasting until the state permit's expiration date, the operator is authorized to discharge stormwater from construction activities.
2. This state permit may also authorize stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

a. The support activity is directly related to the construction site that is required to have state permit coverage for discharges of stormwater associated with construction activity;

b. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and

c. Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity areas.

3. There shall be no discharge of floating solids or visible foam that contravenes established standards or interferes directly or indirectly with designated uses of surface waters.

B. Limitation on coverage.

1. Post-construction discharges. This state permit does not authorize stormwater discharges that originate from the site after construction activities have been completed and the site, including any temporary support activity site, has undergone final stabilization. Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit.

2. Discharges mixed with nonstormwater. This state permit does not authorize discharges that are mixed with sources of nonstormwater, other than those discharges that are identified in Section I D 2 (Exceptions to prohibition of nonstormwater discharges) and are in compliance with Section II D 5 (Nonstormwater discharge management).

3. Discharges covered by another state permit. This state permit does not authorize stormwater discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative general permit.

4. TMDL limitation. Discharges to waters for which a wasteload allocation (WLA) for a pollutant has been established in a an approved "total maximum daily load" (TMDL) ~~approved by the State Water Control Board~~ that would apply to stormwater discharges from a construction activity are not eligible for coverage under this state permit unless the stormwater pollution prevention plan (SWPPP) developed by the operator is consistent with the requirements related to TMDLs contained in Section II D 6.

5. Impaired waters limitation. Discharges to waters that have been identified as impaired in the 2008 § 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under this state permit unless the operator implements strategies and control measures consistent with Sections I H and II D 7.

C. Commingled discharges. Any discharge authorized by a different state or VPDES permit may be commingled with discharges authorized by this state permit.

D. Prohibition of nonstormwater discharges.

1. Except as provided in Sections I A 2, I C and I D 2, all discharges covered by this state permit shall be composed entirely of stormwater associated with construction activity.

2. The following nonstormwater discharges from active construction sites are authorized by this state permit provided the nonstormwater component of the discharge is in compliance with Section II D 5 (Nonstormwater discharges):

- a. Discharges from fire fighting activities;
- b. Fire hydrant flushings;
- c. Waters used to wash vehicles where detergents are not used;
- d. Water used to control dust;
- e. Potable water sources, including uncontaminated waterline flushings;
- f. Routine external building wash down which does not use detergents;
- g. Pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;
- h. Uncontaminated air conditioning or compressor condensate;
- i. Uncontaminated ground water or spring water;
- j. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
- k. Uncontaminated excavation dewatering, and
- l. Landscape irrigation.

E. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the stormwater discharges from the construction site shall be prevented or minimized in accordance with the stormwater pollution prevention plan for the site. This state permit does not relieve the state permittee of the reporting requirements of 40 CFR Part 110 (~~2002~~), 40 CFR Part 117 (~~2002~~) and 40 CFR Part 302 (~~2002~~) or § 62.1-44.34:19 of the Code of Virginia.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (~~2002~~), 40 CFR Part 117 (~~2002~~), 40 CFR Part 302 (~~2002~~), or § 62.1-44.34:19 of the Code of Virginia occurs during a 24-hour period:

- 1. The operator is required to notify ~~the Department of Environmental Quality~~, the department, and the VSMP authority in accordance with the requirements of Section III G as soon as he has knowledge of the discharge;

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2. Where a release enters a municipal separate storm sewer system (MS4), the operator shall also notify the operator of the MS4; and

3. The stormwater pollution prevention plan required under Section II D of this state permit must be reviewed by the operator to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate within seven calendar days of knowledge of a release.

F. Spills. This state permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

G. Termination of state permit coverage. Coverage under this state permit may be terminated in accordance with ~~4VAC50-60-1160~~ 9VAC25-880-60.

H. Water quality protection.

1. The operator must select, install, implement and maintain control measures at the construction site that minimize pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standards.

2. If it is determined by the department in consultation with the State Water Control Board at any time that the operator's stormwater discharges have reasonable potential to cause or contribute to an excursion above any applicable water quality standard, the department shall require the operator to:

a. Modify control measures in accordance with Section II C to adequately address the identified water quality concerns;

b. Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or

c. Cease discharges of pollutants from construction activity and submit an individual permit application according to ~~4VAC50-60-410~~ 9VAC25-870-410 B 3.

All written responses required under this ~~part~~ chapter must include a signed certification consistent with Section III K.

SECTION II

STORMWATER POLLUTION PREVENTION PLAN

A. Stormwater Pollution Prevention Plan Framework.

1. A stormwater pollution prevention plan (SWPPP) shall be developed prior to submission of a registration statement and implemented for the construction activity covered by this state permit. SWPPPs shall be prepared in accordance with good engineering practices.

2. The SWPPP shall:

a. Identify potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site;

b. Describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site; and

c. Comply with the terms and conditions of this state permit.

3. The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other state or local plans such as (i) an erosion and sediment control (ESC) plan, (ii) an agreement in lieu of a plan as defined in ~~4VAC50-30-10~~ 9VAC25-840-10, (iii) a stormwater management plan, (iv) a spill prevention control and countermeasure (SPCC) plan developed for the site under § 311 of the federal Clean Water Act or (v) best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Section II D. If an erosion and sediment control plan for the land-disturbing activity is being incorporated by reference, the referenced plan must be approved by the VESCP authority of the locality in which the construction activity is to occur prior to the commencement of land disturbance.

4. All plans incorporated by reference into the SWPPP become enforceable under this state permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Section II D, the operator must develop the missing elements and include them in the required SWPPP.

5. Once a definable area has been finally stabilized, the operator may mark this on the SWPPP and no further SWPPP or inspection requirements apply to that portion of the site (e.g., earth-disturbing activities around one of three buildings in a complex are done and the area is finally stabilized; one mile of a roadway or pipeline project is done and finally stabilized, etc.).

6. The SWPPP shall identify all properties that are no longer under the control of the operator and the dates on which the operator no longer had control over each property.

7. The operator must implement the SWPPP as written and updated in accordance with Section II C from commencement of construction activity until final stabilization is complete.

B. Signature, SWPPP review and making SWPPPs available.

1. The SWPPP shall be signed in accordance with Section III K.

2. The SWPPP shall be retained, along with a copy of this state permit, registration statement, and ~~acknowledgment~~ state permit coverage letter from the department, at the construction site or other location easily accessible during normal business hours from the date of commencement of construction activity to the date of final stabilization. Operators with day-to-day operational control over SWPPP

implementation shall have a copy of the SWPPP available at a central location on-site for the use of all operators and those identified as having responsibilities under the SWPPP whenever they are on the construction site. The SWPPP must be made available, in its entirety, to the department, the VSMP authority, and the operator of a municipal separate storm sewer system receiving discharges from the site for review at the time of an on-site inspection. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be posted near the main entrance at the construction site.

3. The operator shall make SWPPPs and all updates available upon request to the department; the VSMP authority; EPA; a state or local agency approving erosion and sediment control plans, grading plans, or stormwater management plans; local government officials; or the operator of a municipal separate storm sewer system receiving discharges from the site.

4. A sign or other notice must be posted conspicuously near the main entrance of the construction site. The sign or other notice must contain the following information:

- a. A copy of the state permit coverage letter that includes the registration number for the construction activity; and
- b. The Internet address at which a copy of the SWPPP may be found or the location of a hard copy of the SWPPP and name and telephone number of a contact person for scheduling viewing times.

For linear projects, the sign or other notice must be posted at a publicly accessible location near an active part of the construction project (e.g., where a pipeline project crosses a public road).

5. For discharges that commence on or after July 1, 2009, that have not previously held coverage under a state or VPDES permit, the operator shall make the SWPPP available to the public for review. A copy of the SWPPP for each site shall be made available on the Internet or in hard copy. The website address or contact person for access to the SWPPP shall be posted on the sign required by subdivision B 4 of this section. If not provided electronically, access to the SWPPP may be arranged upon request at a time and at a publicly accessible location convenient to the operator or his designee but shall be no less than once per month and shall be during normal business hours. If a reproduced copy of the SWPPP is provided to the requestor, the requestor shall be responsible for the costs of reproduction. Information excluded from disclosure under applicable law shall not be required to be released. Information not required to be contained within the SWPPP by this state permit is not required to be released.

C. Maintaining an updated SWPPP.

1. The operator shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP.

2. The SWPPP must be amended if during inspections or investigations by the operator's qualified personnel, or by VESCP authority, VSMP authority, state or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in stormwater discharges from the construction site. Revisions to the SWPPP shall include additional or modified control measures designed to correct problems identified. If approval by a VSMP authority is necessary for the control measure, revisions to the SWPPP shall be completed within seven calendar days of approval. Implementation of these additional or modified control measures must be accomplished as described in Section II D 3 b.

3. Revisions to the SWPPP must be dated and signed in accordance with Section III K 2, but are not required to be certified in accordance with Section III K 4.

4. The SWPPP must clearly identify the contractor(s) or subcontractor(s) that will implement and maintain each measure identified in the SWPPP. The SWPPP shall be revised to identify any new contractor that will implement a measure.

D. Stormwater pollution prevention plan contents. The SWPPP shall include the registration statement, this state permit, and the following items:

1. Site and activity description. Each SWPPP shall provide the following information:

- a. A narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway, etc.);
- b. The intended sequence and timing of activities that disturb soils at the site (e.g., grubbing, excavation, grading, utilities and infrastructure installation);
- c. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated;
- d. Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities including off-site borrow and fill areas;
- e. A description of any other potential pollutant sources, such as vehicle fueling, storage of fertilizers or chemicals, sanitary waste facilities, etc.;
- f. Identification of the nearest receiving waters at or near the construction site that will receive discharges from disturbed areas of the project;

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g. The location and description of any discharge associated with industrial activity other than construction at the site. This includes stormwater discharges from dedicated asphalt plants and dedicated concrete plants that are covered by this state permit;

h. A legible general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) with sufficient detail to identify the location of the construction activity and surface waters within one mile of the construction activity; and

i. A legible site map identifying:

(1) Directions of stormwater flow and approximate slopes anticipated after major grading activities;

(2) Areas of soil disturbance and areas of the site which will not be disturbed;

(3) Locations of major structural and nonstructural control measures identified in the SWPPP, including those that will be permanent after construction activities have been completed;

(4) Locations where stabilization practices are expected to occur;

(5) Locations of surface waters;

(6) Locations where concentrated stormwater discharges;

(7) Locations of off-site material, waste, borrow or equipment storage areas covered by the SWPPP;

(8) Locations of other potential pollutant sources, such as vehicle fueling, storage of chemicals, concrete wash-out areas, sanitary waste facilities, including those temporarily placed on the construction site, etc.; and

(9) Areas where final stabilization has been accomplished.

2. Controls to minimize pollutants. The SWPPP shall include a description of all control measures that will be implemented as part of the construction activity to minimize pollutants in stormwater discharges. For each major activity identified in the project description, the SWPPP shall clearly describe appropriate control measures, the general sequencing during the construction process in which the control measures will be implemented, and which operator is responsible for the control measure's implementation.

a. Erosion and sediment controls.

(1) An erosion and sediment control plan or an agreement in lieu of a plan shall be approved by the appropriate VESCP authority for the land-disturbing activity in accordance with the Virginia Erosion and Sediment Control Law (~~§ 10.1-560 et seq.~~) and regulations (~~4VAC50-30~~ 9VAC25-840). Where applicable, a plan shall be developed in accordance with board-approved annual general erosion and sediment control specifications.

(2) All control measures required by the plan shall be designed, installed, and maintained in accordance with good engineering practices and the minimum standards of the Virginia Erosion and Sediment Control Law (~~§ 10.1-560 et seq. of the Code of Virginia~~) and regulations (~~4VAC50-30~~ 9VAC25-840).

b. Management practices.

(1) Plans should ensure that existing vegetation is preserved where possible and that disturbed portions of the site are stabilized.

(2) All control measures must be properly selected, installed, and maintained in accordance with good engineering practices and, where applicable, manufacturer specifications. If periodic inspections or other information indicates a control has been used inappropriately or incorrectly, the operator must replace or modify the control for site situations as soon as practicable and update the SWPPP in accordance with Section II C.

(3) If sediment escapes the construction site, off-site accumulations of sediment must be removed as soon as practicable to minimize off-site impacts. If approval by a VESCP authority is necessary, control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.

(4) Construction debris and construction chemicals exposed to stormwater shall be prevented from becoming a pollutant source in stormwater discharges.

(5) Litter exposed to stormwater shall be prevented from becoming a pollutant source in stormwater discharges and the construction site shall be policed daily to control litter.

c. Stormwater management.

(1) The operator shall ensure compliance with the requirements of ~~4VAC50-60-1180~~ 9VAC25-880-80 through ~~4VAC50-60-1190~~ 9VAC25-880-90 of the ~~Virginia Stormwater Management Regulations~~ General Permit for Discharges of Stormwater from Construction Activities regulations, including but not limited to water quality and quantity requirements. The SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed prior to the completion of the construction process to control pollutants in stormwater discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree possible. Such measures must be designed and installed in accordance with applicable VESCP authority, VSMP authority, state, and federal requirements, and any necessary permits must be obtained.

(2) Control measures contained in Part II (9VAC25-870-40 et seq.) of the Virginia Stormwater Management

Regulations, ~~4VAC50-60-1184~~ 9VAC25-880-84, or on the Virginia BMP Clearinghouse [Website](#) may be utilized. Innovative or alternate control measures may be allowed by the department provided such measures effectively address water quality and quantity in accordance with the requirements of ~~4VAC50-60-1180~~ 9VAC25-880-80 through ~~4VAC50-60-1190~~ 9VAC25-880-90 and are not restricted by the locality in accordance with § 62.1-44.15:33 of the Code of Virginia.

(3) Where applicable, the SWPPP shall contain additional information related to participation in a regional stormwater management plan, including:

- (a) Type of regional facility or facilities to which the site contributes;
- (b) Geographic location of any regional facility to which the site contributes (county or city and Hydrologic Unit Code);
- (c) Geographic location of the site (county or city and Hydrologic Unit Code). Latitude and longitude may additionally be included if available; and
- (d) Number of acres treated by a regional facility.

(4) Where applicable, the SWPPP shall contain additional information related to nutrient offsets to be acquired in accordance with ~~§ 40.1-603.8:1~~ § 62.1-44.15:35 of the Code of Virginia, including:

- (a) Name of the broker from which offsets will be acquired;
- (b) Geographic location (county or city and Hydrologic Unit Code) of the broker's offset generating facility;
- (c) Number of nutrient offsets to be acquired (lbs. per acre per year); and
- (d) Nutrient reductions to be achieved on site (lbs. per acre per year).

(5) Outflows from a stormwater management facility or stormwater conveyance system shall be discharged to an adequate channel as defined in the Virginia Erosion and Sediment Control Regulations (~~4VAC50-30~~ 9VAC25-840). In addition, all control measures shall be employed in a manner that minimizes impacts on the physical, chemical and biological integrity of rivers, streams, and other state waters, is protective of water quality standards, and is consistent with Section II D 6 and D 7 and other applicable provisions of this state permit.

d. Other controls.

(1) The SWPPP shall describe measures to prevent the discharge of solid materials, including building materials, garbage, and debris to state waters, except as authorized by a Clean Water Act § 404 permit.

(2) The SWPPP shall describe control measures used to comply with applicable state or local waste disposal, sanitary sewer or septic system regulations.

(3) The SWPPP shall include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The SWPPP shall also include a description of controls including storage practices, to minimize exposure of the materials to stormwater, and for spill prevention and response.

(4) The SWPPP shall include a description of pollutant sources from off-site areas (including stormwater discharges from dedicated asphalt plants and dedicated concrete plants), and a description of control measures that will be implemented at those sites to minimize pollutant discharges.

e. Applicable state or local programs. The control measures implemented at the site shall be consistent with all applicable federal, state, or VESCP or VSMP authority requirements for erosion and sediment control and stormwater management. The SWPPP shall be updated as necessary to reflect any revisions to applicable federal, state or VESCP or VSMP authority requirements that affect the control measures implemented at the site.

3. Maintenance of controls.

a. All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If site inspections required by Section II D 4 identify control measures that are not operating effectively, maintenance shall be performed as soon as practicable to maintain the continued effectiveness of stormwater controls.

b. If site inspections required by Section II D 4 identify existing control measures that need to be modified or if additional control measures are necessary for any reason, implementation shall be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, the situation shall be documented in the SWPPP and alternative control measures shall be implemented as soon as practicable.

4. Inspections. The name and phone number of qualified personnel conducting inspections shall be included in the SWPPP.

a. Inspections shall be conducted (i) at least every seven calendar days or (ii) at least once every 14 calendar days and within 48 hours following any runoff producing storm event. Where areas have been temporarily stabilized or runoff is unlikely due to winter conditions (e.g., the site is covered with snow or ice, or frozen ground exists) such inspections shall be conducted at least once every month.

b. Inspections must include all areas of the site disturbed by construction activity, off-site areas covered by the state permit, and areas used for storage of materials that

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are exposed to precipitation, but does not need to include areas identified pursuant to Section II A 5. Inspectors must look for evidence of, or the potential for, pollutants entering a stormwater conveyance system. Control measures identified in the SWPPP shall be inspected for proper installation, maintenance, and operation. Discharge locations, where accessible, shall be inspected to ascertain whether control measures are effective in minimizing impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

c. Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may limit the access of inspection personnel to the areas described in Section II D 4 b. Inspection of these areas could require that vehicles compromise temporarily or even permanently stabilized areas, cause additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected on the same frequencies as other construction projects, but representative inspections may be performed. For representative inspections, personnel must inspect controls along the construction site for 0.25 miles above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the areas described above. The conditions of the controls along each inspected 0.25-mile segment may be considered as representative of the condition of controls along that reach extending from the end of the 0.25-mile segment to either the end of the next 0.25-mile segment, or to the end of the project, whichever occurs first. Inspection locations must be listed in the report required by Section II D 4 d.

d. A report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the dates of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with Section II D 4 d of the state permit shall be made and retained as part of the SWPPP in accordance with Section III B of this state permit. Major observations should include:

- (1) The location(s) of discharges of sediment or other pollutants from the site;
- (2) Location(s) of control measures that need to be maintained;
- (3) Location(s) of control measures that failed to operate as designed or proved inadequate for a particular location;
- (4) Location(s) where additional control measures are needed that did not exist at the time of inspection;

- (5) Corrective action required including any changes to the SWPPP that are necessary and implementation dates;

- (6) An estimate of the amount of rainfall at the construction site (in inches) from the runoff producing storm event requiring the inspection, or if inspecting on a seven-day schedule, the amount of rainfall (in inches) since the previous inspection; and

- (7) Weather information and a description of any discharges occurring at the time of inspection.

A record of each inspection and of any actions taken in accordance with Section II must be retained by the operator as part of the SWPPP for at least three years from the date that state permit coverage expires or is terminated. The inspection reports shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this state permit. The report shall be signed in accordance with Section III K of this state permit.

5. Nonstormwater discharge management. The SWPPP shall identify all allowable sources of nonstormwater discharges listed in Section I D 2 of this state permit that are combined with stormwater discharges from the construction activity at the site, except for flows from fire fighting activities. The SWPPP shall identify and require the implementation of appropriate control measures for the nonstormwater components of the discharge.

6. Total maximum daily loads. ~~A~~ An approved total maximum daily load (TMDL) ~~approved by the State Water Control Board~~ may include a wasteload allocation to the regulated construction activity that identifies the pollutant for which stormwater control measures 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 state permit must be specified in the SWPPP. The SWPPP shall include strategies and control measures to ensure consistency with the assumptions and requirements of the TMDL WLA that apply to the operator's discharge. In a situation where a TMDL has specified a general wasteload allocation applicable to construction stormwater discharges, but no specific requirements for construction sites have been identified in the TMDL, the operator shall consult with the state or federal TMDL authority to confirm that meeting state permit requirements will be consistent with the approved TMDL. If the TMDL specifically precludes such discharges, the operator is not eligible for coverage under the general permit.

7. Impaired waters. In accordance with Section I H, control measures shall be protective of water quality standards for impaired waters identified as having impairments for pollutants that may be discharged from the construction activity in the 2008 § 305(b)/303(d) Water Quality Assessment Integrated Report.

SECTION III

CONDITIONS APPLICABLE TO ALL STATE PERMITS

NOTE: Discharge monitoring is not required for this state permit. If the operator chooses to monitor stormwater discharges or control measures, the operator must comply with the requirements of subsections A, B, and C, as appropriate.

A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitoring 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 ensure accuracy of measurements.

B. Records.

1. Monitoring records and 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 update the SWPPP to include the results of the monitoring as may be performed in accordance with this state permit, 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 that

the date, location, parameter, method, and result of the monitoring activity are included.

3. If the operator monitors any pollutant specifically addressed by this permit more frequently than required by this 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 permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this state permit.

D. Duty to provide information. The operator shall furnish, within a reasonable time, any information which the board, department, or other VSMP authority 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, department, or other VSMP authority 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 state waters, or such other information as may be necessary to accomplish the purposes of the CWA and the Virginia Stormwater Management Act. The operator shall also furnish to the board, department, or other VSMP authority, upon request, copies of records required to be kept by this state 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~~ 62.1-44.5 of the Code of Virginia, except in compliance with a state permit issued by the department, it shall be unlawful to cause a stormwater discharge from a construction activity.

G. Reports of unauthorized discharges. Any operator 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~~), or § 62.1-44.15:19 of the Code of Virginia that occurs during a 24-hour period into or upon state waters or who discharges or causes or allows a discharge that may reasonably be expected to enter state 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, ~~the Department of~~

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~~Environmental Quality~~, and the VSMP authority 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, ~~the Department of Environmental Quality~~, and the VSMP authority 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 state waters, the operator shall promptly notify, in no case later than within 24 hours, the department, ~~the Department of Environmental Quality~~, and the VSMP authority by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects 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, ~~the Department of Environmental Quality~~, and the VSMP authority 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 of 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 state waters or may endanger public health.

1. An oral report to the department, ~~the Department of Environmental Quality~~, and the VSMP authority shall be provided within 24 hours from the time the operator becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:
 - a. Any unanticipated bypass; and

- b. Any upset that causes a discharge to state 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 department 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 state waters has been reported.

3. The operator shall report all instances of noncompliance not reported under Section III I 1 or 2 in writing as part of the SWPPP. The reports shall contain the information listed in Section III I 2.

NOTE: The reports required in Section III G, H and I shall be made to the ~~department's Stormwater Management Division, appropriate Department of Environmental Quality's Regional Office Pollution Response Program~~, department and the VSMP authority. Reports may be made by telephone, email, or by fax. For reports outside normal working hours, leaving a recorded message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management 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, including a registration statement, to the department or the VSMP authority, the operator shall promptly submit such facts or correct information.

J. Notice of planned changes.

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

- a. The operator plans an alteration or addition to any building, structure, facility, or installation that may meet one of the criteria for determining whether a facility is a new source in ~~4VAC50-60-420~~ 9VAC25-870-420;
- b. The operator plans an 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 and VSMP authority 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 ~~part~~ chapter, 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-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term 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 ~~part~~ chapter, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by state permits, including SWPPPs, and other information requested by the board or the department 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 signed and dated written authorization is included in the SWPPP. A copy must be provided to the department and VSMP authority, if requested.

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 construction activity, a new authorization satisfying the requirements of Section III K 2 shall be submitted to the VSMP authority as the administering entity for the board prior to or together with any reports or information to be signed by an authorized representative.

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

"I certify under penalty of law that I have read and understand this document and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated 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. 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 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

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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 state waters and in compliance with all applicable state and federal laws and regulations.

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~~ 9VAC25-870-10, 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 ensure efficient operation. These bypasses are not subject to the provisions of Section III U 2 and 3 ~~herein~~.

2. Notice.

a. Anticipated bypass. If the operator knows in advance of the need for a bypass, the operator shall submit prior notice to the department, 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 ~~herein~~.

3. Prohibition of bypass.

a. Except as provided in Section III U 1, bypass is prohibited, and the board or department 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. 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;

(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 department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three conditions listed in Section III U 3 a.

V. Upset.

1. An "upset," as defined in ~~4VAC50-60-10~~ 9VAC25-870-10, 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.

2. An upset 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 ~~herein~~ 4 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.

3. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

4. 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 ~~herein~~; and
- d. The operator complied with any remedial measures required under Section III S ~~herein~~.

5. 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, the VSMP authority, EPA, or an authorized representative of either entity (including an authorized contractor), 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 and photograph 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 ensuring state permit compliance or as otherwise authorized by the Clean Water Act or the Virginia Stormwater Management Act, any substances or parameters at any location.

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

X. 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 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 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new operators containing a specific date for transfer of state permit responsibility, coverage, and liability between them; and
- c. The department 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.

3. For ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior to taking over operations at the site.

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.

~~4VAC50-60-1180.~~ **9VAC25-880-80. Applicability.**

Operators receiving coverage under this general permit shall remain subject to the water quality and quantity criteria set forth in ~~4VAC50-60-1182~~ 9VAC25-880-82 through ~~4VAC50-60-1190~~ 9VAC25-880-90, which specify technical criteria for every land-disturbing activity regulated by this general permit.

~~4VAC50-60-1182.~~ **9VAC25-880-82. General.**

A. Determination of flooding and channel erosion impacts to receiving streams due to land-disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed that also contributes to that point of discharge.

B. The specified design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by

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the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.

C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.

D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws and regulations. Evidence of approval of all necessary permits shall be presented.

E. Impounding structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.

F. Predevelopment and postdevelopment runoff rates shall be verified by calculations that are consistent with good engineering practices.

G. Outflows from a stormwater management facility or stormwater conveyance system, shall be discharged to an adequate channel.

H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land-disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.

I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan.

J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided to the extent possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59.

K. Natural channel characteristics shall be preserved to the maximum extent practicable.

L. Land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law (~~§ 10.1-560 et seq. of the Code of Virginia~~) and attendant regulations.

M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas defined in the Chesapeake Bay

Preservation Act, provided that (i) the local government has conclusively established that the location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; and (iii) the facility must be consistent with a stormwater management program that has been approved by the board, the Chesapeake Bay Local Assistance Board prior to its abolishment on July 1, 2012, or the Board of Conservation and Recreation.

~~4VAC50-60-1184, 9VAC25-880-84. Water quality.~~

A. Compliance with the water quality criteria may be achieved by applying the performance-based criteria or the technology-based criteria to either the site or a planning area.

B. Performance-based criteria. For land-disturbing activities, the calculated postdevelopment nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 1 of this section to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:

1. Situation 1 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is less than the average land cover condition.

Requirement: No reduction in the after disturbance pollutant discharge is required.

2. Situation 2 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the average land cover condition.

3. Situation 3 consists of land-disturbing activities where the existing percent impervious cover is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant discharge based on existing conditions less 10% or (ii) the pollutant discharge based on the average land cover condition, whichever is greater.

4. Situation 4 consists of land-disturbing activities where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.

C. Technology-based criteria. For land-disturbing activities, the postdeveloped stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the postdeveloped condition percent impervious cover as specified in Table 1 of this section. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 1. Design standards and specifications for the BMPs in Table 1 that meet the required target pollutant removal efficiency will be available at the department.

Table 1*

Water Quality BMP*	Target Phosphorus Removal Efficiency	Percent Impervious Cover
Vegetated filter strip	10%	16-21%
Grassed Swale	15%	
Constructed wetlands	20%	22-37%
Extended detention (2 x WQ Vol)	35%	
Retention basin I (3 x WQ Vol)	40%	
Bioretention basin	50%	38-66%
Bioretention filter	50%	
Extended detention-enhanced	50%	
Retention basin II (4 x WQ Vol)	50%	
Infiltration (1 x WQ Vol)	50%	
Sand filter	65%	67-100%
Infiltration (2 x WQ Vol)	65%	
Retention basin III (4 x WQ Vol with aquatic bench)	65%	
*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program		

administrator or the department. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department.

~~4VAC50-60-1186.~~ 9VAC25-880-86. **Stream channel erosion.**

A. Properties and receiving waterways downstream of any land-disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The permit-issuing authority shall require compliance with subdivision 19 of ~~4VAC50-30-40~~ 9VAC25-840-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 4.2.4 (§ ~~10-1-560~~ 62.1-44.15:51 et seq.) of Chapter ~~5 3.1~~ of Title ~~10-1~~ 62.1 of the Code of Virginia.

C. The permit-issuing authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land-disturbing activities. Therefore, in lieu of the reduction of the two-year post-developed peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm.

D. In addition to subsections B and C of this section, permit-issuing authorities, by local ordinance may, or the board by state regulation may, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include, but are not limited to, the following:

1. Criteria and procedures for channel analysis and classification.
2. Procedures for channel data collection.
3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.
4. Criteria for the selection of proposed natural or manmade channel linings.

~~4VAC50-60-1188.~~ 9VAC25-880-88. **Flooding.**

A. Downstream properties and waterways shall be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

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B. The 10-year postdeveloped peak rate of runoff from the development site shall not exceed the 10-year predeveloped peak rate of runoff.

C. In lieu of subsection B of this section, localities may, by ordinance, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors or other downstream conveyance factors as appropriate.

D. Linear development projects shall not be required to control post-developed stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.

~~4VAC50-60-1190.~~ **9VAC25-880-90. Regional (watershed-wide) stormwater management plans.**

This section enables localities to develop regional stormwater management plans. State agencies intending to develop large tracts of land such as campuses or prison compounds are encouraged to develop regional plans where practical.

The objective of a regional stormwater management plan is to address the stormwater management concerns in a given watershed with greater economy and efficiency by installing regional stormwater management facilities versus individual, site-specific facilities. The result will be fewer stormwater management facilities to design, build and maintain in the affected watershed. It is also anticipated that regional stormwater management facilities will not only help mitigate the impacts of new development, but may also provide for the remediation of erosion, flooding or water quality problems caused by existing development within the given watershed.

If developed, a regional plan shall, at a minimum, address the following:

1. The specific stormwater management issues within the targeted watersheds.
2. The technical criteria in ~~4VAC50-60-1180~~ **9VAC25-880-80** through ~~4VAC50-60-1188~~ **9VAC25-880-88** as needed based on subdivision 1 of this section.
3. The implications of any local comprehensive plans, zoning requirements, local ordinances pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and other planning documents.
4. Opportunities for financing a watershed plan through cost sharing with neighboring agencies or localities, implementation of regional stormwater utility fees, etc.
5. Maintenance of the selected stormwater management facilities.
6. Future expansion of the selected stormwater management facilities in the event that development exceeds the anticipated level.

9VAC25-880-100. Delegation of authority.

The director, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

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

FORMS (9VAC25-880)

[Department of Environmental Quality Construction Activity Operator Permit Fee Form - Form DEQ 199-213 \(rev. 08/13\)](#)

[General Permit for Discharges of Stormwater from Construction Activities \(VAR10\) - Notice of Termination - Form DEQ 199-147 \(rev. 08/13\)](#)

[General Permit for Discharges of Stormwater from Construction Activities \(VAR10\) - Registration Statement - Form DEQ 199-146 \(rev. 08/13\)](#)

[General Permit for Discharges of Stormwater from Construction Activities \(VAR10\) - Transfer Agreement - Form DEQ 199-191 \(rev. 08/13\)](#)

VA.R. Doc. No. R14-3679; Filed August 30, 2013, 3:43 p.m.

Final Regulation

REGISTRAR'S NOTICE: Enactment 7 of Chapters 756 and 793 of the 2013 Acts of Assembly transfers the powers related to administration and implementation of the Virginia Stormwater Management Act, the Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act from the Virginia Soil and Water Conservation Board to the State Water Control Board. Pursuant to enactment 8 of Chapters 756 and 793, initial actions of the State Water Control Board to adopt, with necessary amendments, the regulations implementing these programs are exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

Title of Regulation: **9VAC25-890. General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (adding 9VAC25-890-1 through 9VAC25-890-50).**

Statutory Authority: § 62.1-44.15:28 of the Code of Virginia.

Effective Date: October 23, 2013.

Agency Contact: William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4347, TTY (804) 698-4021, or email william.norris@deq.virginia.gov.

Summary:

This regulatory action is a result of Chapters 756 and 793 of the 2013 Acts of Assembly, which transfer oversight of

water quality planning and laws dealing with stormwater management, erosion and sediment control, and the Chesapeake Bay Preservation Areas from the Department of Conservation and Recreation and Virginia Soil and Water Conservation Board to the Department of Environmental Quality and State Water Control Board. The conforming amendments (i) change the chapter and section numbers so that the General Permit for Discharges of Stormwater from Municipal Separate Storm Sewer Regulations appears under the State Water Control Board in the Virginia Administrative Code and (ii) update the agency name, Code of Virginia citations, and Virginia Administrative Code cross references to reflect the change in administration of the program from the Department of Conservation and Recreation and Virginia Soil and Water Conservation Board to the Department of Environmental Quality and State Water Control Board. In addition, amendments incorporate by reference the July 1, 2012, update to the Code of Federal Regulations, make clarifying amendments and changes to conform to current practice, and add a provision delegating certain authority of the State Water Control Board to the Director of the Department of Environmental Quality.

Part XV

General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems

CHAPTER 890

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

4VAC50-60-1200. 9VAC25-890-1. Definitions.

The words and terms used in this ~~part~~ chapter shall have the meanings defined in the Virginia Stormwater Management Act and (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia), this chapter, and 9VAC25-870 unless the context clearly indicates otherwise, except that for the purposes of this ~~part~~ chapter:

"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.

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

~~4VAC50-60-1210. 9VAC25-890-10. 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 (small MS4s) to surface waters of the Commonwealth of Virginia.

B. This general permit will become effective on July 1, 2013, and will expire five years from the effective date.

9VAC25-890-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the United States set forth in the Code of Federal Regulations is referenced and incorporated herein, that regulation shall be as it exists and has been published in the July 1, 2012, update.

~~4VAC50-60-1220. 9VAC25-890-20. Authorization to discharge.~~

A. Any operator covered by this general permit is authorized to discharge stormwater from the small MS4 to surface waters of the Commonwealth of Virginia provided that the operator submits a complete and accurate registration statement in accordance with ~~4VAC50-60-1230 9VAC25-890-30~~ that is accepted by the board, submits any fees required by ~~4VAC50-60-700 9VAC25-870-700~~ et seq. (Part XIII), and complies with the requirements of ~~4VAC50-60-1240 9VAC25-890-40~~.

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

C. Nonstormwater discharges or flows into the small MS4 are authorized by this state permit and do not need to be addressed in the MS4 Program required under ~~4VAC50-60-1240 9VAC25-890-40~~, 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~~ department as de minimis discharges that are not significant sources of pollutants to surface waters and do not require a separate VPDES permit;
3. ~~Nonstormwater~~ The nonstormwater discharges or flows are identified at ~~4VAC50-60-400 9VAC25-870-400~~ D 2 c (3) ~~that and~~ have not been identified by the operator, ~~State Water Control Board~~; or by the board as significant contributors of pollutants to the small MS4; or
4. The discharge of materials resulting from a spill is necessary to prevent loss of life, personal injury, or severe

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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 to the department in the annual report. Circumstances beyond the control of the operator 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.

E. Discharges that are excluded from obtaining a state permit pursuant to ~~4VAC50-60-300~~ 9VAC25-870-300 are exempted from the regulatory requirements of this state permit.

F. Pursuant to ~~4VAC50-60-400~~ 9VAC25-870-400 D 3, for those portions of a small MS4 that are covered under a separate VPDES permit for industrial stormwater discharges, the operator shall follow the conditions established under the separate VPDES permit. Upon termination of separate VPDES permit coverage, discharges from previously separate 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.

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

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~~ 9VAC25-890-40 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.~~ 9VAC25-890-30. State permit application (registration statement).

A. Deadline for submitting a registration statement.

1. Operators of small MS4s designated under ~~4VAC50-60-400~~ 9VAC25-870-400 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 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 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 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.der.virginia.gov/soil_&_water/hu.shtml on the department website) currently receiving discharges or that have potential to receive discharges from the small MS4;
4. The estimated drainage area, in acres, served by the small MS4 directly discharging to any impaired receiving surface waters listed in the 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 small MS4. This information may be found ~~at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformation/TMDLs/TMDL/TMDLDevelopment.aspx>~~ on the department website;

6. The name(s) of any physically interconnected MS4s to which the 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~~ 9VAC25-890-40.
8. For operators applying for initial coverage designated under ~~4VAC50-60-1240~~ 9VAC25-890-10 A, a schedule of development of an MS4 Program Plan 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~~ 9VAC25-890-40, 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;
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;
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~~ 9VAC25-870-370;
11. The name, position title, address, telephone number and email address of any duly authorized representative as defined in ~~4VAC50-60-370~~ 9VAC25-870-370; and
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 in accordance with ~~4VAC50-60-370~~ 9VAC25-870-370.

D. An operator may file its own registration statement, or the operator and other operators of 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 small MS4.

E. Where to submit. The registration statement shall be submitted to the department.

~~4VAC50-60-1240~~ 9VAC25-890-40. **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.)~~ (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter ~~6 3.1~~ of Title ~~40.1 62.1~~ of the Code of Virginia) and the Virginia Stormwater Management Program (VSMP) ~~Permit Regulations~~ (~~4VAC50-60~~) (9VAC25-870).

General Permit No.: VAR04
 Effective Date: July 1, 2013
 Expiration Date: June 30, 2018

GENERAL ~~VPDES~~ 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 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

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

For operators 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.

Table 1: Schedule of MS4 Program Plan Updates Required in this Permit		
Program Update Requirement	Permit Reference	Update Completed By
Public Education Outreach Plan (Minimum Control Measure 1 – Public Education and Outreach on Stormwater Impacts)	Section II B 1	12 months after permit coverage
Illicit Discharge Procedures - (Minimum Control Measure 3 – Illicit Discharge Detection and Elimination)	Section II B 3	
Individual Residential Lot Special Criteria (Minimum Control Measure 5 – Post-Construction Stormwater Management in New Development and Development on Prior Developed Lands)	Section II B 5 c (1) (d)	
Operator-Owned Stormwater Management Inspection Procedures (Minimum Control Measure 5 – Post-Construction Stormwater Management in New Development and Development on Prior Developed Lands)	Section II B 5	
Identification of Locations Requiring SWPPPs	Section II B 6 b	

(Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)		24 months after permit coverage
Nutrient Management Plan (NMP) Locations - (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)	Section II B 6 c (1) (a)	
Training Schedule and Program - (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)	Section II B 6	
Updated TMDL Action Plans (TMDLs approved before July of 2008) – (Special Conditions for Approved Total Maximum Daily Loads (TMDL) Other Than Chesapeake Bay)	Section I B	36 months after permit coverage
Chesapeake Bay TMDL Action Plan – (Special Condition for Chesapeake Bay TMDL)	Section I C	
Stormwater Management Progressive Compliance and Enforcement – (Minimum Control Measure 4 - Construction Site Stormwater Runoff Control)	Section II B 5	
Daily Good Housekeeping Procedures (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)	Section II B 6 a	
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)	Section I B	
Outfall Map Completed -	Section II	48 months

(Minimum Control Measure 3 – Illicit Discharge Detection and Elimination) – Applicable to new boundaries identified as "urbanized" areas in the 2010 Decennial Census	B 3 a (3)	after permit coverage
SWPPP Implementation - (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)	Section II B 6 b (3)	
NMP Implementation - (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)	Section II B 6 c (1) (b)	60 months after permit coverage
*Updates should be submitted with the appropriate annual report.		

**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~~ 9VAC25-890-30.

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 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 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. Unless specifically denied in writing by the department, TMDL Action Plans and updates developed 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 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 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 purposes of this assessment, a significant source of pollutant(s) from a facility of concern means a discharge where the expected pollutant loading is greater than the average pollutant loading for the land use identified in the TMDL. (For example, 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

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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. 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 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. 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 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.

2. Chesapeake Bay TMDL planning.

a. In accordance with Table 1 ~~in this section~~, the operator shall develop and submit to the department for its review and acceptance an approvable Chesapeake Bay TMDL Action Plan. 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 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, 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, 2009, based on the 2009 progress run. The operator shall utilize the applicable versions of 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**

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

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**

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

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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				
Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	2009 EOS Loading Rate (lbs/acre)	Estimated Total POC Load Based on 2009 Progress Run
Regulated Urban Impervious	Nitrogen		9.38	
Regulated Urban Pervious			5.34	
Regulated Urban Impervious	Phosphorus		1.41	
Regulated Urban Pervious			0.38	
Regulated Urban Impervious	Total Suspended Solids		423.97	
Regulated Urban Pervious			56.01	

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

(5) A determination of the total pollutant load reductions necessary to reduce the annual POC loads from existing sources utilizing the applicable versions of 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 served by the MS4 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**

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	First Permit Cycle Required Reduction in Loading Rate (lbs/acre)	Total Reduction Required First Permit Cycle (lbs)
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**

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	First Permit Cycle Required Reduction in Loading Rate (lbs/acre)	Total Reduction Required First Permit Cycle (lbs)
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	

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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**

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	First Permit Cycle Required Reduction in Loading Rate (lbs/acre)	Total Reduction Required First Permit Cycle (lbs)
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		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**

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	First Permit Cycle Required Reduction in Loading Rate (lbs/acre)	Total Reduction Required First Permit Cycle (lbs)
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, 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 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 projects as grandfathered in accordance with ~~4VAC50-60-48~~ 9VAC25-870-48, that disturb one acre or greater that begin construction after July 1, 2014, where the project 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

Ratio of Phosphorus to Other POCs (Based on All Land Uses 2009 Progress Run)	Phosphorus Loading Rate (lbs/acre)	Nitrogen Loading Rate (lbs/acre)	Total Suspended Solids Loading Rate (lbs/acre)
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~~ 9VAC25-870-48;

(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) Implementation of BMPs on unregulated lands 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 ~~§§ 40.1-603.15:1 et seq.~~ 62.1-44.19:20 through 62.1-44.19:23 of the Code of Virginia, governing trading and offsetting;

(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 according to the schedule therein. Compliance with this requirement represents adequate progress for this state permit term towards 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

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construction after July 1, 2014, must be offset prior to completion of the project; and

d. Implementation of means and methods sufficient to meet 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 include a list of control measures implemented during the reporting period and the cumulative progress toward meeting the compliance targets for nitrogen, phosphorus, and total suspended 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 nitrogen, phosphorus, and total suspended solids.

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

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

b. A draft second phase Chesapeake Bay TMDL Action Plan designed to reduce the existing pollutant load 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 small MS4 must develop, implement, and enforce a MS4 Program designed to reduce the discharge of pollutants from the 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.

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.

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 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, 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.

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

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. 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 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 it considered the comments received in the development of

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its MS4 Program Plan. 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.

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

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

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

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

(2) 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 in the Virginia 2010 303(d)/305(b) 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, regulation, or ordinance. Categories of nonstormwater discharges or flows (i.e., illicit discharges) identified in ~~4VAC50-60-400~~ 9VAC25-870-400 D 2 c (3) must be addressed only if they are identified by the operator as significant contributors of pollutants to the small MS4. Flows that have been identified in writing by the ~~Department of Environmental Quality~~ department 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 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 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.

(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 or state permit 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: (i) the date or dates that the illicit discharge was observed and reported; (ii) the results of the investigation; (iii) any follow-up to the investigation; (iv) resolution of the investigation; and (v) the date that the investigation was closed.

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.

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 with the completed registration statement.

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 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 suspected discharge was observed, 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. 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 ~~§ 40.1-560 62.1-44.15:51~~ of the Code of Virginia that result in the disturbance of 10,000 square feet or greater;

(2) Land-disturbing activities in ~~Tidewater~~ jurisdictions ~~in Tidewater Virginia~~, as defined in ~~§ 40.1-2101 62.1-44.15:68~~ 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 ~~§ 40.1-563 62.1-44.15:55~~ of the Code of Virginia for 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 ~~§ 40.1-563 62.1-44.15:55~~ is approved by a VESCP

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authority in accordance with the Erosion and Sediment Control Act Law (~~§ 10.1-560 et seq.~~) (§ 62.1-44.15:51 et seq. of the Code of Virginia). The plan shall be:

(1) Compliant with the minimum standards identified in ~~4VAC 50-30-40~~ 9VAC25-840-40 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~~ 9VAC25-840-40 or with 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.

Where an operator establishes an alternative inspection program as provided for in ~~4VAC50-30-60~~ 9VAC25-840-60 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 a certificate of competence in accordance with ~~4VAC 50-50-40~~ 9VAC25-850-40. 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 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 an inspection finds that the approved plan is inadequate to effectively control soil erosion, sediment deposition, and runoff to prevent the unreasonable degradation of

properties, stream channels, waters, and other natural resources.

(7) The operator shall 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~~ 9VAC25-890-20 through the MS4 is not authorized 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~~ 9VAC25-840.

d. Regulatory coordination. The operator shall implement enforceable procedures to require that large construction activities as defined in ~~4VAC50-60-10~~ 9VAC25-870-10 and small construction activities as defined in ~~4VAC50-60-10~~ 9VAC25-870-10, 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 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 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 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 number of acres disturbed;
- (3) Total number of inspections 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.

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~~ 9VAC25-870-10;
- (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 ~~§ 40.1-2104~~ 62.1-44.15:68 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 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~~ 9VAC25-870-40 et seq.) of ~~4VAC50-60~~ 9VAC25-870;
- (2) In accordance with any additional applicable state or local design criteria required at project initiation; and
- (3) Where applicable, in accordance with any department-approved annual standards and specifications.

Upon board approval of a Virginia Stormwater Management Program authority (VSMP Authority) as defined in ~~§ 40.1-603.2~~ 62.1-44.15:24 of the Code of Virginia and reissuance of the Virginia Stormwater Management Program (VSMP) General Permit for

Discharges of Stormwater from Construction Activities, the operator shall require that stormwater management plans are approved by the appropriate VSMP Authority prior to land disturbance. In accordance with ~~§ 40.1-603.3~~ 62.1-44.15:27 M of the Code of Virginia, VSMPs shall become effective 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 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 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

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alternative schedule is included in the MS4 Program Plan.

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

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

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

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

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

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

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

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

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

(1) The stormwater management facility type;

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

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

(4) The date the facility was brought online (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 in the 2010 § 305(b)/303(d) Water Quality Assessment 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 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.

The operator shall submit an electronic database or spreadsheet of all stormwater management facilities brought online during each reporting year with the appropriate annual report. Upon such time as the department provides the operators access to a statewide web-based reporting 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.

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 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 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 permit;

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

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

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

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

b. Municipal facility pollution prevention and good housekeeping.

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

(3) The operator shall develop and implement specific stormwater pollution prevention plans for all high-priority facilities identified in subdivision 2 of this subsection. The operator shall complete SWPPP development and implementation shall be completed within 48 months of coverage under this state permit. Facilities covered under a separate VDPES permit shall adhere to the conditions established in that permit and are excluded from this requirement.

(4) Each SWPPP shall include:

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

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

(c) A discussion of all potential nonstormwater discharges;

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

(e) A description of the applicable training as required in Section II B 6 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 to accurately reflect any discharge, release, or spill from the high priority facility reported in accordance with Section III G. 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. 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.

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(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 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 personnel provided the lack of applicability is documented in the MS4 Program Plan. The operator shall determine and document the 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 applicable field personnel in the recognition and reporting of illicit discharges.

(2) The operator shall provide biennial training to 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 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, who apply pesticides and herbicides are properly trained or certified in accordance with the Virginia Pesticide Control Act (§ 3.2-3900 et seq. of the Code of Virginia).

(5) The operator shall ensure that employees and contractors 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 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 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. 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 identifies those facilities that have a high potential 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

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. 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 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 requirements.

If the operator is relying on another governmental entity regulated under ~~4VAC50-60-380~~ 9VAC25-870-380 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 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. Program compliance;

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 2010 § 305(b)/303(d) Water Quality Assessment Integrated Report); and

c. Progress towards achieving the identified measurable goals.

2. Recordkeeping. The operator must keep records required by the state permit for at least three years. These records must be submitted to the 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;

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- 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 for any applicable TMDL special condition contained in Section I.

F. Program Plan modifications.

1. 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 meet the criteria referenced in ~~4VAC50-60-630~~ 9VAC25-870-630 or ~~4VAC50-60-650~~ 9VAC25-870-650. 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~~ 9VAC25-870-370, 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 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.
- 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 (~~2004~~) 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~~ 62.1-44.15:26 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 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~~ department 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~~, department within five days of discovery of the discharge. The written report shall contain:

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

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a "bypass" or

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"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~~ department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The operator shall reduce the report to writing and shall submit it to the ~~Department of Environmental Quality and the Department of Conservation and Recreation~~ department 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~~ department 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~~

department 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://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 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-making 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-

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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~~ 9VAC25-870-10, means the intentional diversion of waste streams from any portion of a treatment facility. The operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Sections III U 2 and U 3.

2. Notice.

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

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

3. Prohibition of bypass.

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

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

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention

of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

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

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

V. Upset.

1. An "upset", as defined in ~~4VAC50-60-10~~ 9VAC25-870-10, 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.

9VAC25-890-50. Delegation of authority.

The director, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

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 of the form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC25-890)

[Application Form 1 - General Information, Consolidated Permits Program, EPA Form 3510-1 \(August 1990\)](#)

VA.R. Doc. No. R14-3707; Filed August 30, 2013, 3:47 p.m.

◆ ————— ◆

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Final 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: **10VAC5-161. Mortgage Loan Originators (amending 10VAC5-161-10, 10VAC5-161-20, 10VAC5-161-60; adding 10VAC5-161-75, 10VAC5-161-90).**

Statutory Authority: §§ 6.2-1720 and 12.1-13 of the Code of Virginia.

Effective Date: September 15, 2013.

Agency Contact: E. Joseph Face, Jr., Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9659, FAX (804) 371-9416, or email joe.face@scc.virginia.gov.

Summary:

The amended regulations (i) set forth the procedures and criteria for designating bona fide nonprofit organizations under § 6.2-1701.1 of the Code of Virginia; (ii) define the terms "employee" and "exclusive agent"; (iii) clarify the licensing requirements for individuals whose wages or other compensation is paid by either professional employer

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organizations or organizations that provide staffing services; (iv) require a licensed mortgage loan originator (licensee) to ensure that all residential mortgage loans that close as a result of the licensee engaging in the business of a mortgage loan originator are included in reports of condition submitted to the Nationwide Mortgage Licensing System and Registry; and (v) require the Commissioner of Financial Institutions to establish a process whereby mortgage loan originators may challenge information entered into the registry by the bureau. The only change to the regulation amendments since the proposed stage is the addition of a form for regulators' use.

AT RICHMOND, SEPTEMBER 5, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2013-00067

Ex Parte: In re: Mortgage Loan Originators

ORDER ADOPTING REGULATIONS

On July 3, 2013, the State Corporation Commission ("Commission") entered an Order to Take Notice ("July 3 Order") of a proposal by the Bureau of Financial Institutions to amend Chapter 161 of Title 10 of the Virginia Administrative Code, which governs mortgage loan originators. The July 3 Order and proposed regulations were published in the Virginia Register of Regulations on July 29, 2013, posted on the Commission's website, and sent to all licensed mortgage loan originators, licensed mortgage lenders, licensed mortgage brokers, and other interested parties. Licensees and other interested parties were afforded the opportunity to file written comments or request a hearing on or before August 16, 2013. No comments or requests for a hearing were filed.

NOW THE COMMISSION, having considered the proposed regulations, the record herein, and applicable law, concludes that the proposed regulations should be adopted with an effective date of September 15, 2013.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations, as attached hereto, are adopted effective September 15, 2013.

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

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

(4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof, together with a copy of the attached regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall

forthwith send by e-mail or U.S. mail a copy of this Order and the attached regulations to all licensed mortgage loan originators, licensed mortgage lenders, licensed mortgage brokers, and such other interested parties as he may designate.

10VAC5-161-10. Definitions.

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

"Bureau," "commission," "commissioner," and "person" shall have the meanings ascribed to them in § 6.2-100 of the Code of Virginia.

"Chapter 16" means Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2 of the Code of Virginia.

"Chapter 17" means Chapter 17 (§ 6.2-1700 et seq.) of Title 6.2 of the Code of Virginia.

~~"License application" means a written request for a mortgage loan originator license pursuant to Chapter 17 and this chapter.~~

"Licensee," "Employee," "licensee," "mortgage loan originator," "registered mortgage loan originator," "registry," "residential mortgage loan," and "unique identifier" shall have the meanings ascribed to them in § 6.2-1700 of the Code of Virginia.

"Exclusive agent" for purposes of Chapter 17 and this chapter means an individual who engages in the business of a mortgage loan originator solely on behalf of a particular mortgage broker or mortgage lender, and not on his own behalf or on behalf of any other person. The term does not include an employee of a mortgage broker or a mortgage lender.

"License application" means a written request for a mortgage loan originator license pursuant to Chapter 17 and this chapter.

B. Any term or phrase not defined in Chapter 17 or this chapter shall be construed in accordance with 12 CFR Parts 1007 and 1008.

10VAC5-161-20. Individuals subject to licensure.

A. Unless exempt from licensure pursuant to subsection B of § 6.2-1701 of the Code of Virginia, the following individuals who engage in the business of ~~taking applications for residential mortgage loans, or offering or negotiating the terms of residential mortgage loans, a mortgage loan originator~~ shall obtain and maintain annually a license pursuant to Chapter 17 and this chapter:

1. Individuals who are employees or exclusive agents of a person licensed under Chapter 16. ~~This includes individuals who are employees of~~ Individuals whose wages or other compensation is paid by either professional employment employer organizations or organizations that provide staffing services, who shall become and remain exclusive agents of a person licensed under Chapter 16. In the case of individuals who are exclusive agents of a

person licensed under Chapter 16, the individuals and person licensed under Chapter 16 shall comply with such conditions as the commissioner may prescribe pursuant to subsection A of § 6.2-1601 of the Code of Virginia.

2. Individuals, other than registered mortgage loan originators, who are employees or exclusive agents of a person exempt from licensure under Chapter 16.

3. Individuals who are not employees or exclusive agents of either a person licensed under Chapter 16 or a person exempt from such licensure.

B. For purposes of Chapter 17 and this chapter:

1. An individual takes an application for a residential mortgage loan if the individual receives a residential mortgage loan application for the purpose of facilitating a decision whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower, or to accept the terms offered by a borrower or prospective borrower in response to a solicitation.

2. An individual offers or negotiates the terms of a residential mortgage loan if the individual:

a. Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms;

b. Communicates directly or indirectly with a borrower or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms; or

c. Recommends, refers, or steers a borrower or prospective borrower to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower.

10VAC5-161-60. Required reports and notices; information in registry.

A. Each person for whom an individual described in 10VAC5-161-20 A 1 or 2 engages in the business of a mortgage loan originator shall file, on or before March 1 of each year, an annual report with the bureau stating the amount of residential mortgage loans made or brokered during the preceding calendar year, identifying all licensees performing services for that person, and providing such additional information as the bureau may require. Timely filing of the annual report required by Chapter 16 by a person licensed under that chapter shall constitute compliance with this subsection by that person if the annual report contains the information specified in this subsection.

B. Each licensee who is an individual described in 10VAC5-161-20 A 3 shall file, on or before March 1 of each year, an annual report with the bureau stating the amount of residential mortgage loans originated during the preceding calendar year and providing such additional information as the bureau may require.

C. Each licensee shall give notice to the bureau through the registry within five days after the occurrence of either of the following events:

1. Termination of, or separation from, employment or exclusive agency as a mortgage loan originator for a person licensed or exempt from licensing under Chapter 16. A licensee who is no longer an employee or exclusive agent of a person licensed or exempt from licensing under Chapter 16 shall not engage in activities requiring licensure under Chapter 16 until such time as (i) the individual obtains a mortgage broker license under Chapter 16 or (ii) the individual becomes a bona fide employee or exclusive agent of a person who is licensed or exempt from licensing under Chapter 16 and the requirements set forth in (i) and (ii) of subdivision 2 of this subsection have been satisfied.

2. Commencement of employment or exclusive agency as a mortgage loan originator for a person licensed or exempt from licensing under Chapter 16. A licensee who becomes an employee or exclusive agent of a person licensed or exempt from licensing under Chapter 16 shall not engage in activities requiring licensure under Chapter 16 until (i) the person licensed or exempt from licensing under Chapter 16 has complied with the surety bond filing requirements of § 6.2-1703 of the Code of Virginia, 10VAC5-161-30 B, and 10VAC5-161-50 and (ii) the bureau has received a sponsorship request through the registry.

D. Pursuant to subsection B of § 6.2-1711 of the Code of Virginia, each licensee shall notify the commissioner through the registry within 10 days of any change of residential or business address. A licensee described in 10VAC5-161-20 A 1 or 2 shall be deemed to have complied with this requirement if a person licensed or exempt from licensing under Chapter 16 timely submits such notice on behalf of its employee or exclusive agent.

E. Each licensee shall ensure that all residential mortgage loans that close as a result of the licensee engaging in the business of a mortgage loan originator are included in reports of condition submitted to the registry. Reports of condition shall be in such form, contain such information, and be submitted with such frequency and by such dates as the registry may require.

F. The commissioner shall establish a process whereby mortgage loan originators may challenge information entered into the registry by the bureau.

10VAC5-161-75. Bona fide nonprofit organizations.

A. An organization may request that the commission designate it as a bona fide nonprofit organization for purposes of Chapter 17 and this chapter by (i) submitting its request on a form prescribed by the commissioner, (ii) paying a nonrefundable fee of \$200, and (iii) furnishing such information concerning the criteria in subsection B of this section as the commissioner may require. If the registry is capable of processing these requests, the organization shall

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submit its request through the registry and shall pay or cause to be paid any fees imposed by the registry in addition to the fee payable to the commission.

B. The commission shall designate an organization as a bona fide nonprofit organization only if (i) the organization has satisfied the requirements of subsection A of this section and (ii) the commission finds that the organization:

1. Has the status of a tax-exempt organization under § 501(c)(3) of the Internal Revenue Code of 1986.
2. Promotes affordable housing or provides homeownership education or similar services.
3. Conducts its activities in a manner that serves public or charitable purposes rather than commercial purposes.
4. Charges fees and receives funding and revenue in a manner that does not incentivize it or its employees to act other than in the best interests of its clients.
5. Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients.
6. Provides or identifies for a borrower residential mortgage loans with terms that are (i) favorable to the borrower and (ii) comparable to mortgage loans and housing assistance provided under government housing assistance programs. For purposes of this subdivision and subdivision B 10 of § 6.2-1701 of the Code of Virginia, loan terms shall be considered favorable to the borrower if the terms are consistent with loan origination in a public or charitable context rather than a commercial context.
7. Meets any other criteria that the commission deems relevant.

C. If the commission is unable to make all of the findings required by subsection B of this section, the commission shall notify the organization in writing and provide the basis for its determination.

D. A bona fide nonprofit organization shall give written notice to the bureau within five days of the following: (i) any change in, or revocation of, the organization's tax-exempt status under § 501(c)(3) of the Internal Revenue Code of 1986 or (ii) any change in the organization's mission, policies, or practices that is inconsistent with any of the criteria enumerated in subsection B of this section.

E. When the bureau requests a written response, books, records, documentation, or other information from a bona fide nonprofit organization, the organization shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request or, if no time period is specified, not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation or information and such other

factors as the bureau determines to be relevant under the circumstances. Requests made by the bureau pursuant to this subsection are deemed to be in furtherance of the investigation and examination authority provided for in § 6.2-1701.1 of the Code of Virginia.

10VAC5-161-90. Commission authority.

The commission may, at its discretion, waive or grant exceptions to any provision of this chapter for good cause shown.

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 of the form with a hyperlink to access it. 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 (10VAC5-161)

[Application for Determination of a Bona Fide Non-Profit Status, Form CCB-8821 \(undated\) \]](#)

VA.R. Doc. No. R13-3754; Filed September 6, 2013, 11:26 a.m.

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: **10VAC5-200. Payday Lending (amending 10VAC5-200-10, 10VAC5-200-20, 10VAC5-200-35, 10VAC5-200-50, 10VAC5-200-60, 10VAC5-200-80, 10VAC5-200-110; adding 10VAC5-200-85, 10VAC5-200-113).**

Statutory Authority: §§ 6.2-1815 and 12.1-13 of the Code of Virginia .

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

Public Comment Deadline: October 25, 2013.

Agency Contact: Susan Hancock, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9701, FAX (804) 371-9416, or email susan.hancock@scc.virginia.gov.

Summary:

The State Corporation Commission is proposing numerous amendments to 10VAC5-200, which is the regulation governing payday lenders under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia. The proposed amendments define the terms "prepaid card" and "short-maturity loan," as well as prohibit licensed payday lenders

(licensees) from obtaining an agreement from a borrower that gives the licensee or a third party the authority to prepare a check that is drawn on the borrower's deposit account. The proposal also (i) requires licensees and former licensees to maintain their contact information with the Bureau of Financial Institutions until they have no outstanding payday loans, (ii) requires licensees to dispose of records containing consumers' personal financial information in a secure manner, (iii) specifies additional events that require licensees to file a written report with the bureau, (iv) updates the text of the payday lending pamphlet to reflect certain other proposed amendments to 10VAC5-200, (v) prescribes disclosure requirements for licensees' advertisements, (vi) identifies the circumstances under which the Commissioner of Financial Institutions shall deem a licensee or former licensee to have ceased business for purposes of authorizing the database provider to administratively close any outstanding loan in the database, (vii) eliminates several obsolete provisions relating to the payday lending database, and (viii) clarifies that certain payday lending data is not confidential and may be furnished by the database provider to the public. Various technical and other clarifying amendments are also set forth in the proposed regulations.

AT RICHMOND, SEPTEMBER 3, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2013-00070

Ex Parte: In re: Payday Lending

ORDER TO TAKE NOTICE

Section 6.2-1815 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall adopt such regulations as it deems appropriate to effect the purposes of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia. The Commission's regulations governing licensed payday lenders ("licensees") are set forth in Chapter 200 of Title 10 of the Virginia Administrative Code ("Chapter 200").

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed amendments to Chapter 200. The proposed regulations (i) define the terms "prepaid card" and "short-maturity loan;" (ii) prohibit licensees from obtaining an agreement from a borrower that gives the licensee or a third party the authority to prepare a check that is drawn on the borrower's deposit account; (iii) require licensees and former licensees to maintain their contact information with the Bureau until they have no outstanding payday loans; (iv) require licensees to dispose of records containing consumers' personal financial information in a secure manner; (v) specify additional events that require licensees to file a written report with the Bureau; (vi) update the text of the payday lending pamphlet to reflect certain other proposed amendments to Chapter 200; (vii) prescribe disclosure requirements for licensees' advertisements; (viii)

identify the circumstances under which the Commissioner of Financial Institutions shall deem a licensee or former licensee to have ceased business for purposes of authorizing the database provider to administratively close any outstanding loans in the database; (ix) eliminate several obsolete provisions relating to the payday lending database; and (x) clarify that certain payday lending data is not confidential and may be furnished by the database provider to the public. Various technical and other clarifying amendments have also been proposed.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulations should be considered for adoption with a proposed effective date of December 1, 2013.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations are appended hereto and made a part of the record herein.

(2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before October 25, 2013. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2013-00070. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

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

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

AN ATTESTED COPY hereof, together with a copy of the proposed regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall forthwith send by e-mail or U.S. mail a copy of this Order, together with a copy of the proposed regulations, to all licensed payday lenders and such other interested parties as he may designate.

10VAC5-200-10. Definitions.

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

"Act" means Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia.

"Bureau" means the Bureau of Financial Institutions.

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"Business day" for purposes of clause 1 (vi) of § 6.2-1816 of the Code of Virginia and this chapter means a day on which the licensee's office is open for business as posted as required by subsection A of 10VAC5-200-70.

"Commission" means the State Corporation Commission.

"Duplicate original" for purposes of subdivision 2 of § 6.2-1816 of the Code of Virginia and this chapter means an exact copy of a signed original, an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature.

"Good funds instrument" for purposes of clause 1 (vi) of § 6.2-1816 of the Code of Virginia and this chapter means a certified check, cashier's check, money order or, if the licensee is equipped to handle such payments, payment effected by use of a credit card, prepaid card, or debit card.

"Liquid assets" for purposes of the Act and this chapter means cash on hand and in depository institutions, money market funds, commercial paper, and treasury bills.

"Member of the military services of the United States" for purposes of the Act and this chapter means a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

"Other dependent of a member of the military services of the United States" for purposes of the Act and this chapter means (i) an individual under the age of 18 whose mother or father is a member of the military services of the United States or (ii) an individual for whom a member of the military services of the United States provided more than one-half of the individual's financial support for 180 days immediately preceding the date the individual applied for a payday loan.

"Prepaid card" for purposes of the Act and this chapter means a card with a network logo (e.g., Visa, MasterCard, American Express, or Discover) that is used by a cardholder to access money that has been loaded onto the card in advance.

"Short-maturity loan," as used in the definition of "payday loan" in § 6.2-1800 of the Code of Virginia, means a loan with a term not exceeding 120 days.

"Small," as used in the definition of "payday loan" in § 6.2-1800 of the Code of Virginia, means \$2,500 or less.

B. Other terms used in this chapter shall have the meaning set forth in § 6.2-1800.

10VAC5-200-20. Requirements for licensees; operating rules; acquisitions.

A. A licensee shall maintain unencumbered liquid assets per place of business in Virginia of at least \$25,000 at all times. ~~The bureau may require submission of proof of maintenance of such liquid assets at any time~~ minimum liquid assets required to be maintained pursuant to this subsection shall be separate and apart from, and in addition to, any minimum

liquid assets that the licensee is required to maintain in connection with any other business conducted in the same office.

B. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under the Act shall pay a nonrefundable application fee of \$500.

C. Each original license shall be prominently posted in each place of business of the licensee. In order for a licensee to receive a replacement or reissued license, a licensee shall pay a fee of \$50 per place of business to the commission. Licenses will only be replaced or reissued if the licensee is in compliance with all laws and regulations applicable to the conduct of the licensee's business.

D. If a person has filed a bond with the bureau, as required by § 6.2-1804 of the Code of Virginia, such bond shall be retained by the bureau notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or
2. The person ceases engaging in business as a payday lender.

E. Upon becoming licensed, a licensee shall give written notice to the bureau of its commencement of business within 10 days thereafter.

F. For purposes of clause 1 (v) of § 6.2-1816 of the Code of Virginia, the number of days in a borrower's pay cycle and the corresponding minimum loan term shall be determined by a licensee in accordance with the following:

1. If a borrower is paid on a weekly or more frequent basis, there are seven days in the borrower's pay cycle and the minimum loan term shall be 14 days.
2. If a borrower is paid on a biweekly basis, there are 14 days in the borrower's pay cycle and the minimum loan term shall be 28 days.
3. If a borrower is paid on a semimonthly basis, there are 15 days in the borrower's pay cycle and the minimum loan term shall be 31 days.
4. If a borrower is paid on a monthly basis, there are 30 days in the borrower's pay cycle and the minimum loan term shall be 62 days.
5. If a borrower is paid either (i) less frequently than monthly, or (ii) on an irregular basis (but less frequently than weekly), there are 30 days in the borrower's pay cycle and minimum loan term shall be 62 days.

G. A licensee shall retain supporting documentation for a borrower's pay cycle in each loan file, which may consist of (i) a copy of a borrower's pay stub or similar periodic earnings statement that clearly reflects the borrower's pay cycle, or (ii) a representation by the borrower in the written loan application.

H. A licensee shall not (i) electronically debit a borrower's deposit account or otherwise obtain any funds from a borrower by electronic means, including the use of the Automated Clearing House network, electronic funds transfers, electronic check conversions, or re-presented check entries; or (ii) obtain any agreement from a borrower that gives the licensee or a third party the authority to create or otherwise prepare a check that is drawn upon the borrower's account at a depository institution.

I. With the exception of the check given by a borrower to a licensee as security for a payday loan, a licensee shall not collect or receive from a borrower any interest or fees permitted by § 6.2-1817 of the Code of Virginia, either in whole or in part, prior to the date of loan maturity unless the borrower is voluntarily making a full or partial prepayment pursuant to 10VAC5-200-40. If a borrower enters into an extended payment plan or extended term loan, a licensee shall not collect or receive any interest or fees, either in whole or in part, prior to the due date of a scheduled installment unless the borrower is voluntarily making a payment in advance.

J. The amount of the check given by a borrower to a licensee as security for a payday loan shall not exceed the sum of the principal amount advanced to the borrower and the interest and fees permitted by § 6.2-1817 of the Code of Virginia. If a borrower enters into an extended payment plan at the time a loan is obtained, the amount of the check shall not include any interest.

K. Upon satisfaction of a loan or upon learning that a loan has been satisfied, a licensee shall attach to each loan agreement either (i) a copy of the signed and dated receipt for the payment that satisfied the loan or (ii) if a judgment was obtained and satisfied, a copy of the judgment marked satisfied.

L. Except as otherwise provided in subdivision B 2 of 10VAC5-200-33 or subdivision D 1 of 10VAC5-200-35, the check used to secure a payday loan shall be dated as of the date the loan is due. A licensee shall not deposit or otherwise present for payment a check given as security for a loan, including an extended term loan or a loan that a borrower elected to repay by means of an extended payment plan, prior to the date stated on the face of the check. A licensee shall not require or accept multiple checks or any additional or alternative security in connection with a payday loan.

M. If a borrower (i) cancels a loan in accordance with subsection G of 10VAC5-200-40, or (ii) repays a loan in full with cash or good funds instrument and not with the check securing the loan, the licensee shall immediately return the check given as security for the loan to the borrower.

N. A licensee or former licensee shall provide the following information to the bureau within 10 days after such person's license is surrendered or revoked or the licensed business is otherwise closed: (i) the names, addresses, telephone numbers, fax numbers, and email addresses of a designated contact person, the person responsible for updating

information in the payday lending database, and the person who consumers may contact to make payment arrangements for outstanding payday loans; (ii) the location of the licensee's or former licensee's payday loan records; and (iii) any additional information that the bureau may reasonably require. A licensee or former licensee shall maintain current information with the bureau until the licensee or former licensee has no outstanding payday loans.

O. A person shall remain subject to the provisions of the Act and this chapter applicable to licensees in connection with all payday loans that the person made while licensed as a payday lender notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or
2. The person ceases making payday loans.

P. If a licensee or former licensee disposes of records containing a consumer's personal financial information following the expiration of any applicable record retention periods, such records shall be shredded, incinerated, or otherwise disposed of in a secure manner. A licensee or former licensee may arrange for service from a business record destruction vendor.

Q. Within 15 days following the occurrence of any of the following events, a licensee shall file a written report with the Commissioner of Financial Institutions describing the event and its expected impact, if any, on the activities of the licensee in Virginia:

1. Bankruptcy, reorganization, or receivership proceedings are filed by or against the licensee.
2. The Attorney General or any other Virginia governmental authority institutes an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia).
3. Any local, state, or federal governmental authority institutes revocation, suspension, or other formal administrative, regulatory, or enforcement proceedings against the licensee.
4. Any local, state, or federal governmental authority (i) revokes or suspends the licensee's payday lender license, deferred presentment license, or similar license; (ii) takes formal administrative, regulatory, or enforcement action against the licensee relating to its payday lending, deferred presentment, or similar business; or (iii) takes any other action against the licensee relating to its payday lending, deferred presentment, or similar business where the total amount of restitution or other payment from the licensee exceeds \$20,000. A licensee shall not be required to provide the Commissioner of Financial Institutions with information about such event to the extent that such disclosure is prohibited by the laws of another state.
5. Based on allegations by any local, state, or federal governmental authority that the licensee violated any law

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or regulation applicable to the conduct of its licensed payday lending, deferred presentment, or similar business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.

6. The licensee surrenders its license to engage in payday lending, deferred presentment, or similar business in another state in lieu of threatened or pending license revocation, license suspension, or other administrative, regulatory, or enforcement action.

7. The licensee is denied a license to engage in payday lending, deferred presentment, or similar business in another state.

8. The licensee or any of its members, partners, directors, officers, principals, or employees is indicted or convicted of a felony.

R. Pursuant to subsection B of § 6.2-1801 of the Code of Virginia, a licensee shall not make a payday loan that has been arranged or brokered by another person. This provision shall not be construed to prohibit a licensee from originating payday loans through its own employees.

S. A licensee shall comply with all federal laws and regulations applicable to the conduct of its business, including but not limited to the Truth in Lending Act (15 USC § 1601 et seq.), Regulation Z (12 CFR Part 1026), the Equal Credit Opportunity Act (15 USC § 1691 et seq.), Regulation B (12 CFR Part 1002), and the Standards for Safeguarding Customer Information (16 CFR Part 314).

T. A licensee shall not obtain or receive a personal identification number (PIN) for a credit card, prepaid card, debit card, or any other type of card in connection with a payday loan transaction.

U. A licensee shall not provide any information to a borrower or prospective borrower that is false, misleading, or deceptive.

V. A licensee shall not engage in any activity that directly or indirectly results in an evasion of the provisions of the Act or this chapter.

10VAC5-200-35. Five payday loans within 180 days.

A. A borrower obtaining a fifth payday loan within any rolling 180-day period may elect, at the option of the borrower, (i) to repay the loan through an extended payment plan, unless the borrower previously elected an extended payment plan within the preceding 12 months, or (ii) to obtain the loan in the form of an extended term loan.

B. If a borrower does not obtain an extended payment plan or extended term loan in connection with his fifth payday loan in 180 days, the borrower shall not be eligible for another payday loan until 45 days after the date the fifth payday loan is paid or otherwise satisfied in full.

C. If a borrower previously obtained an extended payment plan within the preceding 12-month period, the borrower

shall not be eligible to repay a fifth payday loan obtained in any rolling 180-day period by means of an extended payment plan. However, if an eligible borrower elects to repay a fifth payday loan obtained in any rolling 180-day period by means of an extended payment plan, the provisions of 10VAC5-200-33 shall apply. A borrower who elects to repay such loan by means of an extended payment plan shall not be eligible for another payday loan until 90 days after the borrower has repaid or satisfied in full the balance of the loan.

D. The following provisions shall apply to extended term loans.

1. An extended term loan is a payday loan, as this term is defined in § 6.2-1800 of the Code of Virginia. As with other payday loans, an extended term loan shall be secured by a check that does not exceed the sum of the principal amount advanced to the borrower and the interest and fees permitted by § 6.2-1817 of the Code of Virginia. The check used to secure an extended term loan shall be dated as of the date the final installment is due. A licensee shall not require or accept multiple checks or any additional or alternative security in connection with an extended term loan. A borrower shall have the option of exchanging security checks with a licensee at the time the borrower makes a payment on an extended term loan. If a borrower wishes to exchange security checks, a licensee shall upon receipt of the payment return the check held as security to the borrower and the borrower shall deliver to the licensee a replacement security check, dated as of the date the final installment is due, for the remaining amount owed to the licensee.

2. If an eligible borrower elects an extended term loan, a licensee shall permit the borrower to repay the amount owed in four equal installments over a term of 60 days. The dollar amount of each installment shall be the same and the installment due dates shall be spread out evenly over the term of the extended term loan (i.e., an installment shall be due every 15 days).

3. The terms of an extended term loan shall be set forth in a written agreement signed and dated by the borrower. An eligible borrower may elect the extended term loan option only on the date a payday loan is made.

4. A borrower who obtains an extended term loan shall not be eligible for another payday loan during the longer of 90 days following the date the extended term loan is paid or otherwise satisfied in full, or 150 days following the date the extended term loan is obtained. Subject to one of the applicable waiting periods associated with a fifth loan in any rolling 180-day period, a borrower may be eligible for consecutive extended term loans or multiple extended term loans in any rolling 12-month period.

5. A licensee shall immediately give a borrower receipts, signed and dated by the licensee, for all payments made in connection with an extended term loan. The receipts shall also state the loan balance due after each payment.

6. A licensee shall retain the written and signed extended term loan agreement and provide the borrower with a duplicate original. A licensee shall also retain copies of receipts provided in accordance with subdivision 5 of this subsection. Upon full repayment or satisfaction of an extended term loan, a licensee shall mark the original extended term loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its loan records.

E. A licensee shall provide notice to borrowers of the potential availability of the extended term loan option in accordance with the provisions of this subsection.

1. A licensee shall conspicuously post in each licensed location a written notice in at least 24-point bold type informing borrowers that they may be eligible to obtain an extended term loan. The minimum size for such written notice shall be 24 inches by 18 inches.

2. The title of the written notice, which shall appear in at least 48-point bold type, shall be "NOTICE – EXTENDED TERM LOANS AVAILABLE TO BORROWERS OBTAINING A FIFTH PAYDAY LOAN WITHIN 180 DAYS."

3. The required text of the written notice shall be as follows:

~~The Payday Loan Act Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia~~ gives borrowers obtaining their fifth payday loan within 180 days the option to receive it in the form of an extended term loan. An extended term loan is a payday loan under which you are permitted to repay the amount you owe in four equal installments spread out evenly over a term of 60 days. You may obtain an extended term loan even if you previously obtained another extended term loan or an extended payment plan. If you want an extended term loan, you must choose this option on the date you obtain the payday loan. When you make a payment on an extended term loan, you will have the option of providing a replacement security check for the remaining amount you owe. Please be advised that if you obtain an extended term loan, you will not be permitted to get another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended term loan or 150 days after you obtain the extended term loan (whichever is longer). However, even if you do not choose an installment payment arrangement, you will still be unable to obtain another payday loan from any lender for a period of 45 days after you fully repay or satisfy your fifth payday loan.

4. If the payday lending database referred to in 10VAC5-200-110 advises a licensee that an applicant is eligible for an extended term loan, the licensee shall immediately provide oral notice to the applicant that (i) the applicant is eligible to obtain an extended term loan; (ii) information about extended term loans may be found on the poster in the licensee's office or in the "Borrower Rights and

Responsibilities" pamphlet; and (iii) the licensee is available to answer any questions that the applicant may have about extended term loans. When providing this notice, the licensee shall also direct the applicant to the specific locations of both the poster referred to in subdivision 1 of this subsection and the section of the pamphlet entitled "Five Payday Loans within 180 days." In addition, if the payday lending database advises a licensee that an applicant is eligible for an extended payment plan, the licensee shall also comply with subdivision C 4 of 10VAC5-200-33.

~~F. Payday loans made prior to January 1, 2009, shall not be considered for purposes of determining how many loans a borrower obtained in any rolling 180-day period.~~

10VAC5-200-50. Responding to requests from the Bureau of Financial Institutions; providing false, misleading, or deceptive information.

A. When the bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information, and such other factors as the bureau determines to be relevant under the circumstances.

B. A licensee shall not provide any false, misleading, or deceptive information to the bureau.

C. Requests made by the bureau pursuant to subsection A are deemed to be in furtherance of the bureau's investigation and examination authority provided for in § 6.2-1813 of the Code of Virginia. Failure to comply with subsection A or any violation of subsection B may result in fines civil penalties, license suspension, or license revocation.

10VAC5-200-60. Posting of charges.

A. A licensee shall conspicuously post in its licensed location a schedule of payments, fees and interest charges, with examples using (i) a \$300 loan payable in 14 days; (ii) a \$300 loan payable in 30 days; (iii) a \$300 loan payable in 31 days; (iv) a \$300 loan payable in 62 days; ~~(v) a \$300 loan payable through an extended payment plan that is elected on the date the loan is obtained;~~ (vi) a \$300 loan payable through an extended payment plan that is elected on the 15th day of a 31-day term; and ~~(vii) (v) a \$300 extended term loan.~~ A licensee may post additional examples when posting the information required by this subsection.

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B. A licensee shall display its fees and interest charges not only as a dollar amount, but also as an Annual Percentage Rate, which shall be stated using this term, calculated in accordance with ~~Federal Reserve Board~~ Regulation Z (12 CFR ~~226.1 et seq.~~ Part 1026).

10VAC5-200-80. Payday lending pamphlet text.

The required text of the payday lending pamphlet referred to in 10VAC5-200-30 is as follows:

PAYDAY LENDING IN THE COMMONWEALTH OF VIRGINIA

BORROWER RIGHTS AND RESPONSIBILITIES

Please take the time to carefully review the information contained in this pamphlet. It is designed to advise you of your rights and responsibilities in connection with obtaining a payday loan in Virginia under ~~the Payday Loan Act, § 6.1-444 et seq.~~ Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia. If you have any questions about payday lending or want additional information, you may contact the Virginia State Corporation Commission's Bureau of Financial Institutions toll-free at (800) 552-7945 or on the Internet at <http://www.scc.virginia.gov/bfi>. The Bureau of Financial Institutions has available a "Consumer Guide to Payday Lending" that may be viewed at this website or obtained by calling the toll-free telephone number listed above.

In General: You are responsible for evaluating whether a payday loan is right for you. Alternatives may include among other things less expensive short-term financing from another financial institution, family, or friends, a cash advance on a credit card, an account with overdraft protection, or a loan repayable over several months.

Advertisements: A lender is prohibited from sending you an envelope or other written material that gives the false impression that it is an official communication from a governmental entity, unless it is required by the United States Postal Service.

Notice from Lender: The lender is required to provide you with a clear and conspicuous printed notice advising you that a payday loan is not intended to meet long-term financial needs and that you should use a payday loan only to meet occasional or unusual short-term cash needs.

Information from Lender: Virginia law prohibits the lender from providing you with any false, misleading, or deceptive information.

Payday Lending Database: Before making a payday loan to you, a lender is required by Virginia law to access a database that contains detailed information about payday loans made to Virginia residents by all lenders licensed to do business in Virginia. The database will inform the lender whether you are eligible for a payday loan. The Bureau of Financial Institutions is unable to advise you of your eligibility for a payday loan. If you are ineligible for a payday loan, the lender will provide you with the toll-free telephone number of the database provider, which you can use to find

out the specific reason for your ineligibility. To enable the lender to check the database, you will be required to provide the lender with a written loan application and your original driver's license or identification card issued by a state driver's licensing authority (e.g., Department of Motor Vehicles for the Commonwealth of Virginia). If you wish to obtain a payday loan but do not have a driver's license or identification card, you will need to obtain a driver's license or identification card from the driver's licensing authority in your home state.

Prohibition on Loans to Individuals with Certain Previous or Outstanding Loans: Virginia law prohibits a lender from making a payday loan to you if (i) you currently have an outstanding payday loan; (ii) you paid or satisfied in full a previous payday loan on the same day that you are applying for a new payday loan; (iii) in the past 90 days you paid or satisfied in full a previous payday loan by means of an extended payment plan; (iv) in the past 45 days you paid or satisfied in full a fifth payday loan that you obtained within a period of 180 days; (v) in the past 90 days you paid or satisfied in full an extended term loan; or (vi) in the past 150 days you entered into an extended term loan.

It is important to note that the previous or outstanding payday loans referred to above include loans made by the same lender as well as any other lender conducting payday lending business in Virginia.

Prohibition on Loans to Members of the Military and their Spouses and Dependents: Virginia law prohibits lenders from making payday loans to members of the military services of the United States as well as their spouses and dependents. If you are a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer, the lender is prohibited from making a payday loan to you. The lender is also prohibited from making a loan to you if (i) you are married to such a member, (ii) you are less than 18 years old and the son or daughter of such a member, or (iii) more than one-half of your financial support for the past 180 days was provided by such a member.

Limitations on Security Interest / Prohibition on Obtaining Funds Electronically / Obtaining PINs: The lender cannot require you to provide more than one check as security for any payday loan. The check must be dated as of the date your loan is due. The lender cannot require you to provide any security for your payday loan other than a check payable to the lender. The lender is also prohibited from electronically debiting your deposit account or obtaining any of your funds by electronic means. The lender also cannot obtain any agreement from you that gives the lender or a third party the authority to prepare a check that is drawn upon your deposit account. Additionally, the lender is prohibited from obtaining or receiving a personal identification number (PIN)

for a credit card, prepaid card, debit card, or any other type of card in connection with your loan.

One Loan at a Time / \$500 Maximum: The lender cannot have more than one loan outstanding to you at any one time. If you currently have an outstanding payday loan from any lender, you cannot obtain another payday loan. The maximum loan amount is \$500.

Minimum Loan Term: Under Virginia law, your loan term must be at least twice as long as your pay cycle. For example, if you are paid on a weekly basis, your minimum loan term would be 14 days.

Fees, Charges, and Interest: The lender is permitted to charge you (i) interest at a simple annual rate of 36%, (ii) a loan fee not exceeding 20% of the amount of money advanced to you (i.e., \$20 per \$100 advanced), and (iii) a verification fee not exceeding \$5.00. For example, if the lender advances you \$300 for 31 days, the lender may charge you up to \$9.30 interest, a loan fee of \$60, and a verification fee of \$5.00 for a total of \$74.30. If the lender advances you \$300 for 62 days, the lender may charge you up to \$18.60 interest, a loan fee of \$60, and a verification fee of \$5.00 for a total of \$83.60. Other than the specific fees and costs discussed in the section of this pamphlet entitled "Failure to Repay" (see below), no additional amounts may be directly or indirectly charged, contracted for, collected, received, or recovered by the lender.

You will receive your loan proceeds in the form of either cash or a check from the lender. The lender cannot charge you a fee for cashing their check. Similarly, a check casher affiliated with the lender cannot charge you a fee for cashing the lender's check.

Written Agreement: The lender must provide you with a written loan agreement, which must be signed by both you and an authorized representative of the lender. The loan agreement is a binding, legal document that requires you to repay the loan. Make sure you read the entire loan agreement carefully before signing and dating it. The lender must provide you with a duplicate original of the loan agreement at the time of your loan transaction. If any provision of your loan agreement violates ~~the Payday Loan Act (§ 6.1-444 et seq. Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia)~~ Virginia, the provision will not be enforceable against you.

Extended Payment Plans: Under Virginia law eligible borrowers have the option of repaying a payday loan by means of an extended payment plan. You may only obtain an extended payment plan once in any rolling 12-month period (even if you obtain loans from different lenders or locations). You may obtain an extended payment plan at any time on or after the date that you received your loan through the date that your loan is due to be repaid.

Under an extended payment plan, you are permitted to repay the amount you owe in at least four equal installments spread out evenly over a term of at least 60 days. You will not be

charged any additional interest or fees in connection with an extended payment plan, and interest will not accrue during the term of an extended payment plan.

If you obtain an extended payment plan, you will not be able to get another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended payment plan.

Five Payday Loans within 180 Days: If you are obtaining a fifth payday loan within a rolling 180-day period, you have the option to (i) repay the fifth loan through an extended payment plan, unless you previously obtained an extended payment plan within the preceding 12 months, or (ii) obtain the loan in the form of an extended term loan.

You do not have to choose either one of these options. However, even if you do not obtain an extended payment plan or extended term loan, you will not be able to obtain another payday loan from any lender for a period of 45 days after you fully repay or satisfy your fifth payday loan.

Extended payment plans are discussed above. If you are eligible to repay your fifth payday loan by means of an extended payment plan and choose to do so, you will not be able to obtain another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended payment plan.

An extended term loan is a payday loan under which you are permitted to repay the amount you owe in four equal installments spread out evenly over a term of 60 days. You may obtain an extended term loan even if you previously obtained another extended term loan or an extended payment plan. If you want an extended term loan, you must choose this option on the date you obtain the payday loan. If you obtain an extended term loan, you will not be able to get another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended term loan or 150 days after you obtain the extended term loan (whichever is longer).

Other Businesses: A lender is prohibited by statute from engaging in other businesses, besides check cashing, unless permitted by order of the State Corporation Commission. A lender is also prohibited by statute from selling you any type of insurance coverage.

Loans for Other Products & Services: You are prohibited from using any of the money from your payday loan to purchase any other product or service sold at the lender's business location.

Right to Cancel: You have the right to cancel your loan at any time prior to the close of business on the next day the lender is open following the date your loan is made by paying the lender the amount advanced to you in cash, certified check, cashier's check, money order or, if the lender is equipped to handle such payments, by using a credit card, prepaid card, or debit card.

Partial Payments and Prepayments: You have the right to make partial payments (in increments of not less than \$5.00)

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on your payday loan at any time prior to its specified due date without penalty. If you make a partial payment, the total interest and loan fee you pay will be reduced (unless you have an extended payment plan or extended term loan -- see "Payments on Extended Payment Plans and Extended Term Loans" below). You have the right to receive signed, dated receipts for each payment made along with a statement of the balance remaining on your payday loan. You also have the right to prepay your loan in full before its specified due date without penalty by paying the lender in cash, certified check, cashier's check, money order or, if the lender is equipped to handle such payments, by use of a credit card, prepaid card, or debit card, the amount of money advanced to you as well as any accrued and unpaid interest and fees.

Payments on Extended Payment Plans and Extended Term Loans: You have the right to prepay an extended payment plan or extended term loan without penalty. However, unless it results in the prepayment in full of an extended payment plan or extended term loan, a partial payment, excess payment, installment payment, or other payment you give to the lender in advance of the date the funds are due does not result in either a change to your payment schedule or a pro-rata adjustment of the total interest, if any, or loan fee that you will be required to pay. Payments you make on an extended payment plan or extended term loan are first applied to any past due installment and then to your next regularly scheduled installment. The lender must give you receipts, signed and dated by the lender, for all payments you make on an extended payment plan or extended term loan. When you make a payment on an extended payment plan or extended term loan, you have the option to give the lender a replacement security check for the remaining amount you owe.

Lender to Return Original Loan Agreement: Upon repayment of your loan in full, the lender must mark your original loan agreement with the word "paid" or "canceled" and return it to you. If you obtained an extended payment plan, the lender is also required to mark your original extended payment plan document with the word "paid" or "canceled" and return it to you.

Lender to Return Security Check: If you cancel your loan (see "Right to Cancel" above) or repay it in full with cash or by certified check, cashier's check, money order or, if the lender is equipped to handle such payments, by using a credit card, prepaid card, or debit card, the lender must immediately return the check you gave as security for the loan.

No Rollovers, Extensions, Etc.: The lender cannot refinance, renew, extend, or rollover your payday loan.

Failure to Repay: Pay back your loan! Know when your payment is due and be sure to repay your loan on time and in full. You are responsible for having sufficient funds in your checking account on the due date of your loan so that your check does not bounce if the lender deposits it in his account.

If you do not repay your loan by the specified due date, the lender may begin accruing interest on the principal amount of your loan at a maximum rate of 6.0% per year.

In collecting or attempting to collect a payday loan, the lender is required to comply with the restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act, 15 USC § 1692 et seq., regarding harassment or abuse, false or misleading misrepresentations, and unfair practices in collections. The lender is also prohibited from threatening or beginning criminal proceedings against you if a check you provide to the lender bounces. If a lender knowingly violates this prohibition, the lender is required to pay you a civil monetary penalty equal to three times the amount of the dishonored check.

If you cannot or do not repay the loan: (i) the lender is permitted to recover from you any fee charged to the lender (maximum of \$25) as a result of your check being returned due to your account being closed by you or containing insufficient funds, or if you stopped payment on your check; and (ii) if the lender seeks and obtains judgment against you as a result of your returned check, the lender may obtain court costs and reasonable attorney's fees (total may not exceed \$250) if such costs and fees are awarded by the court.

The lender cannot file or initiate a legal proceeding against you until 60 days after the date that you default on a payday loan, including a default under an extended payment plan or extended term loan. During this 60-day period the lender may voluntarily enter into a repayment arrangement with you.

Legal Action Against Lender: You have the right to bring a civil action against the lender if you suffer a loss as a result of the lender violating any provision of ~~the Payday Loan Act Chapter 18 (§ 6.2-1800 et seq.)~~ of Title 6.2 of the Code of Virginia. If you are successful in your civil action, you have the right to be reimbursed for reasonable attorney's fees, expert witness fees, and court costs you have incurred in connection with your civil action. Losses suffered as the result of the lender's violation of ~~the Payday Loan Act Chapter 18 of Title 6.2 of the Code of Virginia~~ may also be pursued under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia), which in some cases permits consumers to recover actual and punitive damages.

Complaints and Contacting the Bureau of Financial Institutions: For assistance with any complaints you may have against a payday lender, please contact the Bureau of Financial Institutions toll free at (800) 552-7945 or on the Internet at <http://www.scc.virginia.gov/bfi>. Complaints must be filed in writing with the Bureau of Financial Institutions and include copies of supporting documentation. Complaints should be mailed to Bureau of Financial Institutions, Attn: Complaints, P.O. Box 640, Richmond, Virginia 23218-0640, or faxed to Bureau of Financial Institutions, Attn: Complaints, at (804) 371-9416.

10VAC5-200-85. Advertising.

A. A licensee shall disclose the following information in its advertisements in a conspicuous manner:

1. The name of the payday lender as set forth in the license issued by the commission.
2. A statement that the payday lender is "licensed by the Virginia State Corporation Commission."
3. The license number assigned by the commission to the payday lender (i.e., PL-XXX).

B. A licensee shall not deliver or cause to be delivered to a consumer any envelope or other written material that gives the false impression that the mailing or written material is an official communication from a governmental entity, unless required by the United States Postal Service.

C. Every advertisement used by, or published on behalf of, a licensee shall comply with the disclosure requirements for advertisements contained in Regulation Z (12 CFR Part 1026).

D. For purposes of this section, the term "conspicuous" shall have the meaning set forth in subdivision 20 of § 6.2-1816 of the Code of Virginia.

E. Every licensee shall retain for at least three years after it is last published, delivered, transmitted, or made available, an example of every advertisement used, including but not limited to solicitation letters, commercial scripts, and recordings of all radio and television broadcasts, but excluding copies of Internet web pages.

10VAC5-200-110. Payday lending database.

A. This section sets forth the rules applicable to the payday lending database referred to in § 6.2-1810 of the Code of Virginia.

B. Except as otherwise provided in this section, a licensee shall transmit all information to the database via the Internet. In order to maintain the confidentiality and security of the information, a licensee shall not transmit information to the database using publicly accessible computers, computers that are not under the licensee's control, unsecured wireless (Wi-Fi) connections, or other connections that are not secure. A licensee shall maintain generally accepted security safeguards to protect the confidentiality of the information transmitted to the database, including but not limited to installing and regularly updating malware protection (antivirus and antispyware) software and a firewall.

C. ~~Prior~~ After receiving a completed written loan application but prior to making a payday loan, a licensee shall transmit the following information to the database for purposes of determining whether an applicant is eligible for a payday loan. The licensee shall obtain the applicant information required by this subsection in accordance with the provisions of subsection D of this section.

1. Name of licensee and license number.
2. Office location of licensee.

3. First and last name or identification number of employee entering information into the database.

4. Applicant's first and last name.

5. Last four digits of applicant's driver's license number or identification card number.

6. Applicant's address.

7. Applicant's date of birth.

8. Type of card (e.g., driver's license or identification card issued by a state driver's licensing authority) provided by the applicant pursuant to subdivision D 1 of this section.

D. 1. A licensee shall obtain the information required by subdivisions C 4, 5, 6, ~~and 7,~~ and 8 of this section directly from the applicant's unexpired original driver's license or identification card issued by a state driver's licensing authority (e.g., Department of Motor Vehicles for the Commonwealth of Virginia), regardless of whether the information on the driver's license or identification card is still accurate. A licensee shall not accept photocopies, facsimiles, or other reproductions of a driver's license or identification card.

2. A licensee shall photocopy the applicant's driver's license or identification card, partially redact the driver's license number or identification card number so that only the last four digits of the number remain visible, and retain the redacted photocopy in its records.

3. A licensee shall not accept a driver's license or identification card from an applicant when there is reason to believe that (i) it belongs to an individual other than the applicant or (ii) it is fake, counterfeit, or has been altered, fraudulently obtained, forged, or is otherwise nongenuine or illegitimate.

E. If the database advises a licensee that an applicant is ineligible for a payday loan, then the licensee shall inform the applicant of his ineligibility, instruct the applicant to contact the database provider for information about the specific reason for his ineligibility, and provide the applicant with the toll-free telephone number of the database provider.

F. If the database advises a licensee that an applicant is eligible for a payday loan, then the licensee shall transmit the following additional information to the database prior to making a payday loan:

1. Application date.
2. Loan number.
3. Date of loan.
4. Principal amount of loan.
5. Interest rate.
6. Dollar amount of interest to be charged until date of loan maturity.
7. Dollar amount of loan fee to be charged.
8. Dollar amount of verification fee to be charged.
9. Dollar amount of total finance charges.

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10. Annual Percentage Rate (APR) of loan.
11. Number of days in applicant's pay cycle.
12. Number of days in loan term.
13. Date loan is due.
14. Dollar amount of check given by applicant to secure the loan (i.e., at the time the loan is made).

G. If the database advises a licensee that an applicant is eligible for an extended payment plan or extended term loan and the applicant subsequently elects an extended payment plan or extended term loan, then the licensee shall transmit the following additional applicable information to the database no later than the time the licensee closes for business on the date the applicant enters into the extended payment plan or extended term loan:

1. Date the extended payment plan or extended term loan is entered into.
2. Principal amount owed under the extended payment plan or extended term loan.
3. Number of installment payments and the amount of each payment to be made under the extended payment plan or extended term loan.
4. Date each installment payment is due under the extended payment plan or extended term loan.
5. Number of days in term of extended payment plan or extended term loan.

H. For purposes of this section, a licensee closes for business when it officially shuts its doors to the general public on a business day, or within one hour thereafter.

I. A licensee shall generate a separate printout from the database showing the results of each loan eligibility query, including whether an applicant is eligible for an extended payment plan or extended term loan, and retain the printout in its loan records.

J. Except as otherwise provided in subdivisions 3, 7, and 8 of this subsection, a licensee shall transmit the following additional information, as applicable, to the database no later than the time the licensee closes for business on the date of the event:

1. If a borrower cancels a payday loan, the date of the cancellation.
2. If a payday loan (including an extended term loan or a loan that a borrower elected to repay by means of an extended payment plan) is repaid or otherwise satisfied in full, (i) the date of repayment or satisfaction, and (ii) the total net dollar amount ultimately paid by the borrower in connection with the loan (i.e., principal amount of loan plus all fees and charges received or collected pursuant to §§ 6.2-1817 and 6.2-1818 of the Code of Virginia, less any amount refunded to the borrower as a result of overpayment).

3. If a check used to repay a loan in full is returned unpaid, the date the check is returned unpaid and the dollar amount of the check. A licensee shall transmit such information to the database no later than five calendar days after the date the check is returned unpaid.

4. If a licensee collects a returned check fee from a borrower, the dollar amount of the returned check fee.

5. If a licensee initiates a legal proceeding against a borrower for nonpayment of a payday loan, the date the proceeding is initiated and the total dollar amount sought to be recovered.

6. If a licensee obtains a judgment against a borrower, the date and total dollar amount of the judgment.

7. If a judgment obtained by a licensee against a borrower is satisfied, the date of satisfaction. A licensee shall transmit such information to the database on the date the licensee learns that the judgment has been satisfied.

8. If a licensee collects any court costs or attorney's fees from a borrower, the dollar amount of the court costs or attorney's fees. A licensee shall transmit such information to the database on the date the licensee learns that the court costs or attorney's fees have been paid.

9. If a licensee charges off a payday loan as uncollectible, the date the loan is charged off and the total dollar amount charged off.

K. 1. If any information required to be transmitted by a licensee to the database is automatically populated or calculated by the database provider, the licensee shall verify the information and immediately correct any inaccuracies or other errors.

2. If a licensee becomes aware of any changes, inaccuracies, or other errors in the information previously verified or transmitted by the licensee to the database, the licensee shall immediately update or correct the database.

L. The following provisions address a licensee's inability to access the database via the Internet at the time of loan application:

1. If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall to the extent possible use the database provider's alternative means of database access, such as a telephone interactive voice response system, for purposes of transmitting the information required by this section and obtaining applicant eligibility information from the database.

2. If a licensee makes a payday loan based on applicant eligibility information obtained from the database provider's alternative means of database access, then the licensee shall transmit to the database any remaining information required by this section no later than the time the licensee closes for business on the date that the

database becomes accessible to the licensee via the Internet.

3. If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control and the database provider's alternative means of database access is unavailable or otherwise unable to provide the licensee with applicant eligibility information (including eligibility for an extended payment plan or extended term loan), then the licensee may make a payday loan to an applicant if the applicant signs and dates a separate document containing all of the representations and responses to the questions set forth below and the prospective loan otherwise complies with the provisions of the Act and this chapter. The document shall be printed in a type size of not less than 14 point and contain a statement that the representations and questions relate to loans obtained from either the licensee or another payday lender. The licensee shall retain the original document in its loan file and provide the applicant with a duplicate original.

a. The representations to be made by an applicant are as follows:

- (1) I do not currently have any outstanding payday loans.
- (2) I did not repay or otherwise satisfy in full a payday loan today.
- (3) In the past 90 days I did not repay or otherwise satisfy in full a payday loan by means of an extended payment plan.
- (4) In the past 45 days I did not repay or otherwise satisfy in full a fifth payday loan that was obtained within a period of 180 days.
- (5) In the past 90 days I did not repay or otherwise satisfy in full an extended term loan.
- (6) I did not obtain an extended term loan within the past 150 days.
- (7) I am not a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.
- (8) I am not married to a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.
- (9) I am not under the age of 18 and the son or daughter of a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.
- (10) One-half or less (including none) of my financial support for the past 180 days was provided by a regular

or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

b. The questions to be presented to an applicant are as follows:

(1) In the past 12 months, have you obtained an extended payment plan in order to repay a payday loan? If the applicant's response is "no" and the applicant is eligible for a payday loan, then the licensee shall immediately provide the applicant with the oral notice prescribed in subdivision C 4 of 10VAC5-200-33.

(2) Have you obtained four or more payday loans within the past 180 days? If the applicant's response is "yes" and the applicant is eligible for a payday loan, then the licensee shall immediately provide the applicant with the oral notice prescribed in subdivision E 4 of 10VAC5-200-35.

c. If a licensee makes a payday loan pursuant to subdivision ~~E 3~~ of this ~~section~~ subsection, then the licensee shall transmit to the database the information required by this section no later than the time the licensee closes for business on the date that the database becomes accessible to the licensee, via either the Internet or the database provider's alternative means of database access.

4. If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall document in its records the technical problems it experienced and the date and time that it sought to access the database.

M. The following provisions address a licensee's inability to access the database via the Internet subsequent to making a loan:

1. If a licensee is required to transmit to the database information regarding a loan that has already been made, but the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall to the extent possible use the database provider's alternative means of database access, such as a telephone interactive voice response system, for purposes of transmitting the information required by this section to the database. If the database provider's alternative means of database access is unavailable or otherwise unable to accept the information, then the licensee shall transmit to the database the information required by this section no later than the time the licensee closes for business on the date that the database becomes accessible to the licensee, via either the Internet or the database provider's alternative means of database access.

2. If a licensee is required to transmit to the database information regarding a loan that has already been made,

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but the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall document in its records the technical problems it experienced and the date and time that it sought to transmit the information to the database.

~~N. By the close of business on each business day, a licensee shall transmit to the database the total daily number (even if 0) of individuals who were unable to obtain payday loans from the licensee because they are members of the military services of the United States or the spouses or other dependents of members of the military services of the United States. If the licensee is unable to access the database due to technical problems beyond the licensee's control, then the licensee shall transmit to the database the information required by this subsection no later than the time the licensee closes for business on the next business day that the licensee is able to access the database. The licensee shall also document in its records the technical problems it experienced and the date and time that it sought to transmit the information to the database.~~

~~Q. N.~~ A licensee shall have limited access to the information contained in the database. The database shall only provide a licensee with the following information: (i) whether an applicant is eligible for a new payday loan; (ii) if an applicant is ineligible for a new payday loan, the general reason for the ineligibility (e.g., the database may state that the applicant has an outstanding payday loan but it shall not furnish any details regarding the outstanding loan); and (iii) if an applicant is eligible for a new payday loan, whether the applicant is also eligible for an extended payment plan or extended term loan. The database shall also permit a licensee to access information that the licensee is required to transmit to the database provided that such access is for the sole purpose of verifying, updating, or correcting the information. Except as otherwise provided in this subsection or 10VAC5-200-113, a licensee shall be prohibited from accessing or otherwise obtaining any information contained in or derived from the database.

~~P. O.~~ If the Commissioner of Financial Institutions determines that a licensee or former licensee has ceased business but still has one or more outstanding payday loans that cannot be repaid due to the licensee's or former licensee's closure, the Commissioner of Financial Institutions may authorize the database provider to ~~mark~~ administratively close the outstanding loans ~~as satisfied~~ in the database in order to enable the affected borrowers to obtain payday loans in the future. A licensee or former licensee shall be deemed by the Commissioner of Financial Institutions to have ceased business if it (i) fails to respond to the bureau after two written requests mailed to the address on file with the bureau or (ii) fails to maintain its contact information in accordance with subsection N of 10VAC5-200-20.

~~Q. P. 1. Except as provided in subsection F of 10VAC5-200-35, payday~~ Payday loans made on or after October 1, 2008,

and prior to January 1, 2009, that ~~remain~~ remained outstanding on January 1, 2009, shall be considered for purposes of determining a borrower's eligibility for a payday loan. ~~Accordingly, on or before January 1, 2009, a licensee shall transmit the following information to the database in connection with every payday loan made on or after October 1, 2008, that will or may be outstanding as of January 1, 2009:~~

- ~~a. Name of licensee and license number.~~
- ~~b. Office location of licensee.~~
- ~~e. First and last name or identification number of employee entering information into the database.~~
- ~~d. Borrower's first and last name.~~
- ~~e. Last four digits of borrower's driver's license number or identification card number.~~
- ~~f. Borrower's address.~~
- ~~g. Borrower's date of birth.~~
- ~~h. Date loan funds were disbursed.~~
- ~~i. Date loan is due.~~

~~2. A licensee shall obtain and retain the borrower information required by this subsection in accordance with the provisions of subsection D of this section.~~

~~3. 2.~~ For every payday loan made on or after October 1, 2008, that ~~remains~~ remained outstanding as of January 1, 2009, a licensee shall (i) transmit to the database all applicable information required by subsection J of this section within the time prescribed therein or January 1, 2009, whichever is later and (ii) retain the photocopies specified in subdivision D 2 of this section in accordance with § 6.2-1809 of the Code of Virginia.

10VAC5-200-113. Limited disclosure of data from payday lending database.

A. Pursuant to § 6.2-1810 of the Code of Virginia, the information contained in the payday lending database is confidential. However, provided that it does not directly or indirectly identify or pertain to any specific borrowers, licensees, or loan transactions, aggregate data and data that is otherwise derived from information contained in the database is not confidential and may be furnished by the database provider to the public. The database provider may charge and collect a fee to defray the cost of compiling and furnishing such data.

B. The database provider shall notify the bureau prior to furnishing data pursuant to this section.

VA.R. Doc. No. R14-3844; Filed September 3, 2013; 3:03 p.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Objection to Fast-Track Rulemaking Action

REGISTRAR'S NOTICE: Pursuant to § 2.2-4012.1 of the Code of Virginia, the State Board of Health has filed a notice of objection to the fast-track rulemaking action published in 29:25 VA.R. 3586-3588 August 12, 2013. The board intends to proceed with the normal rulemaking process set out in Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of the Administrative Process Act with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Title of Regulation: 12VAC5-615. Authorized Onsite Soil Evaluator Regulations (repealing 12VAC5-615-10 through 12VAC5-615-470).

Fast-Track Publication Date: 29:25 VA.R. 3586-3588 August 12, 2013.

The State Board of Health received 28 comments objecting to the fast-track rulemaking process that was initiated to repeal 12VAC5-615, Authorized Onsite Soil Evaluator Regulations, as published in 29:25 VA.R. 3586-3588 August 12, 2013. Commenters expressed concern about the following topics: (i) whether adequate and enforceable standards would exist without 12VAC5-615, including the ability of the Virginia Department of Health (VDH) to enforce by policy technical and procedural requirements, roles and responsibilities, standards of practice, and other work product from licensees of the Department of Professional and Occupational Regulation (DPOR); (ii) whether certain portions of 12VAC5-615 should be retained in other regulations administered by VDH or DPOR before rescinding, including ethical requirements, certain definitions (e.g., backlogs), and application requirements; and (iii) whether VDH could implement a consistent, predictable, and enforceable program without 12VAC5-615; for example, VDH has different requirements between public and private sector licensees.

Agency Contact: Allen Knapp, Director, Office of Environmental Health Services, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7458, FAX (804) 864-7475, or email allen.knapp@vdh.virginia.gov.

VA.R. Doc. No. R13-3127; Filed September 12, 2013, 3:12 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF OPTOMETRY

Final Regulation

REGISTRAR'S NOTICE: The Board of Optometry is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board of Optometry will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-20).

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

Effective Date: October 23, 2013.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Summary:

The amendments provide for a one-time fee reduction applicable to the 2013 renewal cycle for optometrists.

18VAC105-20-20. Fees.

A. Required fees.

Initial application and licensure (including TPA certification)	\$250
Application for TPA certification	\$200
Annual licensure renewal without TPA certification	\$150
Annual licensure renewal with TPA certification	\$200
Late renewal without TPA certification	\$50
Late renewal with TPA certification	\$65
Returned check	\$35
Professional designation application	\$100
Annual professional designation renewal (per location)	\$50
Late renewal of professional designation	\$20
Reinstatement application fee (including renewal and late fees)	\$400
Reinstatement application after	\$500

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disciplinary action	
Duplicate wall certificate	\$25
Duplicate license	\$10
Licensure verification	\$10

B. Unless otherwise specified, all fees are nonrefundable.

C. From October 4, 2006, to October 3, 2008, the following fees shall be in effect:

Initial application and licensure (including TPA certification)	\$250
Application for TPA certification	\$200
Annual licensure renewal without TPA certification	\$75
Annual licensure renewal with TPA certification	\$90
Late renewal without TPA certification	\$25
Late renewal with TPA certification	\$30
Returned check	\$35
Professional designation application	\$100
Annual professional designation renewal (per location)	\$50
Late renewal of professional designation	\$20
Reinstatement application fee (including renewal and late fees)	\$400
Reinstatement application after disciplinary action	\$500
Duplicate wall certificate	\$25
Duplicate license	\$40

C. Until December 31, 2013, the following fees shall be in effect:

<u>Annual licensure renewal without TPA certification</u>	<u>\$100</u>
<u>Annual licensure renewal with TPA certification</u>	<u>\$135</u>
<u>Annual professional designation renewal (per location)</u>	<u>\$30</u>

VA.R. Doc. No. R14-3835; Filed September 4, 2013, 10:22 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Final Regulation

REGISTRAR'S NOTICE: Enactment 65 of Chapters 803 and 835 of the 2012 Acts of Assembly transferred powers related to administration of auxiliary grants and provision of adult services and adult protective services from the Department of Social Services to the Department for Aging and Rehabilitative Services effective July 1, 2013. The following action relocates the Department of Social Services' regulations numbered 22VAC40-25 to the Department for Aging and Rehabilitative Services and rennumbers the regulation as 22VAC30-80.

This regulatory action is excluded from the Administrative Process Act in accordance with § 2.2- 4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department for Aging and Rehabilitative Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 22VAC30-80. **Auxiliary Grants Program (adding 22VAC30-80-10 through 22VAC30-80-70).**

Statutory Authority: §§ 51.5-131 and 51.5-160 of the Code of Virginia.

Effective Date: October 23, 2013.

Agency Contact: Tishaun Harris-Ugworji, Program Consultant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA, VA 23229, telephone (804) 662-7531, or email tishaun.harrisugworji@dars.virginia.gov.

Summary:

The amendments reflect changes made by Chapters 803 and 835 of the 2012 Acts of Assembly that relocate the adult services and auxiliary grant program from the Department of Social Services (DSS) to the Department for Aging and Rehabilitative Services (DARS). The amendments update the agency name from DSS to DARS where appropriate, change the chapter and section numbers so that the regulation appears under DARS in the Virginia Administrative Code, and update cross references.

CHAPTER 25 80

AUXILIARY GRANTS PROGRAM

22VAC40-25-10, 22VAC30-80-10. Definitions.

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

"Adult foster care (~~AFC~~)" care" or "AFC" means a locally optional program that provides room and board, supervision, and special services to an adult who has a physical or mental health need. Adult foster care may be provided for up to three adults by any one provider who is approved by the local department of social services.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the Uniform Assessment Instrument.

"Assisted living facility (~~ALF~~)" facility" or "ALF" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

Assuming responsibility for the well-being of individuals residing in an ALF, either directly or through contracted agents, is considered "general supervision and oversight."

"Auxiliary Grants (~~AG~~) Program" or "AG" means a state and locally funded assistance program to supplement income of an individual receiving Supplemental Security Income (SSI) or adult who would be eligible for SSI except for excess income, who resides in an ALF or in AFC with an established rate.

"Certification" means a form provided by the department and prepared by the ALF annually certifying that the ALF has properly managed the personal funds and personal needs allowances of individuals residing in the ALF and is in compliance with program regulations and appropriate licensing regulations.

"Department" means the ~~Virginia Department of Social Services~~ Department for Aging and Rehabilitative Services.

"Established rate" means the rate as set forth in the appropriation act or as set forth to meet federal maintenance of effort requirements.

"Personal needs allowance" means an amount of money reserved for meeting the adult's personal needs when computing the amount of the AG payment.

"Personal representative" means the person representing or standing in the place of the individual for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, next-of-kin, descendent, trustee, or other person expressly named by the individual as his agent.

"Personal toiletries" means hygiene items provided to the individual by the ALF or AFC home including deodorant, razor, shaving cream, shampoo, soap, toothbrush, and toothpaste.

"Program" means the Auxiliary Grant Program.

"Provider" means an ALF that is licensed by the Department of Social Services or an AFC provider that is approved by a local department of social services.

"Provider agreement" means a document that the ALF must complete and submit to the department when requesting to be approved for admitting individuals receiving AG.

"Qualified assessor" means an individual who is authorized by 22VAC40-745 to perform an assessment, reassessment, or change in level of care for an individual applying for AG or residing in an ALF.

"Rate" means the established rate.

"Residential living care" means a level of service provided by an ALF for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the Uniform Assessment Instrument (UAI).

"Uniform Assessment ~~Instrument (UAI)~~ Instrument" or "UAI" means the department-designated assessment form. It is used to record assessment information for determining the level of service that is needed.

~~22VAC40-25-15. 22VAC30-80-15. Residency requirement.~~

A. Individuals applying for AG must have resided in Virginia voluntarily for a minimum of 90 days with the intent to remain.

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1. Individuals applying for AG must submit a written statement of intent to remain in Virginia on a form provided by the department.

2. Individuals applying for AG also may be required to provide verification of Virginia residency using one of the following documents:

- a. Postmarked letters;
- b. Public utility records or credit accounts;
- c. Voter registration records;
- d. Home or apartment lease;
- e. Real property records;
- f. Medical bills; or
- g. State or federal tax records.

B. Exceptions to the 90-day residency requirement.

1. Individuals who have moved to Virginia to join a close relative who has lived in Virginia for at least 90 days. A close relative is limited to the individual's parent, grandparent, grandchild, brother, sister, spouse, or child. The close relative shall furnish verification of kinship at the time of application using one of the following documents:

- a. Birth certificate;
- b. Proof of marriage; or
- c. Notarized affidavit.

2. The close relative shall furnish proof of residency as specified in subdivision A 2 of this section.

C. Virginia locality of residence.

1. An individual who is a resident of Virginia shall apply for AG in the locality in which he resides.

2. The Virginia locality where the individual last resided prior to entering a Virginia-based institution, including but not limited to a nursing home, intermediate care facility, correctional facility, rehabilitation center, psychiatric facility, or medical facility, is the individual's place of residence for purposes of applying for AG.

~~22VAC40-25-30.~~ 22VAC30-80-20. Assessment.

A. In order to receive payment from the program for care in an ALF or in AFC, an individual applying for AG shall have been assessed by a qualified assessor using the UAI and determined to need residential or assisted living care or AFC.

B. As a condition of eligibility for the program, a UAI shall be completed on an individual prior to admission, except for an emergency placement as documented and approved by a Virginia adult protective services worker, at least once annually, and whenever there is a significant change in the individual's level of care, and a determination is made that the individual needs residential or assisted living care in an ALF or AFC.

C. The ALF or AFC provider is prohibited from charging a security deposit or any other form of compensation for

providing a room and services to the individual. The collection or receipt of money, gift, donation or other consideration from or on behalf of an individual for any services provided is prohibited.

~~22VAC40-25-30.~~ 22VAC30-80-30. Basic services.

The rate established under the program shall cover the following services:

1. Room and board.

- a. Provision of a furnished room;
- b. Housekeeping services based on the needs of the individual;
- c. Meals and snacks provided in accordance with 22VAC40-72 including, but not limited to food service, nutrition, number and timing of meals, observance of religious dietary practices, special diets, menus for meals and snacks, and emergency food and water. A minimum of three well-balanced meals shall be provided each day. When a diet is prescribed for a an individual by his physician, it shall be prepared and served according to the physician's orders. Basic and bedtime snacks shall be made available for all individuals desiring them and shall be listed on the daily menu. Unless otherwise ordered in writing by the individual's physician, the daily menu, including snacks, for each individual shall meet the guidelines of the U.S. Department of Agriculture's Food Guide Pyramid, taking into consideration the age, sex, and activity of the resident. Second servings shall be provided, if requested, at no additional charge. At least one meal each day shall include a hot main dish; and
- d. Clean bed linens and towels as needed by the individual and at least once a week.

2. Maintenance and care.

- a. Minimal assistance with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails, arranging for haircuts as needed, and care of needs associated with menstruation or occasional bladder or bowel incontinence;
- b. Medication administration as required by licensing regulations including insulin injections;
- c. Provision of personal toiletries including toilet paper;
- d. Minimal assistance with the following:
 - (1) Care of personal possessions;
 - (2) Care of personal funds if requested by the individual and provider policy allows this practice, and in compliance with 22VAC40-72-140 and 22VAC40-72-150, Standards for Licensed Assisted Living Facilities;
 - (3) Use of the telephone;
 - (4) Arranging transportation;
 - (5) Obtaining necessary personal items and clothing;
 - (6) Making and keeping appointments; and

- (7) Correspondence;
- e. Securing health care and transportation when needed for medical treatment;
- f. Providing social and recreational activities; and
- g. General supervision for safety.

~~22VAC40-25-40.~~ 22VAC30-80-40. Personal needs allowance.

A. The personal needs allowance is included in the monthly AG payment to the individual and must be used by the individual for personal items. These funds shall not be commingled with the funds of the provider and shall be maintained in a separate bank account. The personal needs allowance shall not be charged by the provider for any item or service not requested by the individual. The provider shall not require an individual or his personal representative to request any item or service as a condition of admission or continued stay. The provider must inform the individual or his personal representative of a charge for any requested item or service not covered under the AG and the amount of the charge. The personal needs allowance is expected to cover the cost of the following items and services:

1. Clothing;
2. Personal toiletries not included in those to be provided by the provider or if the individual requests a specific type or brand of toiletry;
3. Personal items including tobacco products, sodas, and snacks beyond those required in subdivision 1 c of ~~22VAC40-25-30~~ 22VAC30-80-30.
4. Hair care services;
5. Over-the-counter medication, medical copayments and deductibles, insurance premiums;
6. Other needs such as postage stamps, dry cleaning, laundry, direct bank charges, personal transportation, and long distance telephone calls;
7. Personal telephone, television, or radio;
8. Social events and entertainment offered outside the scope of the activities program; and
9. Other items agreed upon by both parties except those listed in subsection B of this section.

B. The personal needs allowance shall not be encumbered by the following:

1. Recreational activities required by licensing regulations (including any transportation costs of those activities);
2. Administration of accounts (bookkeeping, account statements);
3. Debts owed the provider for basic services as outlined by regulations; or
4. Provider laundry charges in excess of \$10 per month.

~~22VAC40-25-45.~~ 22VAC30-80-45. Conditions of participation in the program.

A. Provider agreement for ALF.

1. As a condition of participation in the program, the ALF provider is required to complete and submit to the department a signed provider agreement as stipulated below. The agreement is to be submitted prior to the ALF accepting AG payment for qualified individuals. A copy of the ALF's current license must be submitted with the provider agreement.

2. The ALF provider shall agree to the following conditions in the provider agreement to participate in the program:

- a. Provide services in accordance with all laws, regulations, policies, and procedures that govern the provision of services in the facility;
- b. Submit an annual certification form by October 1 of each year;
- c. Care for individuals with AG in accordance with the requirements herein at the current established rate;
- d. Refrain from charging the individual, his family, or his authorized personal representative a security deposit or any other form of compensation as a condition of admission or continued stay in the facility;
- e. Accept the established rate as payment in full for services rendered;
- f. Account for the personal needs allowances in a separate bank account and apart from other facility funds and issue a monthly statement to each individual regarding his account balance;
- g. Provide a 60-day written notice to the regional licensing office in the event of the facility's closure or ownership change;
- h. Provide written notification of the date and place of an individual's discharge or the date of an individual's death to the local department of social services determining the individual's AG eligibility and to the qualified assessor within 10 days of the individual's discharge or death; and
- i. Return to the local department of social services determining the individual's AG eligibility, all AG funds received after the death or discharge date of an individual in the facility.

B. As a condition of participation in the program, the AFC provider shall be approved by a local department of social services and comply with the requirements set forth in ~~22VAC40-771~~ 22VAC30-120.

~~22VAC40-25-50.~~ 22VAC30-80-50. Establishment of rate.

The established rate for individuals authorized to reside in an ALF or in AFC is the established rate as set forth in the appropriation act or as set forth by changes in the federal maintenance of effort formula. The AG payment is determined by adding the rate plus the personal needs

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allowance minus the individual's countable income. The effective date is the date of the individual's approval for AG by the local department of social services.

~~22VAC40-25-60.~~ 22VAC30-80-60. Reimbursement.

A. Any moneys contributed toward the cost of care pending AG eligibility determination shall be reimbursed to the individual or contributing party by the ALF or AFC provider once eligibility for AG is established and that payment received. The payment shall be made payable to the individual, who will then reimburse the provider for care. If the individual is not capable of managing his finances, his personal representative is responsible for reimbursing the provider.

B. In the event an ALF is closed, the facility shall prorate the rate up to the date of the individual's discharge and return the balance to the local department of social services that determined the individual's eligibility for the grant. If the facility maintained the individual's personal needs allowance, the facility shall provide a final accounting of the individual's personal needs allowance account within 60 days of the individual's discharge. Verification of the accounting and of the reimbursement to the individual shall be mailed to the case management agency responsible for the individual's annual reassessment. In the event of the individual's death, the provider shall give to the individual's personal representative a final accounting of the individual's funds within 60 calendar days of the event. All AG funds received after the death or discharge date shall be returned to the local department of social services responsible for determining the individual's AG eligibility as soon as practicable. Providers who do not comply with the requirements of this regulation may be subject to adverse action.

~~22VAC40-25-70.~~ 22VAC30-80-70. Certification.

A. ALFs shall submit an annual certification form by October 1 of each year for the preceding state fiscal year. The certification shall include the following: identifying information about the ALF, census information including a list of individuals who resided in the facility and received AG during the reporting period and personal needs allowance accounting information. If a provider fails to submit an annual certification form, the provider will not be authorized to accept additional individuals with AG.

B. All information reported by an ALF on the certification form shall be subject to audit by the department. Financial information that is not reconcilable to the provider's general ledger or similar records could result in establishment of a liability to the provider. Records shall be retained for three years after the end of the reporting period or until audited by the department, whichever is first.

C. All records maintained by an AFC provider, as required by ~~22VAC40-774~~ 22VAC30-120, shall be made available to the department or the approving local department of social services upon request. All records are subject to audit by the department. Financial information that is not reconcilable to

the provider's records could result in establishment of a liability to the provider. Records shall be retained for three years after the end of the reporting period or until audited by the department, whichever is first.

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

FORMS (~~22VAC40-25~~) (22VAC30-80)

~~Auxiliary Grant Program Provider Agreement, 032-02-0747-01-eng (rev. 6/12).~~

~~Auxiliary Grant Certification, 032-02-0747-04-eng (rev. 4/12).~~

[Auxiliary Grant Program Provider Agreement, 032-02-0747-02-eng \(rev. 6/13\)](#)

[Auxiliary Grant Certification, 032-02-0747-06-eng \(rev. 5/13\)](#)

[Statement of Virginia Residency and Intent to Remain in Virginia, 032-02-0749-00-eng \(eff. 12/12\)](#)

VA.R. Doc. No. R14-3801; Filed September 3, 2013, 5:11 p.m.

GENERAL NOTICES/ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Agricultural Stewardship Act 2012 Annual Report

The Commissioner of Agriculture and Consumer Services announces the availability of the annual report of the Agricultural Stewardship Act (ASA) entitled "Virginia Agricultural Stewardship Act Annual Report, April 1, 2012 - March 31, 2013: A Positive Approach." Copies of this report can be obtained by contacting Joyce Knight by telephone at (804) 786-3538 or by email at joyce.knight@vdacs.virginia.gov. The report can also be obtained from the Department of Agriculture and Consumer Services' website at <http://www.vdacs.virginia.gov/stewardship/index.shtml>. A written request may be sent to the Virginia Department of Agriculture and Consumer Services, Office of Policy, Planning and Research, P.O. Box 1163, 102 Governor Street, Suite 219, Richmond, VA 23218. Copies of the report are available without charge.

Questions regarding the report may be directed to the ASA office at (804) 786-2658.

AIR POLLUTION CONTROL BOARD

Section 111(d)/129 Plan - Proposed Revision

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia's § 111(d)/129 plan for commercial/industrial solid waste incinerators (CISWIs). A § 111(d)/129 plan is developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to implement and enforce emissions guidelines for solid waste incineration units. The Commonwealth intends to submit the plan to the U.S. Environmental Protection Agency (EPA) in accordance with the requirements of the federal Clean Air Act.

Regulations affected: The regulations of the board affected by this action are as follows: Documents incorporated by reference, 9VAC5-20-21 of 9VAC5-20 (General Provisions); and Emission Standards for Commercial/Industrial Solid Waste Incinerators (Rule 4-45), Article 45 (9VAC5-40-6250 et seq.) of 9VAC5-40 (Existing Stationary Sources).

Purpose of notice: DEQ is seeking comment on the overall plan and on the issue of whether any regulations or inventory information included in the plan should be submitted to EPA as part of the plan.

Public comment period: September 23, 2013, to October 23, 2013.

Public hearing: A public hearing will be held in Second Floor Conference Room A, Department of Environmental Quality, 629 East Main Street, Richmond, VA, at 9 a.m. on October 23, 2013, to accept comments concerning the proposed plan.

Public comment stage: The public comment period and hearing are being conducted to satisfy the public participation requirements of 40 CFR 60.23(c) and (d). The regulations included in this plan have been adopted by the State Air Pollution Control Board in accordance with the Code of Virginia and with public participation as required by the Code of Virginia, the federal Clean Air Act, and the Code of Federal Regulations. Because the regulations have been adopted, DEQ is accepting comment only on the issues cited above and not on the content of the regulations.

Description of proposal: EPA amended the designated pollutant emission guidelines for CISWIs in the Federal Register of February 7, 2013, (78 FR 9112). In order to implement the guidelines, it was necessary for Virginia to amend the state regulation (Rule 4-45) containing the federal provisions and to update the most current version of 40 CFR Part 60 listed in 9VAC5-20-21 (Documents incorporated by reference). In addition to affected regulations, the proposed plan revision contains an updated inventory of affected facilities.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations and not any provision of state law. The proposal will be submitted as a § 111(d)/129 plan revision under §§ 111(d) and 129 of the federal Clean Air Act in accordance with 40 CFR 60.23(c) and (d). It is planned to submit all provisions of the proposal as a Commonwealth of Virginia § 111(d)/129 plan with the exception of state-only enforceable provisions, which are specifically identified in the plan.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. All materials received are part of the public record. DEQ will accept written comments through October 23, 2013.

To review plan documents: The proposal is available on the DEQ Air Public Notices for Plans website at <http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx>.

The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the DEQ Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105,

General Notices/Errata

Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

State Implementation Plan Proposed Revision - Proposed Five Year Progress Report Regarding Visibility Impairment in Federal Class I Areas

Notice of action: The Department of Environmental Quality (DEQ) is seeking comments and announcing a public hearing on a proposed five-year progress report regarding visibility impairment in Federal Class I areas. Virginia is home to two such areas: Shenandoah National Park and James River Face Wilderness. The Commonwealth intends to submit the report as a revision to the Virginia State Implementation Plan (SIP) in accordance with the requirements of §§ 110(a) and 169A 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).

Purpose of notice: DEQ is seeking comments on the progress report, on the conclusion that the Virginia Class I areas are on track to meet their reasonable progress goals by 2018, and on the conclusion that no additional controls are necessary in this planning period.

Public comment period: September 23, 2013, to October 23, 2013.

Public hearing: A public hearing will be conducted on October 22, 2013, in Conference Room A, Department of Environmental Quality, 629 East Main Street, Richmond, VA at 10 a.m. Directions may be found at <http://www.deq.virginia.gov/Locations/CentralOffice.aspx>.

Description of proposal: Virginia is required by 40 CFR 51.308(g) to submit to EPA and adopt into the Virginia SIP a report evaluating progress toward the reasonable progress goals provided in Virginia's Regional Haze Plan. The report must contain a description of the status of the implementation of all measures included in the plan, a summary of emission reductions, an assessment of visibility conditions and changes, and other analyses. Additionally, the report must contain an assessment of whether the current plan elements and strategies are sufficient to enable Virginia to meet established reasonable progress goals for visibility improvement. The proposed progress report provides the required analyses, demonstrates that Virginia Class I areas are on track to meet the reasonable progress goals outlined in Virginia's Regional Haze Plan, and concludes that no additional controls are necessary for this planning period.

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) and 169A 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.

Consultation with federal land managers (FLMs): As provided in 40 CFR 51.302(b)(2), the FLMs were given the opportunity to comment on the proposal from June 17, 2013, to August 19, 2013. FLM comments on the proposed progress report and DEQ responses to these comments are located in Appendix B of the report.

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 on the last day of the comment period. Both oral and written comments are accepted at the public hearing. DEQ prefers that the comments be provided in writing, along with any supporting documents or exhibits. All materials received are 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 at <http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx>.

The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) DEQ Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4000;
- 2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (276) 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 (434) 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;
- 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, or email doris.mcleod@deq.virginia.gov.

STATE BOARD OF ELECTIONS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Elections has conducted a small business impact review of **1VAC20-90, Campaign Finance and Political Advertisements**, and determined that this regulation should be retained in its current form. The State Board of Elections is publishing its report of findings dated September 4, 2013, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

The regulation mandated by legislation meets the criteria of Executive Order 14 (2010); the regulation is clearly written and easily understandable. Campaign finance staff reports that no filings subject to the regulation have been received. The regulation promotes efficiency by encouraging electronic filing and appears to be working.

Contact Information: Martha Brissette, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, FAX (804) 371-0194, or email martha.brissette@sbe.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on August 26, 2013. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, VA.

Director's Order Number Fifty-Six (13)

"Holiday Scratcher Sales Explosion Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (effective on the date of its signing, August 8, 2013, and shall remain in full force and effect until ninety (90) days after the conclusion of the Incentive Program, unless otherwise extended by the Director)

Director's Order Number Sixty-Eight (13)

"Live It Redskins Mega Millions Coupon Giveaway" Virginia Lottery Player Giveaway Program Promotion Requirements (effective on the date of its signing, August 9, 2013, and shall remain in full force and effect until ninety (90) days after the conclusion of the Promotion Program, unless otherwise extended by the Director)

Director's Order Number Sixty-Nine (13)

Virginia's Instant Game Lottery 1448 "Winner Take All" Final Rules for Game Operation (effective August 9, 2013)

Director's Order Number Seventy (13)

Virginia Lottery's "25th Birthday Fest" Sweepstakes Final Rules for Operation (effective August 8, 2013)

Director's Order Number Seventy-One (13)

Virginia's Instant Game Lottery 1435 "Zombies" Final Rules for Game Operation (effective August 9, 2013)

Director's Order Number Seventy-Three (13)

Virginia's Instant Game Lottery 1453 "21 Blackjack" Final Rules for Game Operation (effective August 9, 2013)

Director's Order Number Seventy-Four (13)

Virginia's Instant Game Lottery 1469 "50X The Money" Final Rules for Game Operation (effective August 9, 2013)

Director's Order Number Eighty-Four (13)

Virginia's Instant Game Lottery 1436 "\$25 Grand" Final Rules for Game Operation (effective August 26, 2013)

Director's Order Number Eighty-Five (13)

Virginia's Instant Game Lottery 1433 "Money Multiplier" Final Rules for Game Operation (effective August 26, 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.

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/connect/commonwealth-calendar>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: The cumulative table lists regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code. The cumulative table is available online at <http://register.dls.virginia.gov/documents/cumulstab.pdf>.

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ERRATA

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12VAC30-120. Waivered Services.**

Publication: 29:18 VA.R. 2219-2238 May 6, 2013.

Correction to Final Regulation:

Page 2228, insert and strike **12VAC30-120-65, Consumer-directed services: personal assistance and respite care services**, as repealed in its entirety.

VA.R. Doc. No. R13-3218; Filed September 3, 2013, 12:00 p.m.