VIRGINIA REGISTER OF REGULATIONS

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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.

PUBLICATION SCHEDULE AND DEADLINES

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

January 2014 through March 2015

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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
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30:17	April 2, 2014	April 21, 2014
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30:19	April 30, 2014	May 19, 2014
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31:10	December 23, 2014 **(Tuesday)**	January 12, 2015
31:11	January 7, 2015	January 26, 2015
31:12	January 21, 2015	February 9, 2015
31:13	February 4, 2015	February 23, 2015
31:14	February 18, 2015	March 9, 2015

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

Initial Agency Notice

Title of Regulation: **4VAC25-150. Virginia Gas and Oil Regulation.**

Statutory Authority: §§ 45.1-161.3 and 45.1-361.27 of the Code of Virginia.

Name of Petitioner: Virginia Oil and Gas Association.

Nature of Petitioner's Request: The membership of the Virginia Oil and Gas Association (Association) petitions the Department of Mines, Minerals and Energy (DMME) to amend the Virginia Gas and Oil Regulation to add a requirement that all companies are required to participate in Frac Focus. Frac Focus is a website developed by the Groundwater Protection Council. This will ensure that all chemicals used for fracing by Virginia's natural gas and oil industries will be fully disclosed and available to the public. The Association believes DMME has the authority under 4VAC25-150 to open the regulation for this limited purpose and this purpose only. Therefore, the Association petitions this new regulation under § 2.2-4007 of the Code of Virginia. This initiative is intended to alleviate public concern that they are not aware of chemicals utilized in the fracing process. Even though this industry has been safely utilizing the fracing process for over 50 years, the Association wants to be totally transparent.

Agency Plan for Disposition of Request: DMME will thoroughly review this petition and determine the appropriate action to take, including the possibility of absorbing this petition in the agency's already published Notice of Intended Regulatory Action for the Virginia Gas and Oil Regulation (4VAC25-150).

Public Comment Deadline: February 26, 2014.

Agency Contact: Michael Skiffington, Program Support Manager, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3212, or email michael.skiffington@dmme.virginia.gov.

VA.R. Doc. No. R14-06; Filed December 26, 2013, 8:47 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-610, Sewage Handling and Disposal Regulations.** Chapter 202 of the 2013 Acts of Assembly requires the board to promulgate regulations for chamber and bundled expanded polystyrene effluent distribution systems. The board may promulgate regulations for other distribution technologies. The Sewage Handling and Disposal Regulations contain construction, design, and installation requirements for gravel and pipe effluent absorption trench, low pressure distribution, elevated sand mound, and sand-on-sand systems. The amendments will establish construction, design, and installation requirements for gravelless material and drip dispersal systems.

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

Statutory Authority: §§ 32.1-12 and 32.1-164 of the Code of Virginia.

Public Comment Deadline: February 26, 2014.

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. R14-3665; Filed January 2, 2014, 3:45 p.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Final Regulation

Title of Regulation: **3VAC5-50. Retail Operations (amending 3VAC5-50-60).**

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

Effective Date: February 26, 2014.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

Summary:

This regulatory action amends the general procedures for mixed beverage restaurants by (i) prescribing the labeling, container size, and recordkeeping requirements for infusing, storing, and selling flavored distilled spirits and (ii) requiring compliance with all applicable state and federal food safety requirements.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

3VAC5-50-60. Procedures for mixed beverage licensees generally; mixed beverage restaurant licensees; sales of spirits in closed containers.

A. No mixed beverage restaurant or carrier licensee shall:

1. Prepare, other than frozen drinks, or sell any mixed beverage except pursuant to a patron's order and immediately preceding delivery to him.

2. Serve as one drink the entire contents of a container of spirits in its original container for on-premises consumption except as provided by subsections C, D, and E of this section.

3. Sell any mixed beverage to which alcohol has been added.

B. No mixed beverage restaurant licensee shall:

1. Allow to be kept upon the licensed premises any container of alcoholic beverages of a type authorized to be purchased under his license that does not bear the required mixed beverage stamp imprinted with his license number and purchase report number.

2. Use in the preparation of a mixed beverage any alcoholic beverage not purchased from the board or a wholesale wine licensee.

3. Fail to obliterate the mixed beverage stamp immediately when any container of spirits is emptied.

4. Allow any patron to possess more than two drinks of mixed beverages at any one time.

C. If a restaurant for which a mixed beverage restaurant license has been issued under § 4.1-210 of the Code of Virginia is located on the premises of a hotel or motel, whether the hotel or motel be under the same or different ownership, sales of mixed beverages, including sales of spirits packaged in original closed containers purchased from the board, as well as other alcoholic beverages, for consumption in bedrooms and private rooms of such hotel or motel, may be made by the licensee subject to the following conditions in addition to other applicable laws:

1. Spirits sold by the drink as mixed beverages or in original closed containers must have been purchased under the mixed beverage restaurant license upon purchase forms provided by the board;

2. Delivery of sales of mixed beverages and spirits in original closed containers shall be made only in the bedroom of the registered guest or to the sponsoring group in the private room of a scheduled function. This section shall not be construed to prohibit a licensee catering a scheduled private function from delivering mixed beverage drinks to guests in attendance at such function;

3. Receipts from the sale of mixed beverages and spirits sold in original closed containers, as well as other alcoholic beverages, shall be included in the gross receipts from sales of all such merchandise made by the licensee; and

4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

D. Carrier licensees may serve miniatures not in excess of two fluid ounces or 50 milliliters, in their original containers, for on-premises consumption.

E. A mixed beverage restaurant may serve as one drink the entire contents of a container of soju in its original container for on-premises consumption under the following conditions:

1. The container may be no larger than 375 milliliters.

2. Each container of soju served must be served for consumption by at least two patrons legally eligible to consume alcoholic beverages.

F. A mixed beverage restaurant licensee may infuse, store, and sell flavored distilled spirits under the following circumstances:

1. If infused in the original spirits container, the mixed beverage stamp must remain affixed to the bottle.

2. If infused in a container other than the original spirits container, the substitute container, which shall not exceed two liters in volume, will be labeled with the following information:

a. Date of infusion;

b. Brand of spirits; and

c. Amount of spirits used.

3. Accurate records must be kept by the mixed beverage licensee as to the spirits used in any spirits infusion process.

4. Licensees infusing distilled spirits shall comply with all applicable state and federal food safety regulations.

VA.R. Doc. No. R12-2426; Filed January 2, 2014, 3:12 p.m.

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TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Fast-Track Regulation

EDITOR'S NOTE: Effective July 1, 2013, the authority for administration of the nutrient management certification program and responsibility for adopting regulations on nitrogen application rates was transferred from the Department of Conservation and Recreation to the Virginia Soil and Water Conservation Board pursuant to Chapters 593 and 658 of the 2013 Acts of Assembly.

Title of Regulation: **4VAC5-15. Nutrient Management Training and Certification Regulations (amending 4VAC5-15-10, 4VAC5-15-150).**

Statutory Authority: § 10.1-104.2:1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 26, 2014.

Effective Date: March 13, 2014.

Agency Contact: David C. Dowling, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Basis: Section 10.1-104.2:1 of the Code of Virginia requires the Virginia Soil and Water Conservation Board to adopt regulations that amend the application rates in the Virginia Nutrient Management Standards and Criteria (standards and criteria) by incorporating into such regulations or the documents incorporated by reference the recommended application rates for nitrogen in lawn fertilizer and lawn maintenance fertilizer and the recommended application rates for "slow or controlled release fertilizer" and "enhanced efficiency lawn fertilizer," as such terms are defined and adopted or proposed for adoption by the Association of American Plant Food Control Officials (AAPFCO), as described in the Virginia Department of Agriculture and Consumer Services' December 2011 "Report on the Use of Slowly Available Nitrogen in Lawn Fertilizer and Lawn Maintenance Fertilizer."

Purpose: Enactment clause 3 of Chapter 341 of the 2011 Acts of Assembly stated "[t]hat the Department of Agriculture and Consumer Services shall provide, no later than December 15, 2011, a report to the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources concerning the use of slowly available nitrogen in lawn fertilizer and lawn maintenance fertilizer. The report shall (i) conduct an assessment of the most effective means to encourage the use of slowly available nitrogen in lawn fertilizer and lawn maintenance fertilizer, (ii) determine the most appropriate percentages of slowly available nitrogen to be included in lawn fertilizer and lawn maintenance fertilizer, (iii) recommend the most appropriate effective date for any change, (iv) calculate the costs to the manufacturer and consumer, and (v) provide a review of any other issues related to the use of slowly available nitrogen in lawn fertilizer and lawn maintenance fertilizer. The Department shall consult with the Department of Conservation and Recreation and the Chesapeake Bay Commission and, at the Department's discretion, may convene a technical advisory committee of stakeholders concerning the development and content of the report."

In response to this legislative mandate, the Department of Agriculture and Consumer Services (VDACS) convened a technical advisory committee (TAC), which included, among others, the Department of Conservation and Recreation (DCR) and the Chesapeake Bay Commission. The TAC met three times during the summer of 2011 and VDACS issued a report to the General Assembly in December of 2011. The report on the use of slowly available nitrogen in lawn fertilizer and lawn maintenance fertilizer contained the following:

The recommended application rates for nitrogen in lawn fertilizer and lawn maintenance fertilizer are as follows:

No more than 0.7 pounds per 1,000 square feet of readily available nitrogen, as defined by AAPFCO, during any given 30-day period.

No more than 0.9 pounds per 1,000 square feet of total nitrogen on cool season grasses during any given 30-day period.

No more than 1.0 pound per 1,000 square feet of total nitrogen on warm season grasses during any given 30-day period.

The recommended application rates for "Slow or Controlled Release Fertilizer," and for "Enhanced Efficiency" lawn maintenance fertilizer, as defined and adopted or proposed for adoption by AAPFCO, are as follows:

No more than 2.5 pounds of nitrogen per 1,000 square feet per application, with a release rate of no more than 0.7 pounds of nitrogen per 1,000 square feet per 30 days.

The total annual application rate shall not exceed 80% of the nitrogen rates recommended for cool or warm season grasses in the Virginia Nutrient Management Standards and Criteria.

Finally, the TAC recommends that the target effective date for the implementation of the recommended application rates and amendments to the Code of Virginia be July 1, 2014.

Legislation passed by the 2012 General Assembly and signed by the Governor amended § 10.1-104.2:1 of the Code of Virginia to require that DCR incorporate the report's recommended applications rates in the standards and criteria documents incorporated by reference in 4VAC5-15 and utilize a fast-track regulatory process to adopt the change by July 1, 2014.

Modifications being made to the Nutrient Management Training and Certification Regulations and the Nutrient Management Standards and Criteria will protect the health, welfare, and safety of the citizens of the Commonwealth by improving water quality through the amendment of application rates for nitrogen in lawn fertilizers.

Rationale for Using Fast-Track Process: The proposed changes to the standards and criteria amend only one of the nine sections of the Nutrient Management Standards and Criteria. The changes made to the standards and criteria are expected to be noncontroversial, and the changes incorporate the recommendations made by the 2011 TAC convened by VDACS and mandated for incorporation by state law through a fast-track regulatory action in accordance with § 10.1-104.2:1 of the Code of Virginia.

Membership on the 2011 TAC, established by VDACS, included representatives from: (i) DCR; (ii) the Chesapeake Bay Commission; (iii) the Chesapeake Bay Foundation; (iv) Agrium Advanced Technologies; (v) Responsible Industry for a Sound Environment (RISE); (vi) Scotts Miracle-Gro; (vii) Southern States; (viii) University of Florida; (ix) Virginia Agribusiness Council; (x) Virginia Cooperative Extension; (xi) Virginia Crop Production Association; (xii) Virginia Farm Bureau; (xiii) Virginia Green Lawn Care; (xiv) Virginia Nursery and Landscape Association; (xv) Virginia Association of Soil and Water Conservation Districts; (xvi) Virginia Tech Crop and Soil Environmental Sciences; and (xvii) the Virginia Turfgrass Council. The TAC concluded its meetings in September 2011, and after that time, the Chesapeake Bay Commission, in conjunction with industry representatives, initiated further discussions that led to the recommendations contained in the report published in December 2011. Consequently, it is the agency's understanding that the recommendations have been shared with members of the TAC and with members of the General Assembly and that the changes proposed by DCR in this regulatory action address those recommendations.

This fast-track regulatory action amends the date references in 4VAC5-15-10 and 4VAC5-10-150 for the Virginia Nutrient Management Standards and Criteria document from October 2005 to July 2014, and amends the standards and criteria document, which is a document incorporated by reference in the regulation. The proposed amendments to the standards and criteria document only affect Section VI, "Turfgrass Nutrient Recommendations for Home Lawns, Office Parks, Public Lands and Other Similar Residential/Commercial Grounds." The amendments to this section incorporate the recommended fertilizer application rates contained in the December 2011 report and pertinent definitions from the Association of American Plant Food Control Officials.

Substance: The amendments to 4VAC5-15-15 (Definitions) and 4VAC5-15-150 (Required nutrient management plan procedures) change the reference to the current standards and criteria document that is incorporated by reference from October 2005 to July 2014. Section VI (Turfgrass Nutrient Recommendations for Home Lawns, Office Parks, Public Lands and Other Similar Residential/Commercial Grounds) is one of nine sections within the standards and criteria. Only changes to Section VI are being made, and no other sections within that document are being amended by this regulatory action. The amendments to Section VI address the recommendations contained in the 2011 report from the Virginia Department of Agriculture and Consumer Services in response to the legislative mandate contained in § 10.1-104.2:1 of the Code of Virginia.

The proposed amendments conform the standards and criteria to the requirements of § 10.1-104.2:1 of the Code of Virginia and the recommendations contained in the VDACS 2011 report, and they also ensure consistency with the labeling standards for slowly available nitrogen that are contained in § 3.2-3607 G of the Code of Virginia. The department recommends an effective date for the amended standards and criteria of July 1, 2014. This effective date is also consistent with § 3.2-3607 G of the Code of Virginia.

Issues: The amendments comport with the Code of Virginia to address a legislative mandate to incorporate into regulation the following: (i) recommended application rates for nitrogen

in lawn fertilizer and lawn maintenance fertilizer and (ii) recommended application rates for "slow or controlled release fertilizer" and "enhanced efficiency lawn fertilizer." There are no known disadvantages to the public or to the Commonwealth.

The amendments have been advanced in order to improve water quality in state waters across the Commonwealth through nutrient reductions. When the enacting legislation was introduced in 2012, the agency estimated that the change in recommended application rates could amount to as much as 164,000 pounds of nitrogen reductions if applied to all pervious developed areas (approximately1.2 million acres). Controls on fertilizer use and the resulting nitrogen reductions advanced through this regulatory action may result in fewer post-construction controls required of the homebuilding industry and will advance the economic gains associated with recreational and commercial use of Virginia's aquatic resources.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 796 of the 2012 Acts of Assembly, the Department of Conservation and Recreation (DCR) proposes to incorporate in its regulations new, and lower than current, recommended fertilizer application rates for nitrogen for new and existing lawns.

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

Estimated Economic Impact. Pursuant to Chapter 796 of the 2012 Acts of Assembly, the proposed changes will incorporate in the regulations new, and lower than current, recommended fertilizer application rates for new and existing lawns. Chapter 341 of the 2011 Virginia Acts of Assembly directed the Virginia Department of Agriculture and Consumer Services (VDACS), in consultation with DCR and the Chesapeake Bay Commission, to prepare a report concerning, among other things, the recommended fertilizer application rates for lawns. In response, VDACS assembled a technical advisory committee that recommended the application rates below.

For lawn fertilizer and lawn maintenance fertilizer:

No more than 0.7 pounds per 1,000 square feet of readily available nitrogen, as defined by AAPFCO, during any given 30 day period.

No more than 0.9 pounds per 1,000 square feet of total nitrogen on cool season grasses during any given 30 day period.

No more than 1.0 pound per 1,000 square feet of total nitrogen on warm season grasses during any given 30 day period.

For "Slow or Controlled Release Fertilizer," and for "Enhanced Efficiency" lawn maintenance fertilizer:

No more than 2.5 pounds of nitrogen per 1,000 square feet per application, with a release rate of no more than 0.7 pounds of nitrogen per 1,000 square feet per 30 days.

The total annual application rate shall not exceed 80% of the nitrogen rates recommended for cool or warm season grasses in the Virginia Nutrient Management Standards and Criteria.

Following the technical advisory committee's recommendations, Chapter 796 of the 2012 Acts of Assembly directed DCR to adopt these recommended fertilizer application rates in its regulations. In response, DCR updated its 2014 version of the document titled "Virginia Nutrient Management Standards and Criteria" to reflect these recommendations, and now proposes to make the same update to fertilizer application rates in its regulations pursuant to the new 2014 version.

The proposed recommended application rates are approximately 30% lower than the current rates. DCR estimated in 2012 that the change in the recommended application rates could amount to as much as 164,000 pounds of nitrogen reductions over 1.2 million acres of the area they are applied to. While this estimate continues to be the most current data available, there appears to be significant uncertainty associated with it. These rates are recommendations; they are not and will not be enforced. Their implementation will be accomplished primarily through education and training efforts directed to homeowners, golf courses, lawn maintenance businesses, etc. An accurate estimate would require compliance with the current rates, as well as the proposed rates, both of which are not known. Nonetheless, a general reduction in the quantity of fertilizers applied to lawns would have certain effects on property owners with lawns, manufacturers, DCR, and the environment.

Property owners with lawns could be private individuals, small or large for-profit corporations, non-profit organizations, or local, state or even federal government entities. However, DCR does not have an accurate inventory of entities that may be affected by these proposed application rates. If property owners reduce their fertilizer application rates, they would purchase less and realize some monetary savings. At the present time, home lawn fertilizer costs approximately $1 per pound. At this price, a 164,000 pounds reduction in fertilizer consumption would produce $164,000 in savings to property owners. In addition, nitrogen reductions in the Commonwealth's water bodies may result in fewer post-construction controls to reduce runoffs. These controls are known as best management practices and may include but are not limited to rainwater harvesting, vegetated roofs, bioretention, filtering practices, extended detention ponds, etc.

A non-negligible decrease in the quantity of fertilizers applied would also reduce the revenues of manufacturers. However, manufacturers are unlikely to experience any other significant

compliance costs because the statute explicitly prohibits a ban on the sale of fertilizers whose labels are inconsistent with the new proposed rates at the time the proposed regulations go into effect. The proposed rates and their effective dates are already publicly available and manufacturers are likely to be in compliance by the time they become effective in July 2014.

The effects of the new application rates on DCR are not expected to be significant. The main effect on DCR is likely to be in terms of the need to provide training to educate affected entities about the changes in the recommended rates. However, the proposed regulations do not have any provisions requiring additional training. DCR estimates that changing the curriculum of the existing training would be sufficient enough to address the education aspect of the proposed rate changes. Thus, the administrative costs for DCR are expected to be minimal.

A significant reduction in the quantity of fertilizers applied to lawns would have certain positive environmental impacts. When properly applied, nutrients in fertilizers help plants grow and look beautiful. Thus, they are extensively used by property owners to maintain their landscape. However, lawn fertilizers sometimes run off into surface streams and other water bodies especially if they land on sidewalks, driveways, or gutters. Once they reach water bodies, they fuel growth of algae which, upon decomposition, reduces oxygen levels in the water and harms fish and other organisms. Nutrients in fertilizers may also leach into groundwater and contaminate it. The amount of runoff and leaching are affected by many factors including the slope of the area, the characteristics of the soil, vegetation, and the amount and timing of rainfall or watering. Finally, excess fertilizer application can injure the very landscape plants they are intended to help. In short, while proper application of fertilizers helps maintain landscape beauty and quality, misapplication can pollute lakes, rivers, bays, and even groundwater.

As the quality of water improves, the beneficial uses of water also improve. Thus, improved freshwater, marine, and estuarine quality certainly has an economic value. The value may stem from the improved commercial and recreational use of water resources such as fishing and duck hunting; improved primary and secondary contact recreational uses such as swimming and boating; improved tourism activity such as an increase in the number of visitors from other states; improved aquatic and wild life support such as providing a suitable habitat for certain species; improved water quality for potable and non-potable uses such as drinking and agricultural irrigation; a reduced need for cleaning efforts such as reductions in TMDL implementation costs for the Chesapeake Bay; etc.

Businesses and Entities Affected. These regulations apply to the property owners with lawns which could be private individuals, small or large for-profit corporations, non-profit organizations, or local, state or even federal government entities. Improved water quality could benefit all members of the public.

Localities Particularly Affected. While recommended application rates are uniform across the Commonwealth, reduced fertilizer runoff would benefit downstream localities more than it would upstream localities.

Projected Impact on Employment. The recommended reduction in the fertilizer application rates may reduce demand for labor by manufacturers as less of it may be produced in the Commonwealth. On the other hand, improvements in water quality would likely add to the demand for labor due to increased uses stimulating economic activity.

Effects on the Use and Value of Private Property. Applying the proper quantity of fertilizer is expected to benefit lawns as well as the quality of water bodies. A positive effect on the use and value of private properties in proximity of the improved lawns and improved water bodies may be expected.

Small Businesses: Costs and Other Effects. Most of the manufacturers of lawn fertilizers are believed to be large businesses. Thus, no significant cost on small businesses is expected. However, increased uses of water resources may benefit small businesses in proximity to these resources.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The new recommended lawn fertilizer rates are not expected to have an adverse impact on small businesses.

Real Estate Development Costs. Nitrogen reductions in the Commonwealth's water bodies may lead to fewer post-construction controls known as best management practices and may reduce real estate development costs.

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

of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

The amendment incorporates by reference the July 2014 revision of the Department of Conservation and Recreation's Virginia Nutrient Management Standards and Criteria (standards). The 2014 update to the standards incorporate recommended fertilizer application rates for nitrogen for new and existing lawns.

4VAC5-15-10. Definitions.

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

"Application rate" or "nutrient rate" means the quantity of major nutrients, nitrogen as N, phosphorus as P_2O_5, and potassium as K_2O on a per acre basis to supply crop or plant nutrient needs, and to achieve realistic expected crop yields.

"Banding" or "sideband" means the placement of fertilizer approximately two inches to the side and two inches below the seed.

"Best management practice" means a conservation or pollution control practice that manages soil, nutrient losses, or other potential pollutant sources to minimize pollution of water resources, such as split applications of nitrogen, or use of cereal grain cover crops to trap available nitrogen and reduce soil erosion.

"Biosolids" means a sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains acceptable levels of pollutants, such that it is acceptable for use for land application, marketing, or distribution in accordance with 12VAC5-585, Biosolids Use Regulations of the Board of Health.

"Broadcast" means the uniform application of a material over a field.

"Calibration" means the systematic determination of the operational parameters, such as speed and quantity delivered, of application equipment.

"Cereal crop" or "small grain" means barley, rye, triticale, or wheat.

"Certified nutrient management planner" or "nutrient management planner" or "planner" means a person who holds a current Virginia nutrient management certificate of competence.

"Cool season grass" means grass species of temperate zone origin which exhibit the greatest rates of dry matter production in the day/night temperature range of 60°/50°F to 80°/70°F. Examples of cool season grasses include fescue, bluegrass, and ryegrass.

"Commonwealth" means the Commonwealth of Virginia.

"Composted organic nutrient source" means the relatively stable, humus-like product resulting from the controlled aerobic, thermophilic biological decomposition of organic material that bears little physical resemblance to the raw materials from which it originated.

"Cover crop" means a crop including, but not limited to, cereal grains, which is planted following the harvest of the preceding crop for the purpose of:

1. Seasonal protection of soil, or

2. Assimilation of residual soil nitrogen left from a previous crop or from continued mineralization of nitrogen.

"Crop" means cultivated plants or agricultural produce such as grain, silage, forages, oilseeds, vegetables, fruit, nursery stock, or turfgrass.

"Cropland" means land used for the production of grain, oilseeds, silage, industrial crops, and any other category of crop not defined as specialty crop, hay, or pasture.

"Crop nutrient needs" means the primary nutrient requirements of a crop determined as pounds per acre or pounds per 1,000 square feet of nitrogen as N, phosphorus as P_2O_5, and potassium as K_2O required to support crop growth for production of an expected crop yield based upon soil analysis results as specified in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014, or Virginia Commercial Vegetable Production Recommendations for 2005.

"Crop nutrient removal" means the amount of nutrients per acre expected to be taken up by a plant and removed from the site in the harvested portion at the expected yield level, generally expressed as tons per acre or bushels per acre, at rates specified in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014.

"Crop rotation" means one complete sequence of one or more crops grown in succession that may assist in minimizing disease, insects and weeds. For permanent hay, pasture, or a single crop planted continuously, the crop rotation is defined as the life of the nutrient management plan.

"Department" means the Department of Conservation and Recreation.

"Double crop" means the production and harvesting of two crops in succession within a consecutive 12-month growing season.

"Dry manure" or "semisolid manure" means manure containing less than 85.5% moisture.

"Environmentally sensitive site" means any field which is particularly susceptible to nutrient loss to groundwater or surface water since it contains or drains to areas which contain sinkholes, or where at least 33% of the area in a

specific field contains one or any combination of the following features:

1. Soils with high potential for leaching based on soil texture or excessive drainage;

2. Shallow soils less than 41 inches deep likely to be located over fractured or limestone bedrock;

3. Subsurface tile drains;

4. Soils with high potential for subsurface lateral flow based on soil texture and poor drainage;

5. Floodplains as identified by soils prone to frequent flooding in county soil surveys; or

6. Lands with slopes greater than 15%.

"Expected crop yield" means a realistic crop yield for a given farm field determined by using yield records or soil productivity information.

"Fertilizer" means any organic or inorganic material of natural or synthetic origin that is added to a soil to supply certain nutrients essential to plant growth.

"Field" means a unit of contiguous nonwooded land generally used for crop production that is separated by permanent boundaries, such as fences, permanent waterways, woodlands, croplines not subject to change because of farming practices, and other similar features or as determined by the United States Department of Agriculture Farm Service Agency.

"Field identification number" means a number used by a farmer (or the United States Department of Agriculture Farm Service Agency) to distinguish or identify the location of a field on a farm.

"Grid soil sampling" means a process whereby farm fields or other areas are subdivided into smaller areas or squares for the purpose of obtaining more detailed soil analysis results.

"Groundwater" means any water beneath the land surface in a water saturated layer of soil or rock.

"Hay" means a grass, legume, or other plants, such as clover or alfalfa, which is cut and dried for feed, bedding, or mulch.

"Hydrologic soil group" means a classification of soils into one of four groups, A, B, C, or D, according to their hydrologic properties, ranging from low runoff potential (high infiltration potential) in group A to high runoff potential (low infiltration potential) in group D.

"Incorporation" means the process whereby materials are mixed into soils and not exposed on the soil surface, such as would be achieved by disking one time to a depth of six inches.

"Industrial waste" means liquid or other waste resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

"Irrigation" means the application of water to land to assist in crop growth.

"Irrigation scheduling" means the time and amount of irrigation water to be applied to an area for optimum crop growth and to minimize leaching and runoff.

"Leaching" means the movement of soluble material, such as nitrate, in solution through the soil profile by means of percolation.

"Legume" means a plant capable of fixing nitrogen from the atmosphere such as peas, soybeans, peanuts, clovers, and alfalfas.

"Legume nitrogen credit" means the amount of nitrogen a legume is expected to supply to a succeeding crop.

"Liming" means the application of materials containing the carbonates, oxides, or hydroxides of calcium or magnesium in a condition and in a quantity suitable for neutralizing soil acidity.

"Liquid manure" means manure containing at least 85.5% moisture or which can be applied through subsurface injection or surface application with liquid application equipment.

"Livestock" means domesticated animals such as cattle, chickens, turkeys, hogs, and horses raised for home use or for profit.

"Manure" or "animal waste" means animal fecal and urinary excretions and waste by products which may include spilled feed, bedding litter, soil, lactase, process wastewater, and runoff water from animal confinement areas.

"Mehlich I" means the North Carolina Double-Acid soil analysis procedure to determine extractable levels of certain nutrients in soils as described in Methods of Soil Analysis, Part 3, Chemical Methods, 1996.

"Mehlich III" or "Mehlich 3" means a modified version of the Mehlich I method used to determine extractable levels of certain nutrients in soils as described in Methods of Soil Analysis, Part 3, Chemical Methods, 1996 and in Reference Soil and Media Diagnostic Procedures for the Southern Region of the United States, Southern Cooperative Series Bulletin No. 374.

"Micronutrient" means a nutrient necessary only in extremely small amounts for plant growth.

"Mineralization" means the process when plant unavailable organic forms of nutrients are converted to a plant available inorganic state as a result of soil microbial decomposition.

"No-till" means the soil is left undisturbed from the time of harvest or the killing of the preceding crop or cover crop until and including the time of planting of the current crop except for strips up to 1/3 of the row width that are disturbed by coulters or disk openers during the planting operation.

"NRCS" means the United States Department of Agriculture, Natural Resource Conservation Service, formerly the Soil Conservation Service (SCS).

"Nutrient" means an element or compound essential as raw materials for plant growth and development such as carbon, nitrogen, and phosphorus.

"Nutrient content" means the percentage of any primary nutrients such as nitrogen as N, phosphorus as P_2O_5, and potassium as K_2O contained in any type or source of plant nutrients.

"Nutrient management plan" or "plan" means a plan prepared by a Virginia certified nutrient management planner to manage the amount, placement, timing, and application of manure, fertilizer, biosolids, or other materials containing plant nutrients in order to reduce nutrient loss to the environment and to produce crops.

"Nutrient Management Training and Certification Fund" means the fund established by § 10.1-104.2 of the Code of Virginia to support the department's Nutrient Management Training and Certification Program.

"Organic nutrient source" or "organic source" means manure, biosolids, sludge, industrial waste, green manure, compost, or other plant or animal residues which contain plant nutrients.

"Organic residuals" means nutrients released over time from manure, biosolids, industrial wastes, legumes, or other organic sources of nutrients.

"Pasture" means land which supports the grazing of animals for forages.

"Person" means an individual, corporation, partnership, association, a governmental body and its subordinate units, a municipal corporation or any other legal entity.

"Phosphorus index" means the Virginia Phosphorus Index Version 2.0 Technical Guide, revised October 2005.

"Phosphorus saturation level" means the ratio of phosphorus to aluminum plus iron (P/(Al+Fe)) in a soil using the Acid Ammonium Oxalate in Darkness method described in Methods of Soil Analysis, Part 3, Chemical Methods, 1996 (pp. 649-650) or estimated with another extraction procedure correlated to the Acid Ammonium Oxalate in Darkness method and approved by the department.

"Plant available nutrients" means the portion of nutrients contained in nutrient sources which is expected to be available for potential use by plants during the growing season or the crop rotation.

"Pre-sidedress nitrate test" or "PSNT" means a procedure used to determine soil nitrate-nitrogen levels at a specific time during a corn crop growing season.

"Primary nutrients" means nitrogen as N, phosphorus as P_2O_5, and potassium as K_2O.

"Residual nutrients" means the level of nitrogen, phosphorus, and potassium remaining or available in the soil from previously applied nutrient sources, or unharvested plants or plant parts, or naturally occurring nutrient levels in the soil.

"Runoff" means that part of precipitation, snow melt, or irrigation water that runs off the land into streams or other surface water which can carry pollutants from the land.

"RUSLE2" means the USDA—NRCS Revised Universal Soil Loss Equation Version 2 software package.

"Secondary nutrient" means calcium, magnesium, or sulfur.

"Sewage sludge" or "sludge" means any solid, semisolid, or liquid residues which contain materials removed from municipal or domestic wastewater during treatment including primary and secondary residues. Other residuals or solid wastes consisting of materials collected and removed by sewage treatment, septage, and portable toilet wastes are also included in this definition. Liquid sludge contains less than 15% dry residue by weight or can be applied through subsurface injection or surface application with liquid application equipment. Dewatered sludge contains 15% or more dry residue by weight.

"Shall" means a mandatory requirement.

"Should" means a recommendation.

"Slope" means the degree of deviation of a surface from horizontal, measured as a percentage, as a numerical ratio, or in degrees.

"Sidedress" means the placement of fertilizer beside or between the rows of a crop after crop emergence.

"Sinkhole" means a depression in the earth's surface caused by dissolving of underlying limestone, salt, or gypsum having drainage patterns through underground channels.

"Slowly available nitrogen" means nitrogen sources that have delayed plant availability involving compounds which dissolve slowly, materials that must be microbially decomposed, or soluble compounds coated with substances highly impermeable to water such as polymer coated products, methylene urea, isobutylidene diurea (IBDU), urea formaldehyde based (UF), sulfur coated urea, and natural organics.

"Soil erosion" or "erosion" or "soil loss" means the wearing away of the land surface by water, wind, or waves.

"Soil management group" means a grouping of soils based on their similarity in profile characteristics which affect crop production and require specific soil and crop management practices.

"Soil pH level" means the negative logarithm of the hydrogen-ion activity of a soil which measures the relative acidity or alkalinity of the soil. The pH level affects the availability and plant utilization of nutrients.

"Soil productivity group" means a grouping of soils based upon expected yield levels for a given crop type.

"Soil series" means a classification of a specific soil type by name based on the morphological, chemical and physical properties of the soil.

"Soil survey" means a published or electronically available document developed by a governmental entity using the

standards and protocols of the National Cooperative Soil Survey that includes detailed descriptions and classifications of soils, mapping of various soil series, and the interpretation of soils according to their adaptability for various crops and trees.

"Specialty crop" means vegetables, tree crops, perennial vine crops, ornamentals, horticultural crops, and other similar crops.

"Split application" means utilizing a sequence of two or more nutrient applications, separated by approximately three weeks or more, to a single crop in order to improve nutrient uptake efficiency.

"Surface water" means all water whose surface is exposed to the atmosphere.

"Tilled" means soil is disturbed between the time of harvest of the preceding crop through the time of planting of the current crop in that greater than 1/3 of the row width is disturbed by tillage implements such as moldboard plows, chisel plows, subsoilers, disks, field cultivators, roto-tillers, coulters or disk openers.

"Tillering" ~~is~~ means the formation of lateral shoots from the ~~auxillary~~ axillary buds of small grains and grasses.

"Tissue test" means an analysis of crop tissue for the percentage of nitrogen at key growth stages, and used as an intensive nutrient management technique with small grain crops.

"Topdress" means broadcast applications of fertilizer on crops such as small grains or forage after crop emergence has occurred.

"Trap crop" means a timely planted cereal crop for the purposes of capturing residual soil nitrogen and nitrogen that is released during the decomposition of manure or biosolids in order to manage limited manure or sewage sludge storage availability.

"Turfgrass" means selected grass species planted or sodded and managed for such uses as home lawns, golf courses, office parks and rights-of-way.

"Volatilization" means a process by which nitrogen is lost to the atmosphere as ammonia gas.

"Warm season grass" means a grass species of tropical origin that exhibits the highest rate of dry matter production in the day/night temperature range of 90°/79°F at a minimum to a maximum of 97°/88°F. Examples of warm season grasses include zoysia and bermuda grasses.

"Water insoluble nitrogen" or "WIN" means the amount of a type of slowly available nitrogen listed on fertilizer bags and reported as a percentage.

"Watershed" means a drainage area or basin in which all land and water areas drain or flow toward a central collector such as a stream, river, or lake at a lower elevation.

"Watershed code" means the letter and number used by the department to identify a watershed or hydrologic unit area.

"Zadoks' growth stage" means the numerical scale ranging from 0-93 which assigns values to small grain growth stages, e.g. Growth Stage 30 is just prior to the stem elongation phase in wheat growth.

4VAC5-15-150. Required nutrient management plan procedures.

A. Nutrient application.

1. A certified nutrient management planner shall include, in each plan, nutrient application practices for each field in the plan. The nutrient application rates shall be calculated for nitrogen (N), phosphate (P_2O_5), and potash (K_2O). Individual field recommendations shall be made after considering nutrients contained in fertilizers, manure, biosolids, industrial wastes, legumes in the crop rotation, crop residues, residual nutrients, and all other sources of nutrients. Individual fields may be grouped together if similar soil productivity levels, soil fertility levels, and environmentally sensitive site features exist.

2. Nutrient application rates.

a. Determination of crop nutrient needs shall be consistent with tables and procedures contained in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014 and the Commercial Vegetable Production Recommendations, 2005 (Virginia Cooperative Extension Publication 456-420), and shall be based on soil test results for P_2O_5 and K_2O.

b. Nitrogen applications rates in nutrient management plans shall not exceed crop nutrient needs in subdivision 2 a of this subsection.

c. Phosphorus application rates shall be managed to minimize adverse water quality impacts consistent with subdivisions 2 c (1) through (5) of this subsection.

(1) Phosphorus applications from inorganic nutrient sources shall not exceed crop nutrient needs over the crop rotation based on a soil test.

(2) Phosphorus applications shall not be included in nutrient management plans developed after December 31, 2005, for soils exceeding 65% phosphorus saturation levels as listed in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014, regardless of the outcome of other procedures specified in this subsection except as allowed in subdivision 2 c (4) of this subsection.

(3) Whenever possible, phosphorus applications from organic nutrient sources should not exceed crop needs based on a soil test over the duration of the crop rotation. If this is not possible, maximum phosphorus application rates and phosphorus control practices contained in nutrient management plans shall be consistent with the phosphorus management provisions contained in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014 except as allowed in subdivision 2 c (4) of this subsection.

(4) Fields controlled by existing operations that receive phosphorus applications only from on-farm or on-site generated liquid dairy manure, liquid swine manure, or liquid sewage sludge shall be limited to a maximum of crop removal amounts of applied phosphorus until December 31, 2010, if the field exceeds 65% phosphorus saturation levels or has a phosphorus index rating that exceeds 100. New operations that begin production after December 31, 2005, or operations that expand after December 31, 2005, by increasing the total phosphorus generated in liquid dairy manure, liquid swine manure or liquid sewage sludge by more than 10% shall not be considered existing operations.

(5) A single phosphorus application may be recommended to address multiple crops in the crop rotation identified within the timeframe covered by the nutrient management plan consistent with 4VAC5-15-150 D 1 if the single application does not exceed the sum of the appropriate application rates for individual crops as determined by subdivisions 2 c (1) through (3) of this subsection.

d. Recommended application rates for secondary nutrients and micronutrients should be at agronomically or economically justifiable levels for expected crop production. Potassium applications sufficient to meet crop nutrient needs shall be included in nutrient management plans for all fields consistent with recommendations contained in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014.

e. Expected crop yield shall be determined from any of the following methods on a given field:

(1) Soil productivity group expected crop yields based on and consistent with soil productivity information contained in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014;

(2) The farmer's past experience with crop yields in specific fields may be used to make reasonable adjustments to expected crop yields in subdivision 2 e (1) of this subsection in lieu of verifiable yield records provided the upward adjustments impact no more than 20% of the acreage of any crop on a particular farm; or

(3) Verifiable past crop yields are utilized to determined expected crop yield. The calculation of expected crop yield shall be an average of the three highest yielding years taken from the last five years the particular crop was grown in the specific field.

f. Representative soil analysis results for fields shall be determined by using standard soil sampling and analysis methods according to Methods of Soil Analysis, Part 3, Chemical Methods, 1996 utilizing the Mehlich I extraction procedure for phosphorus or other methods and laboratories approved by the department and correlated to Mehlich I and utilizing correlation procedures contained in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014. Soil analysis results shall be dated no more than three years prior to the beginning date of the nutrient management plan. A single composite soil sample should represent an area up to approximately 20 acres. Fields such as those common to strip cropping may be combined when soils, previous cropping history, and soil fertility are similar. Representative soil sample cores shall be obtained from the soil surface to a depth of four inches (0-4") for fields that have not been tilled within the past three years, and from the soil surface to a depth of six inches (0-6") for fields which are tilled or have been tilled within the past three years. Soil sampling of fields based on subfield grids or management zones may be utilized.

g. For existing operations, the most recent organic nutrient source analysis results or an average of past nutrient analysis results for the specific operation within the last three-year period shall be used to determine the nutrient content of organic nutrient sources. Manure analyses shall include percent moisture, total nitrogen or total Kjeldahl nitrogen, ammonium nitrogen, total phosphorus, and total potassium determined using laboratory methods consistent with Recommended Methods of Manure Analysis, publication A3769, University of Wisconsin, 2003 or other methods approved by the department. For plans on new animal waste facilities, average analyses published in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014, should be utilized unless proposed manure storage and treatment conditions warrant the use of alternative data. Plant available nutrient content shall be determined using the mineralization rates and availability coefficients found in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014, for different forms and sources of organic nutrients. Mineralization of organic nutrients from previous applications shall be accounted for in the plan.

h. The expected nitrogen contributions from legumes shall be credited when determining nutrient application rates at levels listed in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014.

3. Soil pH influences nutrient availability and crop nutrient utilization and should be adjusted to the level suited for the crop. Nutrient management plans shall contain lime recommendations to adjust soil pH to a level within the appropriate agronomic range for the existing crop or crop(s) to be grown. Recommendations shall address lime application if soil pH is below the optimal range. Nutrient management planners shall not recommend the application of lime, lime-amended materials, or nutrient sources that are expected to raise the soil pH to a level that exceeds the appropriate agronomic range for the growing crop or

crop(s) to be grown based on recommendations contained in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014.

4. Nutrient application timing.

a. Timing recommendations for nutrient sources containing nitrogen shall be as close to plant nutrient uptake periods as reasonably possible. A certified nutrient management planner shall utilize procedures contained in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014, to determine the timing of nutrient applications. To reduce the potential for nutrient leaching or runoff, a certified nutrient management planner shall recommend applications of nitrogen-containing materials only to sites where an actively growing crop is in place at the time of application or where a timely planted crop will be established within 30 days of the planned nutrient application, except as specified in subdivisions 4 b through e of this subsection. If such nutrient applications are made to fall-seeded crops such as small grain, the crop planted shall be capable of germination and significant growth before the onset of winter so the crop is able to take up the available applied nitrogen.

b. Organic nutrient source applications may be applied at differing times than specified in subdivision 4 a of this subsection in order to manage storage constraints in accordance with the following conditions:

(1) Applications of organic nutrient sources shall be within 60 days of planting a spring seeded crop to sites that are not environmentally sensitive sites as identified in 4VAC5-15-10 or the Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014, except as specified in subdivision 4 b (2) of this subsection. Such nutrient applications shall not exceed allowable application rates of the spring seeded crop;

(2) Applications shall be within 90 days of planting a spring seeded crop to sites that meet all of the following requirements:

(a) Are not environmentally sensitive sites as identified in 4VAC5-15-10 or the Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014;

(b) Have slopes of less than 7.0% throughout the application area unless: (i) at least 60% uniformly distributed crop residue cover exists following application or (ii) the application and any associated tillage is in conformance with an existing and implemented soil conservation plan meeting NRCS requirements for the site; and

(c) The organic sources being applied are one of the following: semi-solid beef manure, semi-solid dairy manure with sawdust bedding or straw bedding, dewatered anaerobically digested sewage sludge, or dewatered lime stabilized sewage sludge. Such nutrient applications shall not exceed allowable application rates of the spring planted crop;

(3) Applications of organic nutrient sources may occur prior to the times specified in subdivisions 4 b (1) and (2) of this subsection on:

(a) Sites that are not environmentally sensitive sites if all of the following requirements are met: (i) a trap crop exists that has reached a Zadoks growth stage of 23 or greater having a uniform stand throughout the site area of at least 20 plants per square foot; (ii) the trap crop shall be allowed to continue growing on the entire site until within two weeks of the spring crop planting date; (iii) all such nitrogen applications of organic nutrient sources to trap crops shall not exceed the crop nutrient needs of the upcoming spring planted crop subtracting at least 30 pounds per acre of nitrogen to be reserved for use as a banded starter fertilizer at the time of spring planting; and (iv) the rate of organic nutrient source applied does not smother the crop.

(b) Environmentally sensitive sites as identified in 4VAC5-15-10 or the Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014, in addition to those criteria outlined in subdivision 4 b (3) (a) of this subsection, such applications to a trap crop must be within 60 days of planting a spring planted crop.

c. The nutrient timing requirements of subdivisions 4 a and b of this subsection for application of sewage sludge to nonenvironmentally sensitive sites in nutrient management plans shall not be effective until January 1, 2009. The delayed implementation time is provided to allow for the development of adequate winter storage capacity, landfilling, or alternative uses. All applications of sewage sludge to environmentally sensitive sites in nutrient management plans will fully comply with the requirements of subdivisions 4 a and b of this subsection by January 11, 2006.

d. Composted organic nutrient sources having a final carbon to nitrogen ratio of 20:1 or greater are exempt from requirements of subdivisions 4 a and b of this subsection if analyzed for carbon to nitrogen ratio at the conclusion of the composting process and results are obtained prior to land application. The planner shall recommend soil nitrate testing to determine nitrogen application rates during the growing season following the application of composted organic nutrient sources.

e. The nutrient management planner shall recommend split application of inorganic nitrogen fertilizers as starter or broadcast and sidedressing or top dressing in row crops and small grains consistent with procedures contained in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014, on environmentally sensitive sites as identified in 4VAC5-15-10. Split applications of inorganic nitrogen fertilizers and irrigation scheduling shall be recommended for crops

to receive irrigation. The use of a pre-sidedress nitrogen test (PSNT) can help to determine nitrogen needs during the growing period. In lieu of split applications, the planner may recommend the application of the total nitrogen requirement for spring-planted row crops within one week prior to planting if at least 50% of the plant available nitrogen requirement of the crop is supplied with slowly available nitrogen sources.

f. Nutrient management plans shall include a statement indicating that applications of inorganic nutrient sources, liquid manure, liquid sewage sludge, or liquid industrial waste are not to occur on frozen or snow-covered ground. When ground is frozen, dry or semi-solid manures, dewatered sludges, or dewatered industrial wastes may only be applied if the field has: (i) slopes not greater than 6.0%; (ii) 60% uniform ground cover from crop residue or an existing actively growing crop such as a small grain or fescue with exposed plant height of three inches or more; (iii) a minimum of a 200-foot vegetated or adequate crop residue buffer between the application area and all surface water courses; and (iv) soils characterized by USDA as "well drained."

5. Application method for nutrients.

a. The application of nitrogen containing materials shall be managed to minimize runoff, leaching and volatilization losses.

b. Applications of liquid manures or sludges utilizing irrigation shall not be recommended to be applied at hydraulic rates above those contained in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014.

c. Plans shall not recommend liquid manure or sludge application rates utilizing nonirrigation liquid spreading equipment which exceed 14,000 gallons per acre (approximately one-half (0.5) inch) per application. The amount of liquid manure or sludge application in plans will not exceed the hydraulic loading capacity of the soil at the time of each application. If a subsequent pass across a field is necessary to achieve the desired application rate, the plan will allow for sufficient drying time.

d. Where possible, the planner should recommend that biosolids, industrial wastes and manures be incorporated or injected in the crop root zone in order to reduce losses of nitrogen to the atmosphere and to increase the plant available nitrogen to phosphorus ratio of these nutrient sources relative to crop nutrient needs. Lime stabilized biosolids should not be injected due to the creation of a localized band of high soil pH unless subsequent practices are utilized, such as disking, in order to adequately mix the soil.

e. The planner shall recommend setbacks around wells, springs, surface waters, sinkholes, and rock outcrops where manure, biosolids, or industrial waste should not be applied. Such setbacks recommended shall be consistent with criteria contained in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014, unless alternative setbacks or buffers are specified in regulations or permits pertaining to the site. For sites impacted by other regulations or permits, the planner shall include the setbacks and buffers specified in regulations promulgated under § 32.1-164.5 of the Code of Virginia for sewage sludge, § 62.1-44.17:1 of the Code of Virginia for animal waste, § 62.1-44.17:1.1 of the Code of Virginia for poultry waste, and Chapter 21 (§ 10.1-2100 et seq.) of Title 10.1 of the Code of Virginia for sites in Chesapeake Bay Preservation areas, and permits for industrial waste land application. The land area within setback and buffer areas shall be deducted from field acreage to determine usable field acreage for nutrient application in nutrient management plans.

B. Manure production and utilization.

1. The planner shall estimate the annual manure quantity produced on each farm utilizing tables and forms contained in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014, or from actual farm records of manure pumped or hauled during a representative 12-month period.

2. The nutrient management plan shall state the total amount of manure produced and the amount that can be used on the farm, utilizing the information and methods provided in the Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014. The plan shall discuss any excess manure and shall provide recommendations concerning options for the proper use of such excess manure.

C. Plans shall identify and address the protection from nutrient pollution of environmentally sensitive sites.

D. Plan maintenance and revisions.

1. A site-specific nutrient management plan developed in accordance with all requirements of these regulations, including specified crops or crop rotations, shall provide information on soil fertility and seasonal application of required nutrients for one to five years of crop production. Plans developed for a period of time greater than three years and up to five years shall be limited to sites in permanent pasture or continuous hay.

2. The plan shall state a need for immediate modification if (i) animal numbers are to increase above the level specified in the plan, (ii) animal types including intended market weights are to be changed, (iii) additional imported manure, biosolids, or industrial waste that was not identified in the existing plan is to be applied to fields under the control of the operator, or (iv) available land area for the utilization of manure decreases below the level necessary to utilize manure in the plan. The plan shall also state a need for modification prior to subsequent nutrient applications if cropping systems, rotations, or fields are

changed and phosphorus will be applied at levels greater than crop nutrient needs based on soil analysis as determined from procedures in Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014.

3. Adjustments to manure production and application should be made if there are increases in animal numbers or changes in how animal waste is stored or applied, or when there are changes in nutrient content of manure resulting from changing feed rations, animal types, or new sampling and analysis for nutrient content and application rate calculations.

4. Soil analysis shall be recommended for each field at least once every three years to determine the soil fertility and pH, and to update the nutrient management plan.

5. Manure analysis shall be recommended before field application until a baseline nutrient content is established for the specific manure type on the corresponding farm operation. After a baseline nutrient content is established, a manure analysis shall be recommended at least once every three years for dry or semisolid manures, and at least once every year for liquid manures.

6. Modified top dressing or sidedressing application rates of nitrogen may be recommended if a pre-sidedress nitrogen test (PSNT) administered during the growing season indicates different levels of nitrogen than planning time calculations if the use of the PSNT and interpretation of the test results are consistent with Virginia Nutrient Management Standards and Criteria, revised ~~October 2005~~ July 2014.

DOCUMENTS INCORPORATED BY REFERENCE (4VAC5-15)

~~Virginia Nutrient Management Standards and Criteria, Department of Conservation and Recreation, Division of Soil and Water Conservation, revised October 2005~~

Virginia Nutrient Management Standards and Criteria, revised July 2014, Department of Conservation and Recreation, Division of Nonpoint Pollution Prevention

Virginia Commercial Vegetable Production Recommendations for 2005, Virginia Cooperative Extension Service, Publication No. 456-420

Electronic Field Office Technical Guide, Natural Resources Conservation Service, United States Department of Agriculture

Methods of Soil Analysis, Part 3, Chemical Methods, 1996, Soil Science Society of America/American Society of Agronomy

Recommended Methods of Manure Analysis, publication A3769, University of Wisconsin, 2003

Tucker, M.R. 1992. Determination of phosphorus by Mehlich 3 extraction. pg. 6-8. In S.J. Donohue (Ed.) Reference Soil and Media Diagnostic Procedures for the Southern Region of the United States. Southern Cooperative Series Bulletin No. 374

Virginia Phosphorus Index Version 2.0 Technical Guide, Revised October 2005, Virginia Tech

VA.R. Doc. No. R14-3787; Filed December 28, 2013, 3:53 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Soil and Water Conservation Board is claiming an exemption from Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to enactment clause 3 of Chapters 593 and 658 of the 2013 Acts of Assembly, which transferred the nutrient management training and certification regulations from the Department of Conservation and Recreation to the board.

Title of Regulation: **4VAC50-85. Nutrient Management Training and Certification Regulations (adding 4VAC50-85-10 through 4VAC50-85-140).**

Statutory Authority: § 10.1-104.2 of the Code of Virginia.

Effective Date: February 26, 2014.

Agency Contact: David C. Dowling, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, email david.dowling@dcr.virginia.gov.

Summary:

Chapters 593 and 658 of the 2013 Acts of Assembly transferred the authority for the Nutrient Management Training and Certification Regulations from the Department of Conservation and Recreation to the Virginia Soil and Water Conservation Board effective July 1, 2013. This exempt action renumbers the regulations to accomplish this transfer (4VAC5-15-10 to 4VAC50-85) and updates cross-references.

CHAPTER ~~15~~ 85
NUTRIENT MANAGEMENT TRAINING AND CERTIFICATION REGULATIONS

~~4VAC5-15-10.~~ 4VAC50-85-10. Definitions.

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

"Application rate" or "nutrient rate" means the quantity of major nutrients, nitrogen as N, phosphorus as P_2O_5, and potassium as K_2O on a per acre basis to supply crop or plant nutrient needs, and to achieve realistic expected crop yields.

"Banding" or "sideband" means the placement of fertilizer approximately two inches to the side and two inches below the seed.

"Best management practice" means a conservation or pollution control practice that manages soil, nutrient losses, or other potential pollutant sources to minimize pollution of water resources, such as split applications of nitrogen, or use

of cereal grain cover crops to trap available nitrogen and reduce soil erosion.

"Biosolids" means a sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains acceptable levels of pollutants, such that it is acceptable for use for land application, marketing, or distribution in accordance with 12VAC5-585, Biosolids Use Regulations of the Board of Health.

"Broadcast" means the uniform application of a material over a field.

"Calibration" means the systematic determination of the operational parameters, such as speed and quantity delivered, of application equipment.

"Cereal crop" or "small grain" means barley, rye, triticale, or wheat.

"Certified nutrient management planner" or "nutrient management planner" or "planner" means a person who holds a current Virginia nutrient management certificate of competence.

"Cool season grass" means grass species of temperate zone origin which exhibit the greatest rates of dry matter production in the day/night temperature range of 60°/50°F to 80°/70°F. Examples of cool season grasses include fescue, bluegrass, and ryegrass.

"Commonwealth" means the Commonwealth of Virginia.

"Composted organic nutrient source" means the relatively stable, humus-like product resulting from the controlled aerobic, thermophilic biological decomposition of organic material that bears little physical resemblance to the raw materials from which it originated.

"Cover crop" means a crop including, but not limited to, cereal grains, which is planted following the harvest of the preceding crop for the purpose of:

1. Seasonal protection of soil, or

2. Assimilation of residual soil nitrogen left from a previous crop or from continued mineralization of nitrogen.

"Crop" means cultivated plants or agricultural produce such as grain, silage, forages, oilseeds, vegetables, fruit, nursery stock, or turfgrass.

"Cropland" means land used for the production of grain, oilseeds, silage, industrial crops, and any other category of crop not defined as specialty crop, hay, or pasture.

"Crop nutrient needs" means the primary nutrient requirements of a crop determined as pounds per acre or pounds per 1,000 square feet of nitrogen as N, phosphorus as P_2O_5, and potassium as K_2O required to support crop growth for production of an expected crop yield based upon soil analysis results as specified in Virginia Nutrient Management Standards and Criteria, revised October 2005, or Virginia Commercial Vegetable Production Recommendations for 2005.

"Crop nutrient removal" means the amount of nutrients per acre expected to be taken up by a plant and removed from the site in the harvested portion at the expected yield level, generally expressed as tons per acre or bushels per acre, at rates specified in Virginia Nutrient Management Standards and Criteria, revised October 2005.

"Crop rotation" means one complete sequence of one or more crops grown in succession that may assist in minimizing disease, insects and weeds. For permanent hay, pasture, or a single crop planted continuously, the crop rotation is defined as the life of the nutrient management plan.

"Department" means the Department of Conservation and Recreation.

"Double crop" means the production and harvesting of two crops in succession within a consecutive 12-month growing season.

"Dry manure" or "semisolid manure" means manure containing less than 85.5% moisture.

"Environmentally sensitive site" means any field which is particularly susceptible to nutrient loss to groundwater or surface water since it contains or drains to areas which contain sinkholes, or where at least 33% of the area in a specific field contains one or any combination of the following features:

1. Soils with high potential for leaching based on soil texture or excessive drainage;

2. Shallow soils less than 41 inches deep likely to be located over fractured or limestone bedrock;

3. Subsurface tile drains;

4. Soils with high potential for subsurface lateral flow based on soil texture and poor drainage;

5. Floodplains as identified by soils prone to frequent flooding in county soil surveys; or

6. Lands with slopes greater than 15%.

"Expected crop yield" means a realistic crop yield for a given farm field determined by using yield records or soil productivity information.

"Fertilizer" means any organic or inorganic material of natural or synthetic origin that is added to a soil to supply certain nutrients essential to plant growth.

"Field" means a unit of contiguous nonwooded land generally used for crop production that is separated by permanent boundaries, such as fences, permanent waterways, woodlands, croplines not subject to change because of farming practices, and other similar features or as determined by the United States Department of Agriculture Farm Service Agency.

"Field identification number" means a number used by a farmer (or the United States Department of Agriculture Farm

Service Agency) to distinguish or identify the location of a field on a farm.

"Grid soil sampling" means a process whereby farm fields or other areas are subdivided into smaller areas or squares for the purpose of obtaining more detailed soil analysis results.

"Groundwater" means any water beneath the land surface in a water saturated layer of soil or rock.

"Hay" means a grass, legume, or other plants, such as clover or alfalfa, which is cut and dried for feed, bedding, or mulch.

"Hydrologic soil group" means a classification of soils into one of four groups, A, B, C, or D, according to their hydrologic properties, ranging from low runoff potential (high infiltration potential) in group A to high runoff potential (low infiltration potential) in group D.

"Incorporation" means the process whereby materials are mixed into soils and not exposed on the soil surface, such as would be achieved by disking one time to a depth of six inches.

"Industrial waste" means liquid or other waste resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

"Irrigation" means the application of water to land to assist in crop growth.

"Irrigation scheduling" means the time and amount of irrigation water to be applied to an area for optimum crop growth and to minimize leaching and runoff.

"Leaching" means the movement of soluble material, such as nitrate, in solution through the soil profile by means of percolation.

"Legume" means a plant capable of fixing nitrogen from the atmosphere such as peas, soybeans, peanuts, clovers, and alfalfas.

"Legume nitrogen credit" means the amount of nitrogen a legume is expected to supply to a succeeding crop.

"Liming" means the application of materials containing the carbonates, oxides, or hydroxides of calcium or magnesium in a condition and in a quantity suitable for neutralizing soil acidity.

"Liquid manure" means manure containing at least 85.5% moisture or which can be applied through subsurface injection or surface application with liquid application equipment.

"Livestock" means domesticated animals such as cattle, chickens, turkeys, hogs, and horses raised for home use or for profit.

"Manure" or "animal waste" means animal fecal and urinary excretions and waste ~~by products~~ byproducts, which may include spilled feed, bedding litter, soil, lactase, process wastewater, and runoff water from animal confinement areas.

"Mehlich I" means the North Carolina Double-Acid soil analysis procedure to determine extractable levels of certain nutrients in soils as described in Methods of Soil Analysis, Part 3, Chemical Methods, 1996.

"Mehlich III" or "Mehlich 3" means a modified version of the Mehlich I method used to determine extractable levels of certain nutrients in soils as described in Methods of Soil Analysis, Part 3, Chemical Methods, 1996 and in Reference Soil and Media Diagnostic Procedures for the Southern Region of the United States, Southern Cooperative Series Bulletin No. 374.

"Micronutrient" means a nutrient necessary only in extremely small amounts for plant growth.

"Mineralization" means the process when plant unavailable organic forms of nutrients are converted to a plant available inorganic state as a result of soil microbial decomposition.

"No-till" means the soil is left undisturbed from the time of harvest or the killing of the preceding crop or cover crop until and including the time of planting of the current crop except for strips up to 1/3 of the row width that are disturbed by coulters or disk openers during the planting operation.

"NRCS" means the United States Department of Agriculture, Natural Resource Conservation Service, formerly the Soil Conservation Service (SCS).

"Nutrient" means an element or compound essential as raw materials for plant growth and development such as carbon, nitrogen, and phosphorus.

"Nutrient content" means the percentage of any primary nutrients such as nitrogen as N, phosphorus as P_2O_5, and potassium as K_2O contained in any type or source of plant nutrients.

"Nutrient management plan" or "plan" means a plan prepared by a Virginia certified nutrient management planner to manage the amount, placement, timing, and application of manure, fertilizer, biosolids, or other materials containing plant nutrients in order to reduce nutrient loss to the environment and to produce crops.

"Nutrient Management Training and Certification Fund" means the fund established by § 10.1-104.2 of the Code of Virginia to support the department's Nutrient Management Training and Certification Program.

"Organic nutrient source" or "organic source" means manure, biosolids, sludge, industrial waste, green manure, compost, or other plant or animal residues which contain plant nutrients.

"Organic residuals" means nutrients released over time from manure, biosolids, industrial wastes, legumes, or other organic sources of nutrients.

"Pasture" means land which supports the grazing of animals for forages.

"Person" means an individual, corporation, partnership, association, a governmental body and its subordinate units, a municipal corporation or any other legal entity.

"Phosphorus index" means the Virginia Phosphorus Index Version 2.0 Technical Guide, revised October 2005.

"Phosphorus saturation level" means the ratio of phosphorus to aluminum plus iron (P/(Al+Fe)) in a soil using the Acid Ammonium Oxalate in Darkness method described in Methods of Soil Analysis, Part 3, Chemical Methods, 1996 (pp. 649-650) or estimated with another extraction procedure correlated to the Acid Ammonium Oxalate in Darkness method and approved by the department.

"Plant available nutrients" means the portion of nutrients contained in nutrient sources which is expected to be available for potential use by plants during the growing season or the crop rotation.

"Pre-sidedress nitrate test" or "PSNT" means a procedure used to determine soil nitrate-nitrogen levels at a specific time during a corn crop growing season.

"Primary nutrients" means nitrogen as N, phosphorus as P_2O_5, and potassium as K_2O.

"Residual nutrients" means the level of nitrogen, phosphorus, and potassium remaining or available in the soil from previously applied nutrient sources, or unharvested plants or plant parts, or naturally occurring nutrient levels in the soil.

"Runoff" means that part of precipitation, snow melt, or irrigation water that runs off the land into streams or other surface water which can carry pollutants from the land.

"RUSLE2" means the USDA—NRCS Revised Universal Soil Loss Equation Version 2 software package.

"Secondary nutrient" means calcium, magnesium, or sulfur.

"Sewage sludge" or "sludge" means any solid, semisolid, or liquid residues which contain materials removed from municipal or domestic wastewater during treatment including primary and secondary residues. Other residuals or solid wastes consisting of materials collected and removed by sewage treatment, septage, and portable toilet wastes are also included in this definition. Liquid sludge contains less than 15% dry residue by weight or can be applied through subsurface injection or surface application with liquid application equipment. Dewatered sludge contains 15% or more dry residue by weight.

"Shall" means a mandatory requirement.

"Should" means a recommendation.

~~"Slope" means the degree of deviation of a surface from horizontal, measured as a percentage, as a numerical ratio, or in degrees.~~

"Sidedress" means the placement of fertilizer beside or between the rows of a crop after crop emergence.

"Sinkhole" means a depression in the earth's surface caused by dissolving of underlying limestone, salt, or gypsum having drainage patterns through underground channels.

"Slope" means the degree of deviation of a surface from horizontal, measured as a percentage, as a numerical ratio, or in degrees.

"Slowly available nitrogen" means nitrogen sources that have delayed plant availability involving compounds which dissolve slowly, materials that must be microbially decomposed, or soluble compounds coated with substances highly impermeable to water such as polymer coated products, methylene urea, isobutylidene diurea (IBDU), urea formaldehyde based (UF), sulfur coated urea, and natural organics.

"Soil erosion" or "erosion" or "soil loss" means the wearing away of the land surface by water, wind, or waves.

"Soil management group" means a grouping of soils based on their similarity in profile characteristics which affect crop production and require specific soil and crop management practices.

"Soil pH level" means the negative logarithm of the hydrogen-ion activity of a soil which measures the relative acidity or alkalinity of the soil. The pH level affects the availability and plant utilization of nutrients.

"Soil productivity group" means a grouping of soils based upon expected yield levels for a given crop type.

"Soil series" means a classification of a specific soil type by name based on the morphological, chemical and physical properties of the soil.

"Soil survey" means a published or electronically available document developed by a governmental entity using the standards and protocols of the National Cooperative Soil Survey that includes detailed descriptions and classifications of soils, mapping of various soil series, and the interpretation of soils according to their adaptability for various crops and trees.

"Specialty crop" means vegetables, tree crops, perennial vine crops, ornamentals, horticultural crops, and other similar crops.

"Split application" means utilizing a sequence of two or more nutrient applications, separated by approximately three weeks or more, to a single crop in order to improve nutrient uptake efficiency.

"Surface water" means all water whose surface is exposed to the atmosphere.

"Tilled" means soil is disturbed between the time of harvest of the preceding crop through the time of planting of the current crop in that greater than 1/3 of the row width is disturbed by tillage implements such as moldboard plows, chisel plows, subsoilers, disks, field cultivators, roto-tillers, coulters or disk openers.

"Tillering" ~~is~~ means the formation of lateral shoots from the ~~auxillary~~ axillary buds of small grains and grasses.

"Tissue test" means an analysis of crop tissue for the percentage of nitrogen at key growth stages, and used as an

intensive nutrient management technique with small grain crops.

"Topdress" means broadcast applications of fertilizer on crops such as small grains or forage after crop emergence has occurred.

"Trap crop" means a timely planted cereal crop for the purposes of capturing residual soil nitrogen and nitrogen that is released during the decomposition of manure or biosolids in order to manage limited manure or sewage sludge storage availability.

"Turfgrass" means selected grass species planted or sodded and managed for such uses as home lawns, golf courses, office parks and rights-of-way.

"Volatilization" means a process by which nitrogen is lost to the atmosphere as ammonia gas.

"Warm season grass" means a grass species of tropical origin that exhibits the highest rate of dry matter production in the day/night temperature range of 90°/79°F at a minimum to a maximum of 97°/88°F. Examples of warm season grasses include zoysia and bermuda grasses.

"Water insoluble nitrogen" or "WIN" means the amount of a type of slowly available nitrogen listed on fertilizer bags and reported as a percentage.

"Watershed" means a drainage area or basin in which all land and water areas drain or flow toward a central collector such as a stream, river, or lake at a lower elevation.

"Watershed code" means the letter and number used by the department to identify a watershed or hydrologic unit area.

"Zadoks' growth stage" means the numerical scale ranging from 0-93 which assigns values to small grain growth stages, e.g. Growth Stage 30 is just prior to the stem elongation phase in wheat growth.

~~4VAC5-15-20.~~ 4VAC50-85-20. Purpose.

A. This chapter governs the department's voluntary Nutrient Management Training and Certification Program for individuals who prepare nutrient management plans.

B. A nutrient management plan is prepared to indicate how primary nutrients are to be managed on farm fields and other land for crop production and in ways which protect groundwater and surface water from excessive nutrient enrichment. Plans contain operating procedures based on expected crop yield, existing nutrient levels in the soil, organic residuals, optimum timing and placement of nutrients, environmental resource protection, and agronomic practices such as liming, tillage, and crop rotation. The department shall certify the competence of individuals to prepare these plans and provide criteria relating to the development of nutrient management plans.

~~4VAC5-15-30.~~ 4VAC50-85-30. Certificates of competence.

A. This chapter applies to any individual seeking a certificate of competence as described in § 10.1-104.2 of the Code of Virginia.

B. Certificates of competence shall be issued by the department to certified nutrient management planners. The department may issue distinct classifications of certification based on areas of specialty, including agriculture and urban agronomic practices.

~~4VAC5-15-40.~~ 4VAC50-85-40. Eligibility requirements.

A. Certification may be obtained by satisfying all of the following requirements for certification:

1. Satisfactorily completing and submitting to the department an application in the form required by the department, including a statement of any felony convictions. Such application shall be submitted to the department at least 30 days before the approved examination date set by the department. The application shall request information relating to the person's education, work experience, knowledge of nutrient management, and willingness to abide by the requirements of these regulations;

2. Supplying proof of meeting one of the following:

a. A copy of a college transcript indicating completion of a college degree with a major in an agriculturally related area with coursework in the area of nutrient management such as soils, soil fertility, and plant science, and one year of practical experience related to nutrient management planning or implementation of nutrient management concepts and principles acceptable to the department, or

b. A combination of education to include nutrient management related educational courses or training and a minimum of three years of practical experience related to nutrient management planning or implementation of nutrient management concepts and principles acceptable to the department;

3. Obtaining a passing score on each of the parts of the nutrient management certification examination administered by the department; and

4. Submitting a $100 certification fee by check or money order to the department.

B. Certificates shall be valid for two years and will expire on the last day of the expiration month. Certified nutrient management planners or applicants shall notify the department of any change in mailing address within 30 days of such change in address.

C. Individuals certified as nutrient management consultants by the State of Maryland or certified as nutrient management specialists by the Commonwealth of Pennsylvania will be eligible for certification in Virginia by complying with all requirements of these regulations except for subdivision A 2 of this section. These individuals may also substitute, for the requirements in ~~4VAC5-15-60~~ 4VAC50-85-60 C, the attainment of a passing score on a Virginia specific examination component which shall include at a minimum the elements listed in ~~4VAC5-15-60~~ 4VAC50-85-60 C 9 and

C 10. The department, upon review, may accept or approve nutrient management certification programs of other states as satisfying partial requirements for certification.

~~4VAC5-15-50.~~ 4VAC50-85-50. Fees.

A. Fees shall be collected for certification and recertification to defray the administrative cost for the certification program.

B. A fee may be charged to supply training materials and present education and training programs, including continuing education, which support the certification program.

C. Fees are nonrefundable and shall not be prorated.

D. The certification fee of $100 for the initial certification period shall be due with the application for certification. If the applicant is unsuccessful in achieving a passing score on the examination, the applicant may retake the examination at the next scheduled time. Applicants may retake the examination one time with no additional charge by resubmitting the application for certification.

E. All fees collected by the department shall be deposited in the state treasury Nutrient Management Training and Certification Fund and shall be used exclusively for the operation of the Nutrient Management Training and Certification Program.

~~4VAC5-15-60.~~ 4VAC50-85-60. Examination.

A. The department shall administer nutrient management certification examinations at least once per year. The examinations shall require a demonstration of the ability to prepare a nutrient management plan. The department may limit the number of applicants taking the examination based upon available examination space.

B. Applicants for certification shall achieve a passing score on each of the parts of the nutrient management certification examination to become eligible for certification.

C. The examinations for persons involved in agricultural nutrient management shall address the elements listed below. To address nutrient management on urban land uses, specialty specific examinations may be added to or substituted by the department for the elements below.

1. General understanding of overall nutrient management concepts such as nutrient cycling on farms, the purpose of nutrient management planning, economic aspects of nutrient use, and components of a nutrient management plan;

2. Basic soil science concepts such as soil physical and chemical properties including texture, structure, organic matter, and horizon development, and how such characteristics influence crop productivity and adaptation, water runoff, and infiltration;

3. Environmental management concepts such as the water cycle, nutrient loss mechanisms, environmental effects of nutrients in waters including Chesapeake Bay, identification of high risk sites relating to nutrient use and appropriate nutrient management practices to reduce nutrient losses;

4. Nutrient sampling, testing, and analysis such as basic sampling procedures, relationship of soil test level with the likelihood of crop response, soil nitrate testing, manure and biosolids sampling and interpretation, and determining nitrogen supplied by legumes;

5. Basic soil fertility concepts such as relationship of soil pH to nutrient availability and toxicity, essential elements for crop growth, limiting factors to crop production, cation exchange capacity and related concepts, nutrient cycles, and forms of nutrients in soils;

6. Fertilizer management concepts such as types of fertilizers, nutrient analysis of common materials and grades, basic calculations and blending, calibration of equipment, and application methods;

7. Manure management concepts such as nutrient content and volume produced, determination of plant available nutrients, selecting sites for manure application, proper timing and placement, coordination of fertilizers with manure, application methods and calibration;

8. Biosolids management concepts such as determination of plant available nutrients, nutrient content, forms of nutrients, types of sludges, coordination with fertilizer applications, and application methods;

9. Nutrient management training and certification regulatory requirements, and requirements of other nutrient management related laws, regulations, and incentive programs; and

10. Development of multiple components of nutrient management plans and completion of calculations comparable to development of nutrient management plans such as, but not limited to, determination of specific soil types in fields, determination of specific nutrient requirements based on soil productivity and soil analysis results, evaluation of field limitations based on environmental hazards or concerns, timing of nitrogen applications, phosphorus nutrient management planning methods and assessment techniques, and interpretation of manure analysis results.

D. An individual who is unable to take an examination at the scheduled time shall notify the department at least five days prior to the date and time of the examination; such individual will be rescheduled for the next examination. The department may consider accepting notice of less than five days due to individual hardship situations on a case-by-case basis. Failure to notify the department may require the individual to submit a new application and payment of fees in accordance with ~~4VAC5-15-40~~ 4VAC50-85-40.

E. The department shall establish acceptable passing scores for the examinations based on the department's determination of the level of examination performance required to show minimal acceptable competence.

F. All applicants shall be notified of results in writing within 60 days of the completion of the examinations.

~~4VAC5-15-70.~~ 4VAC50-85-70. Training.

A. The department shall provide a training session on the mechanics of nutrient management plan development prior to scheduled examinations.

B. The department may provide a training course on concepts supporting and relating to nutrient management which may include: basic soil science; soil fertility; environmental management; fertilizer, manure, and biosolids management; and other relevant topics.

~~4VAC5-15-80.~~ 4VAC50-85-80. Certificate renewal.

The department will not renew a certificate if a proceeding to deny certification under ~~4VAC5-15-110~~ 4VAC50-85-110 has begun, or if the department has found that the applicant violated any requirements of this chapter. A certificate is issued for two years and may be renewed on or before the expiration of a certificate by complying with all of the following requirements:

1. Submittal of a renewal application on the form the department requires;

2. Payment of a $100 renewal fee to the department;

3. Submittal of proof of satisfactory completion of at least four hours of continuing education pre-approved by the department within the past two years. Requests for pre-approval of continuing education courses must be received at least 60 days prior to the expected course date or dates and must include a detailed syllabus indicating time to be spent on each topic area covered. Continuing education hours must be in subject matter consistent with ~~4VAC5-15-60~~ 4VAC50-85-60 C. Department personnel may attend continuing education sessions to verify that the requirements are met. Proof of attendance must be verified by the course provider. The department may accept continuing education units obtained in Delaware, Maryland and Pennsylvania if such continuing education units are specifically for the purpose of recertification in the state nutrient management certification program; and

4. Completion of at least one nutrient management plan or completion of four hours of continuing education pre-approved by the department within the past two years in addition to the requirements of subdivision 3 of this section.

Persons certified prior to January 11, 2006, shall attend a department approved training course in phosphorus nutrient management planning methods and assessment techniques prior to certificate renewal. The training course hours may be applied toward other continuing education requirements of this subsection.

~~4VAC5-15-90.~~ 4VAC50-85-90. Expiration of a certificate.

A. A certificate shall be deemed expired the day after the expiration date on the certificate if any of the requirements of ~~4VAC5-15-80~~ 4VAC50-85-80 are not met.

B. Following the expiration of a certificate, reinstatement may be accomplished only by reapplication and compliance with all requirements of ~~4VAC5-15-40~~ 4VAC50-85-40 A including the examination requirements.

~~4VAC5-15-100.~~ 4VAC50-85-100. Recordkeeping and reporting requirements.

A. Certified nutrient management planner reporting requirements. A person who holds a certificate under these regulations shall keep records and file with the department by September 30 of each year an annual activity report on a form supplied by the department covering the previous year (July 1 through June 30). The annual activity report shall contain the following information:

1. Name and certificate number of the certified nutrient management planner;

2. Any change of mailing address during the previous year;

3. Number of nutrient management plans completed;

4. Acreage covered by plans and planned acreage by county and state watershed codes specified by plan categories of new or revised;

5. Breakdown of planned acreage by cropland, hay, pasture, and specialty crops by county and watershed code specified by plan categories of new or revised; and

6. Other information indicating number of practices facilitated by the planner such as manure testing and use of the PSNT.

B. Certified nutrient management planner recordkeeping requirements. The department may periodically inspect nutrient management plans prepared by certified persons and required records for the purpose of review for compliance with ~~4VAC5-15-140~~ 4VAC50-85-130 and ~~4VAC5-15-150~~ 4VAC50-85-140. A certified nutrient management planner shall maintain the following plan records for a period of not less than three years from the date the plan was prepared:

1. A complete copy of each nutrient management plan prepared and shall make such plans available for inspection by department personnel upon request within one week of receiving such request;

2. Records for each plan with all of the following information if the information is not already contained in the plan:

a. Representative soil analysis results for fields, or field grids if grid soil sampling is used, dated not more than three years prior to the date the nutrient management plan was completed to include information on soil fertility levels for phosphorus and potassium, and pH level;

b. Copies of soil survey maps or a soil survey book containing maps for each field unless a soil survey has not been published for the county;

c. Yield records for each field to include calculations used to determine the planning yield if upward adjustments to soil productivity based yields were made to more than 20% of the fields covered by the plan;

d. Type and number of livestock, if any, as well as a description of the livestock to include average weight;

e. Calculations or records indicating annual quantity of manure produced or expected to be produced; and

f. Organic nutrient source analysis, if applicable, to include information on percentage of moisture, total nitrogen or total Kjeldahl nitrogen, ammonium nitrogen, total phosphorus, and total potassium.

3. A summary listing of all plans prepared to include landowner or operator's name and the date the plan was prepared or revised.

C. Certified nutrient management planners shall provide the department with a copy of a nutrient management plan within two weeks following the modification of any plan required by regulations promulgated under § 32.1-164.5 for sewage sludge, § 62.1-44.17:1 for animal waste, and § 62.1-44.17:1.1 for poultry waste.

~~4VAC5-15-110.~~ 4VAC50-85-110. Compliance with regulations and disciplinary action.

If the department finds that a certified person or an applicant for certification violated any requirements of this chapter, including the circumstances listed below, the department may deny, suspend or revoke certification, following the informal fact-finding procedures of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

1. Providing misleading, false, or fraudulent information in applying for a certificate;

2. Providing the department with any misleading, false, or fraudulent report;

3. Offering or preparing a nutrient management plan claimed to be prepared by a person certified as a nutrient management planner in Virginia as provided by these regulations without a certificate;

4. Offering, preparing, modifying, or revising a nutrient management plan that does not comply with the requirements of these regulations;

5. Failing to promptly provide any report or to allow the department access to inspect any records required to be kept by these regulations;

6. Failing to provide the department with a copy of a nutrient management plan within two weeks following the modification of any plan required by regulations promulgated under § 32.1-164.5 of the Code of Virginia for sewage sludge, § 62.1-44.17:1 of the Code of Virginia for animal waste, or § 62.1-44.17:1.1 of the Code of Virginia for poultry waste; or

7. Conviction of a felony related in any way to the responsibilities of a certified nutrient management planner.

~~4VAC5-15-120.~~ 4VAC50-85-120. Advisory committee.

The department may establish a nutrient management training and certification advisory committee. Advisors shall serve for a term of two years. Members shall be from the agricultural community, academia, industry, the environmental community, and appropriate government units.

~~4VAC5-15-140.~~ 4VAC50-85-130. Nutrient management plan content.

A. A certified nutrient management planner shall prepare nutrient management plans which contain the information in subsections B through G of this section. For nutrient management plans covering nonagricultural, specialty land uses, for example residential lawns, office parks, and golf courses, the department may specify additional plan elements which are critical to the management of nutrients for a particular activity, and may eliminate requirements not pertinent to nonagricultural land uses.

B. Plan identification. Each plan shall be identified by a single cover sheet indicating:

1. Farmer/operator name and address;

2. Name, certificate number, and signature of the certified nutrient management planner that prepared the plan;

3. County and watershed code of land under the nutrient management plan;

4. Total acreage under the plan with double cropped acreage accounted for only once;

5. Acreage of cropland, hay, pasture, and specialty crops included in the plan for the first year of the plan;

6. Date the plan was prepared or revised; and

7. Type and approximate number of livestock, if applicable.

C. Map or aerial photograph.

1. Each plan shall contain a map or aerial photograph to identify:

a. The farm location and boundaries;

b. Individual field boundaries where nutrients will be applied;

c. Field numbers and acreages where nutrients will be applied;

d. Environmentally sensitive sites as defined in ~~4VAC5-15-10~~ 4VAC50-85-10;

e. Setback areas for nonapplication for manure and biosolids as specified in ~~4VAC5-15-150~~ 4VAC50-85-140 A 5 e;

f. Location of manure, biosolids, or waste storage if any; and

g. Intermittent or perennial streams and associated buffers (if the phosphorus index is used to determine phosphorus application rates for specific fields).

2. The map or aerial photograph shall be legible, with the features in subdivision 1 of this subsection recognizable. A farm sketch or soil survey map may be used when a map or aerial photograph is not available, if the features described in subdivision 1 of this subsection are recognizable.

D. Summary of nutrient management plan recommendations. Each plan shall contain one or more summary sheets that list the following information for each field:

1. Name of the farmer/operator;

2. Field identification numbers to include the United States Department of Agriculture Farm Service Agency tract and field numbers;

3. Field acreages;

4. Expected crops or crop rotations;

5. Crop nutrient needs per acre based on soil analysis results and soil productivity;

6. Legume nitrogen credits per acre;

7. Available nutrients in soil from previous crop and mineralization of organic residuals;

8. Recommended organic nutrient source application rates in tons per acre or 1,000 gallons per acre; plant available nitrogen as N, phosphorus as P_2O_5, and potassium as K_2O per acre; and spreading schedule to include approximate months of application;

9. Expected time of incorporation of organic nutrient sources into the soil if organic nutrient sources will be used;

10. Commercial fertilizer rates and timing of applications, including split applications of nitrogen and the possible use of soil nitrogen test results on a field before sidedressing with nitrogen; and

11. Numerical phosphorus and potassium soil analysis results expressed as ppm P and K, pounds per acre P and K or pounds per acre P_2O_5 and K_2O for all fields in the plan.

E. Individual fields may be grouped together if similar soil productivity levels, soil fertility levels, and environmentally sensitive site features exist pertaining to subsection D of this section.

F. Each plan shall also contain the following information in summary or narrative form:

1. Identification and management of environmentally sensitive sites;

2. Quantities of manure produced on the farm, available manure storage capacity, and manure analysis;

3. Total manure used as crop nutrients, if any, including manure from both on farm and off farm sources based on plan recommendations and total land requirements for manure utilization;

4. Quantity of unused manure, if applicable, and recommendations on appropriate use options;

5. Liming recommendations if soil pH is below the optimal range or to raise soil pH to no more than the upper limit for lime stabilized sewage sludge;

6. Recommendations or fact sheets to ensure efficient application of fertilizers and organic nutrient sources and other best management practices to reduce the potential for the degradation of surface and groundwater quality, which may include but are not limited to:

a. Equipment calibration;

b. Application timing and method;

c. Crop rotation and agronomic practices;

d. Soil nitrate testing; and

e. Cover crop management;

7. Information on maintaining and updating a nutrient management plan. General comments about plan maintenance shall include:

a. The length of time the plan is effective consistent with ~~4VAC5-15-150~~ 4VAC50-85-140 D 1; and

b. Identification of circumstances or changes in the farm operation such as an increase in animal numbers that would require the plan to be updated prior to the time specified in this subdivision 7;

8. Expected crop yields for each field for the planned crop rotation;

9. The following information for all fields where the phosphorus applications are based on the phosphorus index:

a. Functioning riparian buffer widths and distances to surface waters in feet;

b. Presence of any contour planting at a maximum of 1.0% row grade, strip cropping, conservation tillage with greater than 30% residue, or terraces;

c. Percentage of required ground cover on pastures stated as 75% cover;

d. Crop tillage type for each crop stated as either no-till or tilled for all cropland; and

e. If expected soil erosion for the phosphorus index was developed using RUSLE2, a copy of the RUSLE2 Profile Erosion Calculation Record computerized print-out indicating: (i) crop(s) for each year in the crop rotation to match those identified in the nutrient management plan, (ii) all mechanical field operations, and (iii) edge of field soil loss for each field; and

10. Other notes as needed pertaining to nutrient application, tillage, and other special conditions.

G. The nutrient management planner shall incorporate additional more restrictive plan requirements if required by other specific legislative, regulatory or incentive programs which apply to a specific operator.

~~4VAC5-15-150.~~ 4VAC50-85-140. Required nutrient management plan procedures.

A. Nutrient application.

1. A certified nutrient management planner shall include, in each plan, nutrient application practices for each field in the plan. The nutrient application rates shall be calculated for nitrogen (N), phosphate (P_2O_5), and potash (K_2O). Individual field recommendations shall be made after considering nutrients contained in fertilizers, manure, biosolids, industrial wastes, legumes in the crop rotation, crop residues, residual nutrients, and all other sources of nutrients. Individual fields may be grouped together if similar soil productivity levels, soil fertility levels, and environmentally sensitive site features exist.

2. Nutrient application rates.

a. Determination of crop nutrient needs shall be consistent with tables and procedures contained in Virginia Nutrient Management Standards and Criteria, revised October 2005 and the Commercial Vegetable Production Recommendations, 2005 (Virginia Cooperative Extension Publication 456-420), and shall be based on soil test results for P_2O_5 and K_2O.

b. Nitrogen applications rates in nutrient management plans shall not exceed crop nutrient needs in subdivision 2 a of this subsection.

c. Phosphorus application rates shall be managed to minimize adverse water quality impacts consistent with subdivisions 2 c (1) through (5) of this subsection.

(1) Phosphorus applications from inorganic nutrient sources shall not exceed crop nutrient needs over the crop rotation based on a soil test.

(2) Phosphorus applications shall not be included in nutrient management plans developed after December 31, 2005, for soils exceeding 65% phosphorus saturation levels as listed in Virginia Nutrient Management Standards and Criteria, revised October 2005, regardless of the outcome of other procedures specified in this subsection except as allowed in subdivision 2 c (4) of this subsection.

(3) Whenever possible, phosphorus applications from organic nutrient sources should not exceed crop needs based on a soil test over the duration of the crop rotation. If this is not possible, maximum phosphorus application rates and phosphorus control practices contained in nutrient management plans shall be consistent with the phosphorus management provisions contained in Virginia Nutrient Management Standards and Criteria, revised October 2005 except as allowed in subdivision 2 c (4) of this subsection.

(4) Fields controlled by existing operations that receive phosphorus applications only from on-farm or on-site generated liquid dairy manure, liquid swine manure, or liquid sewage sludge shall be limited to a maximum of crop removal amounts of applied phosphorus until December 31, 2010, if the field exceeds 65% phosphorus saturation levels or has a phosphorus index rating that exceeds 100. New operations that begin production after December 31, 2005, or operations that expand after December 31, 2005, by increasing the total phosphorus generated in liquid dairy manure, liquid swine manure or liquid sewage sludge by more than 10% shall not be considered existing operations.

(5) A single phosphorus application may be recommended to address multiple crops in the crop rotation identified within the timeframe covered by the nutrient management plan consistent with ~~4VAC5-15-150~~ 4VAC50-85-140 D 1 if the single application does not exceed the sum of the appropriate application rates for individual crops as determined by subdivisions 2 c (1) through (3) of this subsection.

d. Recommended application rates for secondary nutrients and micronutrients should be at agronomically or economically justifiable levels for expected crop production. Potassium applications sufficient to meet crop nutrient needs shall be included in nutrient management plans for all fields consistent with recommendations contained in Virginia Nutrient Management Standards and Criteria, revised October 2005.

e. Expected crop yield shall be determined from any of the following methods on a given field:

(1) Soil productivity group expected crop yields based on and consistent with soil productivity information contained in Virginia Nutrient Management Standards and Criteria, revised October 2005;

(2) The farmer's past experience with crop yields in specific fields may be used to make reasonable adjustments to expected crop yields in subdivision 2 e (1) of this subsection in lieu of verifiable yield records provided the upward adjustments impact no more than 20% of the acreage of any crop on a particular farm; or

(3) Verifiable past crop yields are utilized to determined expected crop yield. The calculation of expected crop yield shall be an average of the three highest yielding years taken from the last five years the particular crop was grown in the specific field.

f. Representative soil analysis results for fields shall be determined by using standard soil sampling and analysis methods according to Methods of Soil Analysis, Part 3, Chemical Methods, 1996 utilizing the Mehlich I extraction procedure for phosphorus or other methods and laboratories approved by the department and correlated to Mehlich I and utilizing correlation

procedures contained in Virginia Nutrient Management Standards and Criteria, revised October 2005. Soil analysis results shall be dated no more than three years prior to the beginning date of the nutrient management plan. A single composite soil sample should represent an area up to approximately 20 acres. Fields such as those common to strip cropping may be combined when soils, previous cropping history, and soil fertility are similar. Representative soil sample cores shall be obtained from the soil surface to a depth of four inches (0-4") for fields that have not been tilled within the past three years, and from the soil surface to a depth of six inches (0-6") for fields which are tilled or have been tilled within the past three years. Soil sampling of fields based on subfield grids or management zones may be utilized.

g. For existing operations, the most recent organic nutrient source analysis results or an average of past nutrient analysis results for the specific operation within the last three-year period shall be used to determine the nutrient content of organic nutrient sources. Manure analyses shall include percent moisture, total nitrogen or total Kjeldahl nitrogen, ammonium nitrogen, total phosphorus, and total potassium determined using laboratory methods consistent with Recommended Methods of Manure Analysis, publication A3769, University of Wisconsin, 2003 or other methods approved by the department. For plans on new animal waste facilities, average analyses published in Virginia Nutrient Management Standards and Criteria, revised October 2005, should be utilized unless proposed manure storage and treatment conditions warrant the use of alternative data. Plant available nutrient content shall be determined using the mineralization rates and availability coefficients found in Virginia Nutrient Management Standards and Criteria, revised October 2005, for different forms and sources of organic nutrients. Mineralization of organic nutrients from previous applications shall be accounted for in the plan.

h. The expected nitrogen contributions from legumes shall be credited when determining nutrient application rates at levels listed in Virginia Nutrient Management Standards and Criteria, revised October 2005.

3. Soil pH influences nutrient availability and crop nutrient utilization and should be adjusted to the level suited for the crop. Nutrient management plans shall contain lime recommendations to adjust soil pH to a level within the appropriate agronomic range for the existing crop or crop(s) to be grown. Recommendations shall address lime application if soil pH is below the optimal range. Nutrient management planners shall not recommend the application of lime, lime-amended materials, or nutrient sources that are expected to raise the soil pH to a level that exceeds the appropriate agronomic range for the growing crop or crop(s) to be grown based on recommendations contained in Virginia Nutrient Management Standards and Criteria, revised October 2005.

4. Nutrient application timing.

a. Timing recommendations for nutrient sources containing nitrogen shall be as close to plant nutrient uptake periods as reasonably possible. A certified nutrient management planner shall utilize procedures contained in Virginia Nutrient Management Standards and Criteria, revised October 2005, to determine the timing of nutrient applications. To reduce the potential for nutrient leaching or runoff, a certified nutrient management planner shall recommend applications of nitrogen-containing materials only to sites where an actively growing crop is in place at the time of application or where a timely planted crop will be established within 30 days of the planned nutrient application, except as specified in subdivisions 4 b through e of this subsection. If such nutrient applications are made to fall-seeded crops such as small grain, the crop planted shall be capable of germination and significant growth before the onset of winter so the crop is able to take up the available applied nitrogen.

b. Organic nutrient source applications may be applied at differing times than specified in subdivision 4 a of this subsection in order to manage storage constraints in accordance with the following conditions:

(1) Applications of organic nutrient sources shall be within 60 days of planting a spring seeded crop to sites that are not environmentally sensitive sites as identified in ~~4VAC5-15-10~~ 4VAC50-85-10 or the Virginia Nutrient Management Standards and Criteria, revised October 2005, except as specified in subdivision 4 b (2) of this subsection. Such nutrient applications shall not exceed allowable application rates of the spring seeded crop;

(2) Applications shall be within 90 days of planting a spring seeded crop to sites that meet all of the following requirements:

(a) Are not environmentally sensitive sites as identified in ~~4VAC5-15-10~~ 4VAC50-85-10 or the Virginia Nutrient Management Standards and Criteria, revised October 2005;

(b) Have slopes of less than 7.0% throughout the application area unless: (i) at least 60% uniformly distributed crop residue cover exists following application or (ii) the application and any associated tillage is in conformance with an existing and implemented soil conservation plan meeting NRCS requirements for the site; and

(c) The organic sources being applied are one of the following: semi-solid beef manure, semi-solid dairy manure with sawdust bedding or straw bedding, dewatered anaerobically digested sewage sludge, or dewatered lime stabilized sewage sludge. Such nutrient

applications shall not exceed allowable application rates of the spring planted crop;

(3) Applications of organic nutrient sources may occur prior to the times specified in subdivisions 4 b (1) and (2) of this subsection on:

(a) Sites that are not environmentally sensitive sites if all of the following requirements are met: (i) a trap crop exists that has reached a Zadoks growth stage of 23 or greater having a uniform stand throughout the site area of at least 20 plants per square foot; (ii) the trap crop shall be allowed to continue growing on the entire site until within two weeks of the spring crop planting date; (iii) all such nitrogen applications of organic nutrient sources to trap crops shall not exceed the crop nutrient needs of the upcoming spring planted crop subtracting at least 30 pounds per acre of nitrogen to be reserved for use as a banded starter fertilizer at the time of spring planting; and (iv) the rate of organic nutrient source applied does not smother the crop.

(b) Environmentally sensitive sites as identified in ~~4VAC5-15-10~~ 4VAC50-85-10 or the Virginia Nutrient Management Standards and Criteria, revised October 2005, in addition to those criteria outlined in subdivision 4 b (3) (a) of this subsection, such applications to a trap crop must be within 60 days of planting a spring planted crop.

c. The nutrient timing requirements of subdivisions 4 a and b of this subsection for application of sewage sludge to nonenvironmentally sensitive sites in nutrient management plans shall not be effective until January 1, 2009. The delayed implementation time is provided to allow for the development of adequate winter storage capacity, landfilling, or alternative uses. All applications of sewage sludge to environmentally sensitive sites in nutrient management plans will fully comply with the requirements of subdivisions 4 a and b of this subsection by January 11, 2006.

d. Composted organic nutrient sources having a final carbon to nitrogen ratio of 20:1 or greater are exempt from requirements of subdivisions 4 a and b of this subsection if analyzed for carbon to nitrogen ratio at the conclusion of the composting process and results are obtained prior to land application. The planner shall recommend soil nitrate testing to determine nitrogen application rates during the growing season following the application of composted organic nutrient sources.

e. The nutrient management planner shall recommend split application of inorganic nitrogen fertilizers as starter or broadcast and sidedressing or top dressing in row crops and small grains consistent with procedures contained in Virginia Nutrient Management Standards and Criteria, revised October 2005, on environmentally sensitive sites as identified in ~~4VAC5-15-10~~ 4VAC50-85-10. Split applications of inorganic nitrogen fertilizers and irrigation scheduling shall be recommended for crops to receive irrigation. The use of a pre-sidedress nitrogen test (PSNT) can help to determine nitrogen needs during the growing period. In lieu of split applications, the planner may recommend the application of the total nitrogen requirement for spring-planted row crops within one week prior to planting if at least 50% of the plant available nitrogen requirement of the crop is supplied with slowly available nitrogen sources.

f. Nutrient management plans shall include a statement indicating that applications of inorganic nutrient sources, liquid manure, liquid sewage sludge, or liquid industrial waste are not to occur on frozen or snow-covered ground. When ground is frozen, dry or semi-solid manures, dewatered sludges, or dewatered industrial wastes may only be applied if the field has: (i) slopes not greater than 6.0%; (ii) 60% uniform ground cover from crop residue or an existing actively growing crop such as a small grain or fescue with exposed plant height of three inches or more; (iii) a minimum of a 200-foot vegetated or adequate crop residue buffer between the application area and all surface water courses; and (iv) soils characterized by USDA as "well drained."

5. Application method for nutrients.

a. The application of nitrogen containing materials shall be managed to minimize runoff, leaching and volatilization losses.

b. Applications of liquid manures or sludges utilizing irrigation shall not be recommended to be applied at hydraulic rates above those contained in Virginia Nutrient Management Standards and Criteria, revised October 2005.

c. Plans shall not recommend liquid manure or sludge application rates utilizing nonirrigation liquid spreading equipment which exceed 14,000 gallons per acre (approximately one-half (0.5) inch) per application. The amount of liquid manure or sludge application in plans will not exceed the hydraulic loading capacity of the soil at the time of each application. If a subsequent pass across a field is necessary to achieve the desired application rate, the plan will allow for sufficient drying time.

d. Where possible, the planner should recommend that biosolids, industrial wastes and manures be incorporated or injected in the crop root zone in order to reduce losses of nitrogen to the atmosphere and to increase the plant available nitrogen to phosphorus ratio of these nutrient sources relative to crop nutrient needs. Lime stabilized biosolids should not be injected due to the creation of a localized band of high soil pH unless subsequent practices are utilized, such as disking, in order to adequately mix the soil.

e. The planner shall recommend setbacks around wells, springs, surface waters, sinkholes, and rock outcrops

where manure, biosolids, or industrial waste should not be applied. Such setbacks recommended shall be consistent with criteria contained in Virginia Nutrient Management Standards and Criteria, revised October 2005, unless alternative setbacks or buffers are specified in regulations or permits pertaining to the site. For sites impacted by other regulations or permits, the planner shall include the setbacks and buffers specified in regulations promulgated under § 32.1-164.5 of the Code of Virginia for sewage sludge, § 62.1-44.17:1 of the Code of Virginia for animal waste, § 62.1-44.17:1.1 of the Code of Virginia for poultry waste, and ~~Chapter 21 (§ 10.1 2100 et seq.) of Title 10.1~~ Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia for sites in Chesapeake Bay Preservation areas, and permits for industrial waste land application. The land area within setback and buffer areas shall be deducted from field acreage to determine usable field acreage for nutrient application in nutrient management plans.

B. Manure production and utilization.

1. The planner shall estimate the annual manure quantity produced on each farm utilizing tables and forms contained in Virginia Nutrient Management Standards and Criteria, revised October 2005, or from actual farm records of manure pumped or hauled during a representative 12-month period.

2. The nutrient management plan shall state the total amount of manure produced and the amount that can be used on the farm, utilizing the information and methods provided in the Virginia Nutrient Management Standards and Criteria, revised October 2005. The plan shall discuss any excess manure and shall provide recommendations concerning options for the proper use of such excess manure.

C. Plans shall identify and address the protection from nutrient pollution of environmentally sensitive sites.

D. Plan maintenance and revisions.

1. A site-specific nutrient management plan developed in accordance with all requirements of these regulations, including specified crops or crop rotations, shall provide information on soil fertility and seasonal application of required nutrients for one to five years of crop production. Plans developed for a period of time greater than three years and up to five years shall be limited to sites in permanent pasture or continuous hay.

2. The plan shall state a need for immediate modification if (i) animal numbers are to increase above the level specified in the plan, (ii) animal types including intended market weights are to be changed, (iii) additional imported manure, biosolids, or industrial waste that was not identified in the existing plan is to be applied to fields under the control of the operator, or (iv) available land area for the utilization of manure decreases below the level necessary to utilize manure in the plan. The plan shall also state a need for modification prior to subsequent nutrient applications if cropping systems, rotations, or fields are changed and phosphorus will be applied at levels greater than crop nutrient needs based on soil analysis as determined from procedures in Virginia Nutrient Management Standards and Criteria, revised October 2005.

3. Adjustments to manure production and application should be made if there are increases in animal numbers or changes in how animal waste is stored or applied, or when there are changes in nutrient content of manure resulting from changing feed rations, animal types, or new sampling and analysis for nutrient content and application rate calculations.

4. Soil analysis shall be recommended for each field at least once every three years to determine the soil fertility and pH, and to update the nutrient management plan.

5. Manure analysis shall be recommended before field application until a baseline nutrient content is established for the specific manure type on the corresponding farm operation. After a baseline nutrient content is established, a manure analysis shall be recommended at least once every three years for dry or semisolid manures, and at least once every year for liquid manures.

6. Modified top dressing or sidedressing application rates of nitrogen may be recommended if a pre-sidedress nitrogen test (PSNT) administered during the growing season indicates different levels of nitrogen than planning time calculations if the use of the PSNT and interpretation of the test results are consistent with Virginia Nutrient Management Standards and Criteria, revised October 2005.

DOCUMENTS INCORPORATED BY REFERENCE ~~(4VAC5-15)~~ (4VAC50-85)

Virginia Nutrient Management Standards and Criteria, Department of Conservation and Recreation, Division of Soil and Water Conservation, revised October 2005

Virginia Commercial Vegetable Production Recommendations for 2005, Virginia Cooperative Extension Service, Publication No. 456-420

Electronic Field Office Technical Guide, Natural Resources Conservation Service, United States Department of Agriculture

Methods of Soil Analysis, Part 3, Chemical Methods, 1996, Soil Science Society of America/American Society of Agronomy

Recommended Methods of Manure Analysis, publication A3769, University of Wisconsin, 2003

Tucker, M.R. 1992. Determination of phosphorus by Mehlich 3 extraction. pg. 6-8. In S.J. Donohue (Ed.) Reference Soil and Media Diagnostic Procedures for the Southern Region of the United States. Southern Cooperative Series Bulletin No. 374

Virginia Phosphorus Index Version 2.0 Technical Guide, Revised October 2005, Virginia Tech

VA.R. Doc. No. R14-3854; Filed January 2, 2014, 5:34 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **9VAC5-85. Permits for Stationary Sources of Pollutants Subject to Regulation (Rev. H-12) (amending 9VAC5-85-40, 9VAC5-85-50; adding 9VAC5-85-55).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 26, 2014.

Effective Date: March 13, 2014.

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

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Federal Requirements. Section 110(a) of the federal Clean Air Act mandates that each state adopt and submit to the Environmental Protection Agency (EPA) a state implementation plan (SIP) that provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The SIP is adopted only after reasonable public notice is given and public hearings are held. The SIP must include provisions to establish, among other tasks, programs for the regulation of the modification and construction of any stationary source within areas covered by the plan to assure the achievement of the ambient air quality standards, including a permit program as required by Part C of Title I of the Act.

The purpose of Part C, "Prevention of Significant Deterioration of Air Quality," is to protect existing clean air resources. Part C requires that the SIP include a prevention of significant deterioration (PSD) program. That is, in areas that are meeting the national ambient air quality standards (NAAQS) (attainment), as well as in national parks and other protected areas, the air quality may not deteriorate.

Sections 162 through 169B provide the details of how each state's PSD program is to be designed and operated. Section 165, "Preconstruction Requirements," is the section of the Act that deals with new source review (NSR) permit programs. This section requires that sources obtain permits demonstrating that they will not contribute to air pollution in excess of that allowed by the Act. Section 165 specifies that new sources locating in attainment areas must meet best available control technology (BACT), which is defined in § 169.

40 CFR 51.166 contains the requirements for SIP-approved state PSD programs, while 40 CFR 52.21 contains the requirements for the issuance of PSD permits pursuant to federal authority. Permitting for sources of greenhouse gases is covered under 40 CFR 51.166 and 40 CFR 52.21 primarily through the definition of "subject to regulation."

Virginia is a SIP-approved state for PSD, and therefore has the authority to directly implement federal PSD regulations as long as its rules are at least as protective as the federal rules of 40 CFR 51.166. In its action of July 12, 2012, EPA revised the provisions relating to PALs at 40 CFR 52.21(aa) and provisions relating to the definition of "subject to regulation" at 40 CFR 52.21(b)(49). These provisions only affect permits issued under federal authority (i.e., those issued by the EPA or a delegated state agency). By amending 40 CFR 52.21 and not 40 CFR 51.166, EPA did not intend to affect existing state authority to issue PAL permits and did not require permitting authorities to take any action with respect to their existing PAL regulations or any existing PAL permits. Therefore, these revisions are not minimum program requirements that must be adopted by states into their EPA-approved SIP PSD permitting programs. Accordingly, EPA's final rule does not adopt these changes into the existing PAL provisions contained in 40 CFR 51.166, but states may adopt these changes into their SIP-approved PAL program if they so choose.

State Requirements. These specific amendments are not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308 A of the Code of Virginia). Section 10.1-1300 of Code of Virginia defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property."

Purpose: The regulation and the proposed amendments are intended to achieve the following goals:

1. To protect public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

2. To prevent the construction, modification, or operation of major facilities that will prevent or interfere with the attainment or maintenance of any ambient air quality standard.

3. To ensure that major new facilities or major expansions to existing facilities will be designed, built, and equipped to operate without causing or exacerbating a violation of any ambient air quality standard.

4. To ensure that major new facilities or major expansions to existing facilities will be designed, built, and equipped to comply with case-by-case control technology determinations and other requirements.

5. To ensure that there is no significant deterioration of air quality in Virginia's national parks and throughout the Commonwealth.

The PSD program is designed to protect air quality in areas where the air is cleaner than required by the NAAQS. PSD's primary control strategy is new source review. Prior to construction or expansion of an industrial facility, a permit must be issued that ensures that the facility will not emit pollutants in sufficient quantity to make a significant contribution to the deterioration of air quality or to violate the NAAQS. The permit application and the department review and analysis must be subject to a public hearing prior to issuing the permit. The facility must use BACT to control emissions.

On January 2, 2011, greenhouse gases (GHGs) became "regulated air pollutants" and thus subject to NSR permitting under the "Tailoring Rule." The Tailoring Rule was necessary because the federal Clean Air Act applicability requirements that determine which sources are subject to permitting are based on annual potential emission rates of 100 or 250 tons per year (tpy). Implementing these requirements for GHG-emitting sources immediately after they became subject to PSD requirements would have overwhelmed the capabilities of state permitting authorities to issue permits, and as a result, would have impeded the ability of sources to construct, modify or operate.

The Tailoring Rule initially established two steps to implement PSD. Tailoring Rule Step 1 began on January 2, 2011, and applies to sources subject to PSD due to their emissions of other pollutants ("anyway" sources) and that had the potential to emit 75,000 tpy CO_2e (or increase emissions by that amount for modifications). Tailoring Rule Step 2 began on July 1, 2011. In addition to anyway sources, Step 2 applies to new facilities emitting GHGs in excess of 100,000 tpy CO_2e and facilities making changes that would increase GHG emissions by at least 75,000 tpy CO_2e, and that also exceed 100/250 tpy of GHGs on a mass basis.

In the latest rulemaking, Step 3, EPA has continued to identify and evaluate approaches to enable permitting authorities to permit more GHG-emitting sources without undue burden. EPA finalized a streamlining measure that would revise the existing PAL permitting program to allow permitting authorities to issue GHG PALs on either a mass basis (tpy) or a CO_2e basis, including the option to use the CO_2e-based increases provided in the subject to regulation thresholds in setting the PAL, and to allow such PALs to be used as an alternative approach for determining whether a project is a major modification and whether GHG emissions are subject to regulation. EPA also finalized the "minor source approach," which allows permitting authorities to issue GHG PALs to GHG-only sources without requiring the source to undertake an action that would make GHGs subject to regulation and bring the source into major stationary source status under the Tailoring Rule. Thus, Step 3 of the Tailoring Rule enables GHG-only sources to obtain a GHG PAL and remain a minor source as long as their GHG emissions remain below the PAL.

Adopting Step 3 of the federal GHG rules will streamline the administration of Virginia's GHG PSD permitting program by providing sources with a voluntary alternative approach for controlling GHGs such that sources and the department can address GHGs one time for a source rather than undergo repeated subsequent permitting actions over a five-year period.

Rationale for Using Fast-Track Process: EPA revised its regulations to streamline PSD permitting programs by allowing sources and the reviewing authority to voluntarily address GHGs one time for a source and avoid repeated subsequent permitting actions. It is in the best interests of the regulated community, the department, and the public to have permitting functions operate as cost-effectively and efficiently as possible, and that encourage processes that minimize harmful air pollution. If a GHG PAL would enable a facility to better manage its GHG emissions, then the department should provide the tools needed for them to avail themselves of the process.

Substance: Provisions have been added to enable GHG PALs to be established on a mass or a CO_2e emissions basis, and to allow a GHG-only source to submit an application for a CO_2e-based GHG PAL while maintaining its minor source status.

Issues: The primary advantage to the public is more efficient permitting, which is cost-effective, enables the better provision of services, and may contribute to air quality benefits. The primary advantage to the department is more efficient permitting, which is cost-effective, enables the better provision of services, and may contribute to air quality benefits. There are no disadvantages to the public or the department.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The U.S. Environmental Protection Agency recently promulgated final amendments that would provide for a more streamlined implementation of the federal program for establishing plant-wide applicability limits (PALs) for greenhouse gases (GHGs) emissions. Consequently, the Air Pollution Control Board proposes to amend these regulations so as to streamline prevention of significant deterioration (PSD) permitting programs by allowing sources and the reviewing authority to voluntarily address GHGs one time for a source and avoid repeated subsequent permitting actions.

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

Estimated Economic Impact. Since a PAL provides extensive operational flexibility, sources will not have to spend money on obtaining permit modifications (about $7,000 per permit amendment) for the PAL duration. Such cost savings will depend on how frequently the source modifies its processes. In turn, the Department of Environmental Quality will not have to process many permit modifications, and may focus its efforts on other facilities with a greater impact on the environment. Avoiding PSD review also allows sources to make the changes necessary to respond rapidly to market conditions, while generally assuring the environment is protected from adverse impacts from the change.

A PAL also results in significant environmental benefit by providing the community with an understanding of the long-term emissions impact from a facility, by preventing "emissions creep," and by requiring enhanced monitoring, recordkeeping and reporting provisions to demonstrate compliance with the PAL. In order to operate within the PAL emissions limit and maintain its PAL status, a facility is likely to look for ways to improve its operations, thus likely resulting in reduction of GHGs. Public health and welfare may thus benefit from the more efficient and effective management of GHG emissions.

Businesses and Entities Affected. Entities potentially affected by the proposed amendments include electricity generators, paper manufacturers, and landfills. In Virginia, there are approximately 57 sources with estimated CO2 emissions over 100,000 tons per year. Since PALs are optional, sources may or may not opt to apply for a PAL permit.

Localities Particularly Affected. The proposed amendment of this regulation does not disproportionately affect any particular localities.

Projected Impact on Employment. The proposed amendments will reduce costs ($7,000) for entities such as some electricity generators, paper manufacturers, and landfills which without the amendments may have needed to have obtained permit modifications. The reduced cost might have a small positive impact on employment.

Effects on the Use and Value of Private Property. The proposed amendments will reduce costs ($7,000) for entities such as some electricity generators, paper manufacturers, and landfills which without the amendments may have needed to have obtained permit modifications.

Small Businesses: Costs and Other Effects. The proposed amendment of this regulation will not increase costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of this regulation does not adversely affect small businesses.

Real Estate Development Costs. The proposed amendments will not affect new real estate development, but may reduce some costs (through not requiring additional permitting) with changes at existing development.

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

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendments (i) enable greenhouse gas (GHG) plantwide applicability limits (PALs) to be established on a mass or a carbon dioxide equivalent (CO_2e) emissions basis, (ii) allow a GHG-only source to submit an application for a CO_2e-based GHG PAL while maintaining its minor source status, and (iii) add new definitions and revise several existing ones.

Part III

Prevention of Significant Deterioration Permit Actions

9VAC5-85-40. Prevention of significant deterioration area permit actions.

The requirements of Article 8 (9VAC5-80-1605 et seq.) of Part II of 9VAC5-80 shall apply, ~~except that the~~ with the following exceptions:

1. The terms defined shall have the meaning given to them in this part.

2. The board, at its discretion, may apply the provisions of 9VAC5-85-55 in lieu of 9VAC5-80-1865 (Actuals plantwide applicability limits (PALs)).

9VAC5-85-50. Definitions.

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

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

C. Terms defined.

"Actuals PAL" means (i) for major stationary sources, a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant or (ii) for GHG-only sources, a PAL based on the baseline actual emissions of all emissions units at the source, that emit or have the potential to emit GHGs.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits that restrict the operating rate or hours of operation, or both) and the most stringent of the following:

1. The allowable emissions for any emissions unit as calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit; or

2. An emissions unit's potential to emit.

"Baseline actual emissions for a GHG PAL" means the average rate, in tons per year CO_2e or tons per year GHG, as applicable, at which the emissions unit actually emitted GHGs during any consecutive 24-month period selected by the owner within the five-year period immediately preceding either the date the owner begins actual construction of the project or the date a complete permit application is received by the board for a permit required under this part. For any existing electric utility steam generating unit, baseline actual emissions for a GHG PAL means the average rate, in tons per year CO_2e or tons per year GHG, as applicable, at which the emissions unit actually emitted the GHGs during any consecutive 24-month period selected by the owner within the five-year period immediately preceding the date the owner begins actual construction of the project. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

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

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

3. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the stationary source shall currently comply, had such stationary source been required to comply with such limitations during the consecutive 24-month period.

4. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual GHG emissions and for adjusting this amount if required by subdivisions 2 and 3 of this definition.

5. When a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions.

"Emissions unit" means any part of a stationary source that emits or has the potential to emit GHGs. For purposes of 9VAC5-85-55, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is or will be newly constructed and that has existed for less than two years from the date such emissions unit first operated, and (ii) an existing emissions unit is any emissions unit that does not meet the definition of a new emissions unit.

"GHG-only source" means any existing stationary source that emits or has the potential to emit GHGs in the amount equal to or greater than the amount of GHGs on a mass basis that would be sufficient for a new source to trigger permitting requirements for GHGs under the definition of "major stationary source" and the amount of GHGs on a CO_2e basis that would be sufficient for a new source to trigger permitting requirements for GHGs under the definition of "subject to regulation" at the time the PAL permit is being issued, but does not emit or have the potential to emit any other non-GHG regulated NSR pollutant at or above the applicable major source threshold. A GHG-only source may only obtain a PAL for GHG emissions under 9VAC5-85-55.

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

"Major emissions unit" means (i) for any major stationary source obtaining a GHG PAL issued on a mass basis, a major emissions unit as defined in 9VAC5-80-1615 C or (ii) for a GHG PAL issued on a CO_2e basis, any emissions unit that emits or has the potential to emit equal to or greater than the amount of GHGs on a CO_2e basis that would be sufficient for a new source to trigger permitting requirements under the definition of "subject to regulation" at the time the PAL permit is being issued.

"Major stationary source" means a major stationary source that is defined in and subject to Article 8 (9VAC5-80-1605 et seq.) of 9VAC5-80 (Permits for Stationary Sources) and that meets the definition of "subject to regulation."

"Minor source" means any stationary source that does not meet either (i) the definition of "major stationary source" for any pollutant at the time the PAL is issued or (ii) the definition of "subject to regulation."

"Plantwide applicability limitation" or "PAL" means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e for a CO_2e-based GHG emission limitation, for a pollutant at a major stationary source or GHG-only source, that is enforceable as a practical matter and established source-wide in accordance with 9VAC5-85-55.

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

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

"PAL major modification" means, notwithstanding the definitions for "major modification" and "net emissions increase" as defined in 9VAC5-80-1615 C and the definition of "subject to regulation" of this section, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the major NSR permit, the state operating permit, or the federal operating permit that establishes a PAL for a major stationary source or a GHG-only source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source or a GHG-only source. For a GHG-only source, the only available PAL pollutant is greenhouse gases.

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

"Regulated NSR pollutant" means:

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

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

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

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

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

"Significant emissions unit" means (i) for a GHG PAL issued on a mass basis, an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit or (ii) for a GHG PAL issued on a CO_2e basis, any emissions unit that emits or has the potential to emit GHGs on a CO_2e basis in amounts equal to or greater than the amount that would qualify the unit as small emissions unit, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means (i) for a GHG PAL issued on a mass basis, an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in this section or in the federal Clean Air Act, whichever is lower or (ii) for a GHG PAL issued on a CO_2e basis, an emissions unit that emits or has the potential to emit less than the amount of

GHGs on a CO_2e basis defined as "significant" for the purposes of subdivision 3 of the definition of "subject to regulation" at the time the PAL permit is being issued.

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

1. GHGs shall not be subject to regulation except as provided in subdivisions 4 and 5 of this definition and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements of 9VAC5-95-55, and complies with the PAL permit containing the GHG PAL. A GHG-only source with a valid CO_2e-based GHG PAL shall be considered to be a minor source for GHG.

2. For purposes of subdivisions 3 through 5 of this definition, the term "tpy CO_2 equivalent emissions (CO_2e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

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

b. Sum the resultant value from subdivision a of this subdivision for each gas to compute a tpy CO_2e.

3. The term "emissions increase" as used in subdivisions 4 and 5 of this definition shall mean that both a significant emissions increase (as calculated using the procedures in 9VAC5-80-1605 G) and a significant net emissions increase (as defined in 9VAC5-80-1615 C) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in subdivision b of the definition of "significant" in 9VAC5-80-1615 C.

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

a. The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

b. The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more.

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

a. At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

b. At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

9VAC5-85-55. Actuals plantwide applicability limits (PALs).

A. The following applicability requirements shall apply:

1. The board may approve the use of an actuals PAL for GHGs on either a mass basis or a CO_2e basis for any existing major stationary source or any existing GHG-only source if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.

2. Any physical change in or change in the method of operation of a major stationary source or a GHG-only source that maintains its total source-wide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

a. Is not a major modification for the PAL pollutant;

b. Does not have to be approved through Article 8 (9VAC5-80-1605 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources) or this part;

c. Is not subject to the provisions of 9VAC5-80-1605 C (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program); and

d. Does not make GHGs subject to regulation.

3. Except as provided under subdivision 2 c of this subsection, a major stationary source or a GHG-only source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. As part of a permit application requesting a PAL, the owner of a major stationary source or a GHG-only source

shall submit the following information to the board for approval:

1. A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

2. Calculations of the baseline actual emissions, with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

3. The calculation procedures that the owner proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision M 1 of this section.

4. As part of a permit application requesting a GHG PAL, the owner of a major stationary source or a GHG-only source shall submit a statement by the owner that clarifies whether the source is an existing major source as defined in the definition of "major stationary source" or a GHG-only source.

C. The board may establish a PAL at a major stationary source or a GHG-only source, provided that at a minimum, the following requirements are met. At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 9VAC5-80-2120 F through L unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

1. The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e, that is enforceable as a practical matter, for the entire major stationary source or GHG-only source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source or GHG-only source owner shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source or GHG-only source owner shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

2. The PAL shall be established in a PAL permit that meets the public participation requirements in subsection D of this section.

3. The PAL permit shall contain all the requirements of subsection F of this section.

4. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source or GHG-only source.

5. Each PAL shall regulate emissions of only one pollutant.

6. Each PAL shall have a PAL effective period of five years.

7. The owner of the major stationary source or GHG-only source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections L through N of this section for each emissions unit under the PAL through the PAL effective period.

D. PALs for existing major stationary sources or GHG-only sources shall be established, renewed, or increased through the public participation procedures prescribed in the applicable permit programs identified in the definition of "PAL permit." This includes the requirement that the board provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The board will address all material comments before taking final action on the permit.

E. Setting the five-year actuals PAL level shall be accomplished as follows:

1. Except as provided in subdivisions 2 and 3 of this subsection, the actuals PAL level on a mass basis for a major stationary source or a GHG-only source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source, plus an amount equal to the applicable significant level for the PAL pollutant under the definition of "significant" in 9VAC5-80-1615.

2. For newly constructed units, which do not include modifications to existing units, on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in subdivision 1 of this subsection, the emissions shall be added to the PAL level in an amount equal to the potential to emit of the units.

3. For a CO_2e based GHG PAL, the actuals PAL level shall be established as the sum of the GHGs baseline actual emissions of GHGs for each emissions unit at the source, plus an amount equal to the amount defined as significant on a CO_2e basis for the purposes of subdivision 3 of the definition of "subject to regulation" at the time the PAL permit is being issued. When establishing the actuals PAL level for a CO_2e-based PAL, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all existing emissions units. Emissions associated with units that were permanently shut down after this 24-month period shall be subtracted from the PAL level. The board will specify a reduced PAL level (in tons per year CO_2e) in the PAL permit to become effective on the future compliance date of any applicable federal or

state regulatory requirement that the board is aware of prior to issuance of the PAL permit.

F. The PAL permit shall contain, at a minimum, the following information:

1. The PAL pollutant and the applicable source-wide emission limitation in tons per year CO_2e.

2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

3. Specification in the PAL permit that if a major stationary source or a GHG-only source owner applies to renew a PAL in accordance with subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the board.

4. A requirement that emission calculations for compliance purposes shall include emissions from startups, shutdowns, and malfunctions.

5. A requirement that, once the PAL expires, the major stationary source or GHG-only source is subject to the requirements of subdivision I of this section.

6. The calculation procedures that the major stationary source or GHG-only source owner shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subdivision M 1 of this section.

7. A requirement that the GHG-only source owner shall monitor all emissions units in accordance with the provisions under subsection L of this section.

8. A requirement to retain the records required under subsection M of this section on site. Such records may be retained in an electronic format.

9. A requirement to submit the reports required under subsection N of this section by the required deadlines.

10. Any other requirements that the board deems necessary to implement and enforce the PAL.

11. A permit for a GHG PAL issued to a GHG-only source shall also include a statement denoting that GHG emissions at the source will not be subject to regulation as long as the source complies with the PAL.

G. The PAL effective period shall be five years.

H. The following requirements for reopening the PAL permit shall apply:

1. During the PAL effective period the board will reopen the PAL permit to:

a. Correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

b. Reduce the PAL if the owner creates creditable emissions reductions for use as offsets under 9VAC5-80-2120 F through N; and

c. Revise the PAL to reflect an increase in the PAL as provided under subsection K of this section.

2. The board may reopen the PAL permit for the following reasons:

a. Reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date; and

b. Reduce the PAL consistent with any other requirement that is enforceable as a practical matter and that the board may impose on the major stationary source or GHG-only source.

3. Except for the permit reopening in subdivision 1 a of this subsection for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection D of this section.

I. Any PAL that is not renewed in accordance with the procedures in subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply:

1. Each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

a. Within the time frame specified for PAL renewals in subdivision J 2 of this section, the major stationary source or GHG-only source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the board) by distributing the PAL allowable emissions for the major stationary source or GHG-only source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subdivision J 5 of this section, such distribution shall be made as if the PAL had been adjusted.

b. The board will decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the board determines is appropriate.

2. Each emissions unit shall comply with the allowable emission limitation on a 12-month rolling basis. The board may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

3. Until the board issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subdivision 1 b of this subsection, the source shall continue to comply with a

source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

4. Any physical change or change in the method of operation at the major stationary source or GHG-only source shall be subject to major NSR requirements if such change meets the definition of "major modification" in 9VAC5-80-1615 C.

5. The major stationary source or GHG-only source owner shall continue to comply with any state or federal applicable requirements (such as BACT, RACT, NSPS) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 9VAC5-80-1605 C, but were eliminated by the PAL in accordance with the provisions in subdivision A 2 c of this section.

J. PALs shall be renewed as follows:

1. The board will follow the procedures specified in subsection D of this section in approving any request to renew a PAL for a major stationary source or a GHG-only source and will provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the board.

2. A major stationary source or a GHG-only source owner shall submit a timely application to the board to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner of a major stationary source or a GHG-only source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

3. The application to renew a PAL permit shall contain the following information:

a. The information required in subdivisions B 1 through 3 of this section.

b. A proposed PAL level.

c. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

d. Any other information the owner wishes the board to consider in determining the appropriate level for renewing the PAL.

4. In determining whether and how to adjust the PAL, the board will consider the following options; however, in no case may any such adjustment fail to comply with subdivision 4 c of this subsection:

a. If the emissions level calculated in accordance with subsection E of this section is equal to or greater than 80% of the PAL level, the board may renew the PAL at the same level without considering the factors set forth in subdivision 4 b of this subsection; or

b. The board may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the board in its written rationale.

c. Notwithstanding subdivisions 4 a and b of this subsection (i) if the potential to emit of the major stationary source or GHG-only source is less than the PAL, the board will adjust the PAL to a level no greater than the potential to emit of the source and (ii) the board will not approve a renewed PAL level higher than the current PAL, unless the major stationary source or GHG-only source has complied with the provisions of subsection J of this section.

5. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the board has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or federal operating permit renewal, whichever occurs first.

K. A PAL may be increased during the PAL effective period as follows:

1. The board may increase a PAL emission limitation only if the major stationary source or GHG-only source complies with the following provisions:

a. The owner of the major stationary source or GHG-only source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions units contributing to the increase in emissions so as to cause the GHG-only source's emissions to equal or exceed its PAL.

b. As part of this application, the major stationary source or GHG-only source owner shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the

preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit shall currently comply.

c. The owner obtains a major NSR permit for all emissions units identified in subdivision 1 a of this subsection, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

2. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

3. The board will calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subdivision 1 b of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

4. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection D of this section.

L. Monitoring requirements for PALs shall be as follows:

1. The following general requirements apply:

a. Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of CO_2e per unit of time. Any monitoring system authorized for use in the PAL permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

b. The PAL monitoring system shall employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subdivision 2 of this subsection and shall be approved by the board.

c. Notwithstanding subdivision 1 b of this subsection, the owner may also employ an alternative monitoring approach that meets subdivision 1 a of this subsection if approved by the board.

d. Failure to use a monitoring system that meets the requirements of this subsection renders the PAL invalid.

2. The following are acceptable general monitoring approaches when conducted in accordance with the following minimum requirements:

a. Mass balance calculations for activities using coatings or solvents;

b. CEMS;

c. CPMS or PEMS; and

d. Emission factors.

3. An owner using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner shall use the highest value of the range to calculate the PAL pollutant emissions unless the board determines there is site-specific data or a site-specific monitoring program to support another content within the range.

4. An owner using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. CEMS shall comply with applicable Performance Specifications found in Appendix B to 40 CFR Part 60; and

b. CEMS shall sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

5. An owner using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and

b. Each CPMS or PEMS shall sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the board, while the emissions unit is operating.

6. An owner using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

c. If technically practicable, the owner of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission

factor within six months of PAL permit issuance, unless the board determines that testing is not required.

7. A source owner shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

8. Notwithstanding the requirements in subdivisions 3 through 7 of this subsection, where an owner of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the board will, at the time of permit issuance:

a. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or

b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

9. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the board. Such testing shall occur at least once every five years after issuance of the PAL.

M. Recordkeeping requirements shall be as follows:

1. The PAL permit shall require the owner to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

2. The PAL permit shall require the owner to retain a copy of the following records for the duration of the PAL effective period plus five years:

a. A copy of the PAL permit application and any applications for revisions to the PAL; and

b. Each annual certification of compliance pursuant to the federal operating permit program and the data relied on in certifying the compliance.

N. The owner shall submit semi-annual monitoring reports and prompt deviation reports to the board in accordance with the federal operating permit program. The reports shall meet the following requirements:

1. The semi-annual report shall be submitted to the board within 30 days of the end of each reporting period. This report shall contain the following information:

a. The identification of owner and the permit number.

b. Total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO_2e) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision M 1 of this section.

c. All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

d. A list of any emissions units modified or added to the major stationary source or GHG-only source during the preceding six-month period.

e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision L 7 of this section.

g. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

2. The major stationary source or GHG-only source owner shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 9VAC5-80-110 F 2 b shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 9VAC5-80-110 F 2 b. The reports shall contain the following information:

a. The identification of owner and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

3. The owner shall submit to the board the results of any revalidation test or method within three months after completion of such test or method.

O. The board will not issue a PAL that does not comply with the requirements of this part after March 13, 2014. The board may supersede any PAL that was established prior to March 13, 2014, with a PAL that complies with the requirements of this section.

VA.R. Doc. No. R14-3397; Filed December 30, 2013, 12:53 p.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with (i) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors; (ii) § 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; and (iii) § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-10, 9VAC25-31-25, 9VAC25-31-30, 9VAC25-31-50, 9VAC25-31-200, 9VAC25-31-300, 9VAC25-31-310).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, 124, 403, and 503.

Effective Date: February 26, 2014.

Agency Contact: Frederick Cunningham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4285, FAX (804) 698-4032, TTY (804) 698-4021, or email frederick.cunningham@deq.virginia.gov.

Background: The Virginia Pollutant Discharge Elimination System (VPDES) permit regulation governs the discharge of pollutants from various sources into state waters. The State Water Control Board has the authority to administer the federal National Pollutant Discharge Elimination System (NPDES) program within the Commonwealth, and as such, the program is called the VPDES. Operations subject to these regulations are required to be covered under the (VPDES) Permit Regulation (9VAC25-31) or VPDES General Permit Regulation (9VAC25-191) if they discharge.

Summary:

The amendments (i) incorporate into VPDES regulations recent changes to 40 CFR 122.26, to 40 CFR Parts 449 and 451, and to §§ 54.1-2301 and 62.1-44.5 of the Code of Virginia and (ii) update the regulation to allow the use of the latest versions of federal effluent guidelines.

Part I

Definitions and General Program Requirements

9VAC25-31-10. Definitions.

"Act" means Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), as amended, 33 USC § 1251 et seq.

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

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (ii) crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the CWA (33 USC § 1251 et seq.) and the law, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, 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 Director of the Department of Environmental Quality.

"Approved POTW Pretreatment Program" or "Program" or "POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in Part VII (9VAC25-31-730 et seq.) of this chapter and which has been approved by the director or by the administrator in accordance with 9VAC25-31-830.

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

"Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

"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 practices ~~(BMPs)~~" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 9VAC25-31-770 and to prevent or reduce the pollution of surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9VAC25-31-540, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with this chapter. Liquid biosolids contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry residue by weight.

"Board" means the Virginia State Water Control Board or State Water Control Board.

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

"Class I sludge management facility" means any POTW identified under Part VII (9VAC25-31-730 et seq.) of this chapter as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator, in conjunction with the director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

"Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as a Large CAFO or as a Medium CAFO, or that is designated as a Medium CAFO or a Small CAFO. Any AFO may be designated as a CAFO by the director in accordance with the provisions of 9VAC25-31-130 B.

1. "Large CAFO." An AFO is defined as a Large CAFO if it stables or confines as many or more than the numbers of animals specified in any of the following categories:

a. 700 mature dairy cows, whether milked or dry;

b. 1,000 veal calves;

c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;

d. 2,500 swine each weighing 55 pounds or more;

e. 10,000 swine each weighing less than 55 pounds;

f. 500 horses;

g. 10,000 sheep or lambs;

h. 55,000 turkeys;

i. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

j. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

k. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

l. 30,000 ducks, if the AFO uses other than a liquid manure handling system; or

m. 5,000 ducks if the AFO uses a liquid manure handling system.

2. "Medium CAFO." The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges below that has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

a. The type and number of animals that it stables or confines falls within any of the following ranges:

(1) 200 to 699 mature dairy cattle, whether milked or dry;

(2) 300 to 999 veal calves;

(3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;

(4) 750 to 2,499 swine each weighing 55 pounds or more;

(5) 3,000 to 9,999 swine each weighing less than 55 pounds;

(6) 150 to 499 horses;

(7) 3,000 to 9,999 sheep or lambs;

(8) 16,500 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(11) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system;

(12) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

b. Either one of the following conditions are met:

(1) Pollutants are discharged into surface waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

(2) Pollutants are discharged directly into surface waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. "Small CAFO." An AFO that is designated as a CAFO and is not a Medium CAFO.

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria

of this definition, or which the board designates under 9VAC25-31-140. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility if it contains, grows, or holds aquatic animals in either of the following categories:

1. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

a. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

b. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding; or

2. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

a. Closed ponds which discharge only during periods of excess run-off; or

b. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

Cold water aquatic animals include, but are not limited to, the Salmonidae family of fish (e.g., trout and salmon).

Warm water aquatic animals include, but are not limited to, the Ictaluridae, Centrarchidae and Cyprinidae families of fish (e.g., respectively, catfish, sunfish and minnows).

"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).

"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 authority" refers to the POTW if the POTW's pretreatment program submission has been approved in accordance with the requirements of 9VAC25-31-830 or the approval authority if the submission has not been approved.

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

"CWA" means the 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, Public Law 97-117, and Public Law 100-4.

"CWA and regulations" means the Clean Water Act (CWA) and applicable 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 Virginia Department of Environmental Quality.

"Designated project area" means the portions of surface within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants~~,~~ and be harvested within a defined geographic area.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Environmental Quality or an authorized representative.

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

"Discharge," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means "indirect discharge" as defined in this section.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface 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 run-off which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which 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 ~~(DMR)~~" or "DMR" means the form supplied by the department or an equivalent form developed by the permittee and approved by the board, for the reporting of self-monitoring results by permittees.

"Draft permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to

terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"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 ~~(EPA)~~" or "EPA" means the United States Environmental Protection Agency.

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

"Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of a new source and which 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 VPDES 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 VPDES program.

"General permit" means a VPDES permit authorizing a category of discharges under the CWA and the law within a geographical area.

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

"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 discharge" means the introduction of pollutants into a POTW from any nondomestic source regulated under § 307(b), (c) or (d) of the CWA and the law.

"Indirect discharger" means a nondomestic discharger introducing pollutants to a POTW.

"Individual control strategy" means a final VPDES permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation or other documentation that shows that applicable water quality standards will be met not later than three years after the individual control strategy is established.

"Industrial user" or "user" means a source of indirect discharge.

"Interference" means an indirect discharge which, alone or in conjunction with an indirect discharge or discharges from other sources, both: (i) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (ii) therefore ~~(ii)~~ is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of biosolids use or sewage sludge disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA) the Clean Air Act (42 USC § 701 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.), and the Marine Protection, Research and Sanctuaries Act (33 USC § 1401 et seq.).

"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.

"Land application area" means, in regard to an AFO, land under the control of an AFO owner or operator, that is owned, rented, or leased to which manure, litter or process wastewater from the production area may be applied.

"Land application area" means, in regard to biosolids, the area in the permitted field, excluding the setback area, where biosolids may be applied.

"Log sorting facilities" and "log storage facilities" mean facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).

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

"Malodor" means an unusually strong or offensive odor associated with biosolids or sewage sludge as distinguished

from odors normally associated with biosolids or sewage sludge.

"Manmade" means constructed by man and used for the purpose of transporting wastes.

"Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

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

"Municipal separate storm sewer" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains, (i) owned or operated by 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, storm water, or other wastes, including special districts under state law, such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization or a designated and approved management agency under § 208 of the CWA, that discharges to surface waters of the state; (ii) designed or used for collecting or conveying storm water; (iii) that is not a combined sewer; and (iv) that is not part of a publicly owned treatment works (POTW).

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

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

"National pretreatment standard," "pretreatment standard," or "standard," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with § 307(b) and (c) of the CWA, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 9VAC25-31-770.

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

1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. Which is not a new source; and

4. Which has never received a finally effective VPDES permit for discharges at that site.

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

"New source," except when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

~~(a)~~ 1. After promulgation of standards of performance under § 306 of the CWA which are applicable to such source; or

~~(b)~~ 2. After proposal of standards of performance in accordance with § 306 of the CWA which 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.

"New source," when used in Part VII of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under § 307(c) of the CWA which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

1. a. The building, structure, facility or installation is constructed at a site at which no other source is located;

b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. The production of wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such 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 should be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivision 1 b or c of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source as defined under this subdivision 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 this subdivision.

"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 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.

"Owner" or "operator" means the owner or operator of any facility or activity subject to regulation under the VPDES program.

"Pass through" means a discharge which exits the POTW into state waters in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation).

"Permit" means an authorization, certificate, license, or equivalent control document issued by the board to implement the requirements of this chapter. Permit includes a VPDES general permit. Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

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

"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 which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board, and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"POTW treatment plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited in Part VII of this chapter. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with Part VII of this chapter.

"Pretreatment requirements" means any requirements arising under Part VII (9VAC25-31-730 et seq.) of this chapter including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the board.

Pretreatment requirements do not include the requirements of a national pretreatment standard.

"Primary industry category" means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in 40 CFR Part 122 Appendix A.

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

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. Process wastewater from an AFO means water directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of the animals; or dust control. Process wastewater from an AFO also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage areas includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

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

"Publicly owned treatment works ~~(POTW)~~" or "POTW" means a treatment works as defined by § 212 of the CWA, which 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, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Recommencing discharger" means a source which 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.

"Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

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

"Secondary industry category" means any industry category which is not a primary industry category.

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

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

"Setback area" means the area of land between the boundary of the land application area and adjacent features where biosolids or other managed pollutants may not be land applied.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which 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.

"Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under § 312 of CWA.

"Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal ~~waste water~~ wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced ~~waste water~~ wastewater treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

"Sewage sludge use" or "disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use of biosolids, or disposal of sewage sludge.

"Significant industrial user" or "SIU" means:

1. Except as provided in subdivisions 2 and 3 of this definition:

a. All industrial users subject to categorical pretreatment standards under 9VAC25-31-780 and incorporated by reference in 9VAC25-31-30; and

b. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5.0% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the ~~Control Authority~~ control authority, on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

2. The control authority may determine that an industrial user subject to categorical pretreatment standards under 9VAC25-31-780 and 40 CFR chapter I, subchapter N is a nonsignificant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:

a. The industrial user, prior to control authority's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;

b. The industrial user annually submits the certification statement required in 9VAC25-31-840 together with any additional information necessary to support the certification statement; and

c. The industrial user never discharges any untreated concentrated wastewater.

3. Upon a finding that an industrial user meeting the criteria in subdivision 1 b of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with Part VII (9VAC25-31-730 et seq.) of this chapter, determine that such industrial user is not a significant industrial user.

"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 storm water discharges.

"Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into surface waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA § 404 permit.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sludge-only facility" means any treatment works treating domestic sewage whose methods of biosolids use or sewage sludge disposal are subject to regulations promulgated pursuant to the law and § 405(d) of the CWA, and is required to obtain a VPDES permit.

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

"Standards for biosolids use or sewage sludge disposal" means the regulations promulgated pursuant to the law and § 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use of biosolids or disposal of sewage sludge by any person.

"State" means the Commonwealth of Virginia.

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

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

"Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program. For the categories of industries identified in this definition, the term includes, but is not limited to, storm

water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or ~~by-products~~ byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, ~~by-product~~ byproduct, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in subdivisions 1 through 10 of this definition) include those facilities designated under the provisions of 9VAC25-31-120 A 1 c. The following categories of facilities are considered to be engaging in industrial activity for purposes of this subsection:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards ~~which~~ that are exempted under category 10);

2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, ~~by products~~ byproducts, or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC § 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA (42 USC § 6901 et seq.);

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under subdivisions 1 through 7 or 9 and 10 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with § 405 of the CWA; and

10. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25.

"Submission" means: (i) a request by a POTW for approval of a pretreatment program to the regional administrator or the director; (ii) a request by POTW to the regional administrator or the director for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant

removals; or (iii) a request to the EPA by the director for approval of the Virginia pretreatment program.

"Surface waters" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which 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. Which 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. Which 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 Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

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

"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.

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Treatment works treating domestic sewage" means a POTW or any other sewage sludge or ~~waste-water~~ wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and ~~waste-water~~ wastewater from humans or household operations that are discharged to or otherwise enter a treatment works.

"TWTDS" means treatment works treating domestic sewage.

"Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act (42 USC § 6901 et seq.).

"Upset," except when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. 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, or in the applicable effluent limitations guidelines which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions which 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.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

"Virginia Pollutant Discharge Elimination System ~~(VPDES)~~ permit" or "VPDES permit" means a document issued by the board pursuant to this chapter authorizing, under prescribed

conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use of biosolids or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

"VPDES 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 VPDES permit.

"Wastewater," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means liquid and water carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions, whether treated or untreated, which are contributed to the POTW.

"Wastewater works operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of wastewater works.

"Water Management Division Director" means the director of the Region III Water Management Division of the Environmental Protection Agency or this person's delegated representative.

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

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

9VAC25-31-25. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the United States Environmental Protection Agency set forth in Title 40 of 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~~ 2013, update.

9VAC25-31-30. Federal effluent guidelines.

A. The following federal regulations are hereby incorporated by reference:

Airport Deicing Operations - 40 CFR Part 449

Aluminum Forming - 40 CFR Part 467

Asbestos Manufacturing - 40 CFR Part 427

Battery Manufacturing - 40 CFR Part 461

Canned and Preserved Fruits and Vegetables - 40 CFR Part 407

Canned and Preserved Seafood - 40 CFR Part 408

Carbon Black Manufacturing - 40 CFR Part 458

Cement Manufacturing - 40 CFR Part 411

Centralized Waste Treatment - 40 CFR Part 437

Coal Mining - 40 CFR Part 434

Coil Coating - 40 CFR Part 465

Concentrated Aquatic Animal Production - 40 CFR Part 451

Copper Forming - 40 CFR Part 468

Dairy Products - 40 CFR Part 405

Electrical and Electronic Components - 40 CFR Part 469

Electroplating - 40 CFR Part 413

Explosives Manufacturing - 40 CFR Part 457

Feedlots - 40 CFR Part 412 ~~(2009)~~

Ferroalloy Manufacturing - 40 CFR Part 424

Fertilizer Manufacturing - 40 CFR Part 418

Glass Manufacturing - 40 CFR Part 426

Grain Mills - 40 CFR Part 406

Gum and Wood Chemicals Manufacturing - 40 CFR Part 454

Hospitals - 40 CFR Part 460

Ink Formulating - 40 CFR Part 447

Inorganic Chemicals Manufacturing - 40 CFR Part 415

Iron and Steel Manufacturing - 40 CFR Part 420

Landfills - 40 CFR Part 445

Leather Tanning and Finishing - 40 CFR Part 425

Meat Products - 40 CFR Part 432

Metal Finishing - 40 CFR Part 433

Metal Molding and Casting - 40 CFR Part 464

Metal Products and Machinery - 40 CFR Part 438

Mineral Mining and Processing - 40 CFR Part 436

Nonferrous Metals - 40 CFR Part 421

Nonferrous Metal Forming - 40 CFR Part 471

Oil and Gas Extraction - 40 CFR Part 435

Ore Mining and Dressing - 40 CFR Part 440

Organic Chemicals, Plastics and Synthetic Fibers - 40 CFR Part 414

Paint Formulating - 40 CFR Part 446

Paving and Roofing Materials - 40 CFR Part 443

Pesticide Chemicals - 40 CFR Part 455

Petroleum Refining - 40 CFR Part 419

Pharmaceutical Manufacturing - 40 CFR Part 439

Phosphate Manufacturing - 40 CFR Part 422

Photographic Processing - 40 CFR Part 459

Plastics Molding and Forming - 40 CFR Part 463

Porcelain Enameling - 40 CFR Part 466

Pulp, Paper and Paperboard - 40 CFR Part 430

Rubber Processing - 40 CFR Part 428

Secondary Treatment - 40 CFR Part 133

Soaps and Detergents - 40 CFR Part 417

Steam Electric Power Generation - 40 CFR Part 423

Sugar Processing - 40 CFR Part 409

Textile Mills - 40 CFR Part 410

Timber Products - 40 CFR Part 429

Toxic Pollutant Effluent Standards - 40 CFR Part 129

Transportation Equipment Cleaning - 40 CFR Part 442

Waste Combustors - 40 CFR Part 444

B. The director shall be responsible for identifying any subsequent changes in the regulations incorporated in the previous subsection or the adoption or the modification of any new national standard. Upon identifying any such federal change or adoption, the director shall initiate a regulation adopting proceedings by preparing and filing with the Registrar of Regulations the notice required by § 2.2-4006 A 4 c of the Code of Virginia or a notice of a public hearing pursuant to § 2.2-4007 C of the Code of Virginia.

9VAC25-31-50. Prohibitions.

A. Except in compliance with a VPDES permit, or another permit, issued by the board or other entity authorized by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; ~~or~~

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses~~.~~; or

3. Discharge stormwater into state waters from municipal separate storm sewer systems or land disturbing activities.

B. Any person in violation of ~~9VAC25-31-50~~ subsection A of this section, who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters; 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 permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

C. No permit may be issued:

1. When the conditions of the permit do not provide for compliance with the applicable requirements of the CWA or the law, or regulations promulgated under the CWA or the law;

2. When the 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 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 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 law 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 permit under 9VAC25-31-280.

9VAC25-31-200. Additional conditions applicable to specified categories of VPDES permits.

The following conditions, in addition to those set forth in 9VAC25-31-190, apply to all VPDES permits within the categories specified below:

A. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the department as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

a. One hundred micrograms per liter (100 µg/l);

b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the board in accordance with 9VAC25-31-220 F.

2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the board in accordance with 9VAC25-31-220 F.

B. Publicly and privately owned treatment works. All POTWs and PVOTWs must provide adequate notice to the department of the following:

1. Any new introduction of pollutants into the POTW or PVOTW from an indirect discharger which would be subject to § 301 or 306 of the CWA and the law if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW or PVOTW by a source introducing pollutants into the POTW or PVOTW at the time of issuance of the permit.

3. For purposes of this subsection, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW or PVOTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW or PVOTW.

4. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design capacity authorized by the VPDES permit for each month of any three-month period, the owner shall within 30 days notify the department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

a. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could be reasonably anticipated, resulting from high influent flows.

b. Upon receipt of the owner's plan of action, the board shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.

c. Failure to timely submit an adequate plan shall be deemed a violation of the permit.

d. Nothing herein shall in any way impair the authority of the board to take enforcement action under § 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of Virginia.

C. Wastewater works operator requirements.

1. The permittee shall employ or contract at least one wastewater works operator who holds a current wastewater license appropriate for the permitted facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations (18VAC160-20). Notwithstanding the foregoing requirement, unless the

discharge is determined by the board on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

a. That have a design hydraulic capacity equal to or less than 0.04 mgd;

b. That discharge industrial waste or other waste from coal mining operations; or

c. That do not utilize biological or physical/chemical treatment.

2. In making this case-by-case determination, the board shall consider the location of the discharge with respect to state waters, the size of the discharge, the quantity and nature of pollutants reaching state waters and the treatment methods used at the wastewater works.

3. The permittee shall notify the department in writing whenever he is not complying, or has grounds for anticipating he will not comply with the requirements of subdivision 1 of this subsection. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

D. Lake level contingency plans. Any VPDES permit issued for a surface water impoundment whose primary purpose is to provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be released when the water level above the dam drops below designated levels due to drought conditions, and such plan shall take into account and minimize any adverse effects of any release reduction requirements on downstream users. This subsection shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

E. Concentrated Animal Feeding Operations (CAFOs). The activities of the CAFO shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter or process wastewater to surface waters of the state except in the case of an overflow caused by a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges as defined in subdivision C 3 of 9VAC25-31-130 are permitted. Domestic sewage or industrial waste shall not be managed under the Virginia Pollutant Discharge Elimination System General Permit for CAFOs (9VAC25-191). Any permit issued to a CAFO shall include:

1. Requirements to develop, implement and comply with a nutrient management plan. At a minimum, a nutrient management plan shall include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented and be in compliance with the nutrient management plan as a requirement of the permit. The nutrient management plan must, to the extent applicable:

a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

c. Ensure that clean water is diverted, as appropriate, from the production area;

d. Prevent direct contact of confined animals with surface waters of the state;

e. Ensure that chemicals and other contaminants handled on site are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface waters of the state;

g. Identify protocols for appropriate testing of manure, litter, process wastewater and soil;

h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and

i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.

2. Recordkeeping requirements. The permittee must create, maintain for five years, and make available to the director upon request the following records:

a. All applicable records identified pursuant to subdivision 1 i of this subsection;

b. In addition, all CAFOs subject to EPA Effluent Guidelines for Feedlots (40 CFR Part 412) must comply with recordkeeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c);

A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the director upon request.

3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of EPA Effluent Guidelines for Feedlots (40 CFR Part 412). Large CAFOs must retain for five years records of the date, recipient name and address and approximate

amount of manure, litter or process wastewater transferred to another person.

4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the director. The annual report must include:

a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

c. Estimated amount of total manure, litter and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);

d. Total number of acres for land application covered by the nutrient management plan developed in accordance with subdivision 1 of this subsection;

e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;

f. Summary of all manure, litter and process wastewater discharges from the production area that occurred in the previous 12 months including date, time and approximate volume;

g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and

h. The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with subdivisions 5 a (2) and 5 b (4) of this subsection, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with subdivision 5 b of this subsection, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with subdivision 5 b (4) of this subsection, and the amount of any supplemental fertilizer applied during the previous 12 months.

5. Terms of the nutrient management plan. Any permit issued to a CAFO shall require compliance with the terms of the CAFO's site-specific nutrient management plan. The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the board to be necessary to meet the requirements of subdivision 1 of this subsection. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by subdivision 4 h of this subsection and, as applicable, 40 CFR 412.4(c), shall include the fields available for land application; field-specific rates of application properly developed, as specified in subdivisions 5 a and b of this subsection, to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms shall address rates of application using one of the following two approaches, unless the board specifies that only one of these approaches may be used:

a. Linear approach. An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

(1) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the board, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the board for each crop or use identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

(2) Large CAFOs that use this approach shall calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; or

b. Narrative rate approach. An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter,

and process wastewater to be land applied, according to the following specifications:

(1) The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the board, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in accordance with subdivision 5 b (2) of this subsection); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the board for each crop or use identified for each field. In addition, the terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the nutrient management plan, as required by subdivision 1 g of this subsection; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

(2) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops shall be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan shall include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the board for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied shall be determined in accordance with the methodology described in subdivision 5 b (1) of this subsection.

(3) For CAFOs using this approach, the following projections shall be included in the nutrient management plan submitted to the board, but are not terms of the nutrient management plan: the CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

(4) CAFOs that use this approach shall calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in subdivision 5 b (1) of this subsection before land applying manure, litter, and process wastewater and shall rely on the following data:

(a) A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by subdivision 5 b (1) of this subsection, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the board; and

(b) The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

9VAC25-31-300. Public comments and requests for public hearings.

During the public comment period provided under 9VAC25-31-290, any interested person may submit written comments on the draft 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, pursuant to the board's Procedural Rule No. 1 (9VAC25-230-10 et seq.) or its successor~~ 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 9VAC25-31-320.

9VAC25-31-310. 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 permit or 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 permit decision.~~

~~3.~~ Procedures for public hearings and permits before the board are those set forth in § 62.1-44.15:02 of the Code of Virginia.

2. Public notice of the public hearing shall be given as specified in 9VAC25-31-290 of this chapter.

~~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 permit applications may be considered at any such public hearing.

B. Any person may submit oral or written statements and data concerning the draft 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 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.

D. Proceedings at, and the decision from, the public hearing will be governed by ~~the board's Procedural Rule No. 1 (9VAC25-230-10 et seq.) or its successor~~ § 62.1-44.15:02 of the Code of Virginia.

VA.R. Doc. No. R14-3566; Filed December 30, 2013, 12:12 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-151. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity (amending 9VAC25-151-10, 9VAC25-151-20, 9VAC25-151-40 through 9VAC25-151-90, 9VAC25-151-110 through 9VAC25-151-350, 9VAC25-151-370; adding 9VAC25-151-15; repealing 9VAC25-151-65).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

Effective Date: July 1, 2014.

Agency Contact: Burton R. Tuxford, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4086, FAX (804) 698-4032, TTY (804) 698-4021, or email burton.tuxford@deq.virginia.gov.

Summary:

This regulatory action reissues the existing Virginia Pollutant Discharge Elimination System Industrial Activity Storm Water General Permit (VAR05) that expires on June 30, 2014, and is based primarily on the U.S. Environmental Protection Agency's 2008 final Multi-Sector General Permit. The general permit establishes permit conditions and monitoring requirements for point source discharges of storm water associated with industrial activity to surface waters. The general permit regulation is reissued to make it available for these facilities to continue to discharge and will be effective for five years beginning July 1, 2014, and expiring June 30, 2019.

9VAC25-151-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the VPDES Permit Regulation (9VAC25-31) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Best management practices" or "BMPs" means schedules of activities, practices (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

["Board" means the Virginia State Water Control Board or State Water Control Board.]

"Closed landfill" means a landfill that, on a permanent basis, will no longer receive waste and has completed closure in accordance with applicable federal, state, or local requirements.

"Coal pile runoff" means the rainfall runoff from or through any coal storage pile.

"Colocated industrial activity" means ~~when a facility has~~ any industrial ~~activities being conducted~~ activity, excluding the facility's primary industrial activity, located on-site that ~~are described under more than one of the industrial sectors of 9VAC25-151-90 through 9VAC25-151-370~~ meets the description of a category included in the "industrial activity" definition. An activity at a facility is not considered colocated if the activity, when considered separately, does not meet the description of a category included in the "industrial activity" definition or identified by the Standard Industrial Classification (SIC) code list in Table 50-2 in 9VAC25-151-50.

"Commercial treatment and disposal facilities" means facilities that receive, on a commercial basis, any produced hazardous waste (not their own) and treat or dispose of those wastes as a service to the generators. Such facilities treating or disposing exclusively residential hazardous wastes are not included in this definition.

"Control measure" means any best management practice or other method (including effluent limitations) used to prevent or reduce the discharge of pollutants to surface waters.

"Department" or "DEQ" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality or an authorized representative.

"Existing discharger" means an operator applying for coverage under this permit for discharges authorized previously under a VPDES general or individual permit.

"Impaired water" means ~~a water is impaired,~~ for purposes of this chapter ~~if it,~~ a water that has been identified by Virginia pursuant to § 303(d) of the Clean Water Act as not meeting applicable water quality standards (these waters are called "water quality limited segments" under 40 CFR 30.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

~~"Inactive landfill" means a landfill that, on a permanent basis, will no longer receive waste and has completed closure in accordance with any applicable federal, state, or local requirements.~~

"Industrial activity" - the following categories of facilities are considered to be engaging in "industrial activity":

~~(1)~~ 1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N ~~(2007)~~ (except facilities with toxic pollutant effluent standards which are exempted under category (10) of this definition);

~~(2)~~ 2. Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget (OMB) SIC Manual, 1987);

~~(3)~~ 3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) ~~(2007)~~ because the performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, benefication, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

~~(4)~~ 4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.);

~~(5)~~ 5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition, and debris/wastes from ~~Department of Conservation and Recreation~~ [~~Virginia Stormwater Management Program (VSMP)~~ VPDES] regulated construction activities/sites) including those that are subject to regulation under Subtitle D of RCRA;

~~(6)~~ 6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification Codes 5015 and 5093 (OMB SIC Manual, 1987);

~~(7)~~ 7. Steam electric power generating facilities, including coal handling sites;

~~(8)~~ 8. Transportation facilities classified as SIC Codes 40, 41, 42 (except 4221-4225), 43, 44, 45, and 5171 (OMB SIC Manual, 1987) which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operation, airport deicing operation, or which are otherwise identified under categories 1 through 7 or 9 and 10 of this definition are associated with industrial activity;

~~(9)~~ 9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that is located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved POTW pretreatment program under 9VAC25-31. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused

and which are not physically located in the confines of the facility, or areas that are in compliance with 9VAC25-31-420 through 9VAC25-31- 720;

~~(10)~~ 10. Facilities under SIC Codes 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225 (OMB SIC Manual, 1987).

"Industrial storm water" means storm water runoff ~~associated with the definition of "storm water discharge associated with~~ from industrial activity.~~"~~

"Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

~~"Large and medium municipal separate storm sewer system" means all municipal separate storm sewers that are located in the following municipalities: the City of Norfolk; the City of Virginia Beach; Fairfax County; the City of Chesapeake; the City of Hampton; Prince William County; Arlington County; Chesterfield County; Henrico County; the City of Newport News; and the City of Portsmouth.~~

"Measurable storm event" means a storm event that results in an actual discharge from a site.

"Minimize" means reduce or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.

"MS4" means a municipal separate storm sewer system.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters of the state; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW).

"No exposure" means all industrial materials or activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, ~~and/or~~ or runoff.

"Primary industrial activity" includes any activities performed on-site which are:

1. Identified by the facility's primary SIC code; or

2. Included in the narrative descriptions of the definition of "industrial activity."

Narrative descriptions in the "industrial activity" definition include: category 1 activities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards; category 4 hazardous waste treatment storage or disposal facilities, including those that are operating under interim status or a permit under subtitle C of the Resource Conservation and Recovery Act RCRA; category 5 landfills, land application sites, and open dumps that receive or have received industrial wastes; category 7 steam electric power generating facilities; and category 9 sewage treatment works with a design flow of 1.0 mgd or more.

For colocated activities covered by multiple SIC codes, the primary industrial determination should be based on the value of receipts or revenues, or, if such information is not available for a particular facility, the number of employees or production rate for each process may be compared. The operation that generates the most revenue or employs the most personnel is the operation in which the facility is primarily engaged. In situations where the vast majority of on-site activity falls within one SIC code, that activity may be the primary industrial activity.

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

~~"Section 313 water priority chemicals" means a chemical or chemical categories which: (i) are listed at 40 CFR 372.65 (2007) pursuant to § 313 of the Emergency Planning and Community Right to Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986) (42 USC § 11001 et seq.); (ii) are present at or above threshold levels at a facility subject to EPCRA § 313 reporting requirements; and (iii) that meet at least one of the following criteria: (a) are listed in Appendix D of 40 CFR Part 122 (2007) on either Table II (Organic priority pollutants), Table III (Certain metals, cyanides and phenols) or Table V (Certain toxic pollutants and hazardous substances); (b) are listed as a hazardous substance pursuant to § 311(b)(2)(A) of the Clean Water Act at 40 CFR 116.4 (2007); or (c) are pollutants for which EPA has published acute or chronic water quality criteria.~~

"Significant materials" includes, 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 the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.); any chemical the facility is required to report pursuant to EPCRA § 313; fertilizers; pesticides; and waste products such as

ashes, slag and sludge that have the potential to be released with storm water discharges.

"Significant spills" includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 ~~(2007)~~ and 40 CFR 117.21 ~~(2007))~~) or § 102 of CERCLA (see 40 CFR 302.4 ~~(2007))~~).

["Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.]

~~"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, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under subsection 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 9VAC25-31-120 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 highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.~~

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities include those that are federally, state, or municipally owned or operated that meet the description of the facilities listed in the "industrial activity" definition. The term also includes those facilities designated under the provisions of 9VAC25-31-120 A 1 c, or under 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations.

"Virginia Environmental Excellence Program" or "VEEP" means a voluntary program established by the department to provide public recognition and regulatory incentives to encourage higher levels of environmental performance for program participants that develop and implement environmental management systems (EMSs). The program is based on the use of EMSs that improve compliance, prevent pollution, and utilize other measures to improve environmental performance.

"Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

9VAC25-151-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 CFR is referenced and incorporated herein, that regulation shall be as it exists and has been published as of July 1, [~~2012~~ 2013].

9VAC25-151-20. Purpose.

This general permit regulation governs all ~~new and existing~~ storm water discharges associated with industrial activity from facilities in any of the industrial activity categories defined in 9VAC25-151-10 (Definitions), through a point source to surface waters, or through a municipal or nonmunicipal separate storm sewer system to surface waters. This regulation also governs storm water discharges designated by the board for permitting under the provisions of 9VAC25-31-120 A 1 c, or under 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation.

9VAC25-151-40. Effective date of the permit.

This general permit will become effective on July 1, ~~2009~~ 2014. This general permit will expire on June 30, ~~2014~~ 2019.

9VAC25-151-50. Authorization to discharge.

A. To be eligible to discharge under this permit, an owner must (i) have a stormwater discharge associated with industrial activity from the facility's primary industrial activity, as defined in 9VAC25-151-10 (Definitions), provided the primary industrial activity is included in Table 50-2 of this section, or (ii) be notified that discharges from the facility have been designated by the board for permitting under the provisions of 9VAC25-31-120 A 1 c, or under 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation, and are eligible for coverage under Sector AD of this permit.

Any owner governed by this general permit is hereby authorized to discharge storm water associated with industrial activity ~~(as defined in this regulation)~~, as defined in this chapter, to surface waters of the Commonwealth of Virginia provided that ~~the~~:

1. The owner ~~files the~~ submits a registration statement ~~of~~ in accordance with 9VAC25-151-60, ~~pays any fees~~ and that registration statement is accepted by the board;

2. The owner submits the required ~~by 9VAC25-20, receives a copy of the general permit, and~~ permit fee;

3. The owner complies with the applicable requirements of 9VAC25-151-70 et seq.; and ~~provided that:~~

4. The board has not notified the owner that the discharge is ineligible for coverage in accordance with subsection B of this section.

B. The board will notify an owner that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;

2. The owner is proposing to discharge to state waters specifically named in other board regulations that prohibit such discharges;

3. The discharge violates or would violate the antidegradation policy in the Water Quality Standards at 9VAC25-260-30; or

4. The discharge is not consistent with the assumptions and requirements of an approved TMDL. Note: Virginia's [Phase I] Chesapeake Bay TMDL Watershed Implementation Plan (November 29, 2010) [~~requires~~ states] that waste loads [for future growth] for new facilities in the Chesapeake Bay watershed with industrial stormwater discharges [~~not~~ cannot] exceed the nutrient and sediment loadings that were discharged prior to the land being developed for the [new] industrial activity. For purposes of this permit regulation, facilities [~~constructed~~ that commence construction] after [~~November 29, 2010~~ June 30, 2014], must be consistent with this requirement to be eligible for coverage under this general permit.

C. 1. Facilities with colocated industrial activities on-site shall comply with all applicable effluent limitations, monitoring and pollution prevention plan requirements of each section of 9VAC25-151-70 et seq. in which a colocated industrial activity is described~~;~~.

2. Storm water discharges associated with industrial activity that are mixed with other discharges (both storm water and nonstorm water) requiring a VPDES permit are authorized by this permit, provided that the owner obtains coverage under this VPDES general permit for the industrial activity discharges, and a VPDES general or individual permit for the other discharges. The owner shall comply with the terms and requirements of each permit obtained that authorizes any component of the discharge~~;~~.

3. The storm water discharges authorized by this permit may be combined with other sources of storm water which are not required to be covered under a VPDES permit, so long as the combined discharge is in compliance with this permit~~; and~~.

4. Authorized nonstorm water discharges. The following "nonstorm water" discharges are authorized by this permit:

a. Discharges from fire fighting activities;

b. Fire hydrant flushings;

c. Potable water, including water line flushings;

d. Uncontaminated ~~air conditioning or compressor condensate (excluding air compressors)~~ condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;

e. Irrigation drainage;

f. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with ~~manufacturer's instructions~~ the approved labeling;

g. Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed);

h. Routine external building ~~wash-down~~ washdown that does not use detergents;

i. Uncontaminated ground water or spring water;

j. Foundation or footing drains where flows are not contaminated with process materials; and

k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

5. Storm water discharges associated with construction activity that are regulated under [~~the Virginia Stormwater Management Program (VSMP)~~ a VPDES permit] are not authorized by this permit.

6. Discharges subject to storm water effluent limitation guidelines under 40 CFR Subchapter N (Effluent

Guidelines and Standards). Only those storm water discharges subject to storm water effluent limitation guidelines under 40 CFR Subchapter N that are identified in Table 50-1 of this subsection are eligible for coverage under this permit.

TABLE 50 - 1
STORM WATER-SPECIFIC EFFLUENT LIMITATION GUIDELINES.

Effluent Limitation Guideline	Sectors with Affected Facilities
Runoff from material storage piles at cement manufacturing facilities (40 CFR Part 411 Subpart C (established February 20, 1974))	E
Contaminated runoff from phosphate fertilizer manufacturing facilities (40 CFR Part 418 Subpart A (established April 8, 1974))	C
Coal pile runoff at steam electric generating facilities (40 CFR Part 423 (established November 19, 1982))	O
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas (40 CFR Part 429 Subpart I (established January 26, 1981))	A
Runoff from asphalt emulsion facilities (40 CFR Part 443 Subpart A (established July 24, 1975))	D
Runoff from landfills (40 CFR Part 445 Subparts A and B (established January 19, 2000))	K and L
Discharges from airport deicing operations, (40 CFR Part 449 (established May 16, 2012))	S

7. Permit eligibility is limited to discharges from facilities in the "sectors" of industrial activity summarized in Table 50-2 of this subsection. These sector descriptions are based on Standard Industrial Classification (SIC) Codes and Industrial Activity Codes. References to "sectors" in this permit (e.g., sector-specific monitoring requirements) refer to these groupings.

~~B. Limitations on coverage.~~

~~1. The owner shall not be authorized to discharge under this general permit if the owner has been required to obtain an individual permit pursuant to 9VAC25-31-170 B;~~

~~2. The owner shall not be authorized by this general permit to discharge to state waters specifically named in other board regulations or policies which prohibit such discharges;~~

~~3. The following storm water discharges associated with industrial activity are not authorized by this permit:~~

~~a. Discharges that are located at a facility where a VPDES permit has been terminated (other than at the request of the permittee) or denied;~~

~~b. Discharges that the director determines cause, or may reasonably be expected to cause, or be contributing to a violation of a water quality standard;~~

~~c. Discharges subject to effluent limitation guidelines, not described under 9VAC25-151-70, Table 70-2;~~

~~d. Discharges to waters for which a "total maximum daily load" (TMDL) allocation has been established by the board and approved by EPA prior to the term of this permit, unless the owner develops, implements, and maintains a storm water pollution prevention plan (SWPPP) that is consistent with the assumptions and requirements of the TMDL. This only applies where the facility is a source of the TMDL pollutant of concern. The SWPPP shall specifically address any conditions or requirements included in the TMDL that are applicable to discharges from the facility. If the TMDL establishes a specific numeric wasteload allocation that applies to discharges from the facility, the owner shall implement BMPs designed to meet that allocation;~~

~~e. New dischargers that discharge to impaired waters for which a TMDL has not been established by the board and approved by EPA unless:~~

~~(1) The discharger prevents all exposure to stormwater of the pollutant(s) for which the waterbody is impaired, and retains documentation of the procedures taken to prevent exposure onsite with the SWPPP required by 9VAC25-151-70;~~

~~(2) The discharger documents that the pollutant(s) for which the waterbody is impaired is not present at the site, and retains documentation of this finding with the SWPPP required by 9VAC25-151-70; or~~

~~(3) Prior to submitting a registration statement, the discharger provides to the appropriate DEQ regional office data to support a showing that the discharge is not expected to cause or contribute to an exceedance of a water quality standard. The discharger shall provide data and other technical information to the regional office sufficient to demonstrate that the discharge of the pollutant for which the water is impaired will meet in-stream water quality criteria at the point of discharge to the waterbody. The discharges from the facility are authorized under this permit if the discharger receives an affirmative determination from the regional office that the discharges will not contribute to the existing impairment. The discharger shall maintain the supporting~~

~~data and the regional office determination onsite with the SWPPP required by 9VAC25-151-70; and~~

~~f. Discharges that do not comply with Virginia's antidegradation policy for water quality standards under 9VAC25-260-30. If authorization to discharge under this general permit will not comply with the antidegradation requirements, an individual permit application may be required to allow a discharge that meets the requirements for high quality waters in 9VAC25-260-30 A 2, or permits may be denied to meet the requirements for exceptional waters in 9VAC25-260-30 A 3.~~

~~4. Facilities covered. Permit eligibility is limited to discharges from facilities in the "sectors" of industrial activity based on Standard Industrial Classification (SIC) codes and Industrial Activity codes summarized in Table 50-1. References to "sectors" in this permit refer to these sectors.~~

~~5. Storm water discharges associated with construction activity that are regulated under the Department of Conservation and Recreation VSMP permit program are not authorized by this permit.~~

TABLE 50-~~1~~ 2
SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT~~.~~

SIC Code or Activity Code	Activity Represented
Sector A: Timber Products	
2411	Log Storage and Handling ~~(Wet~~ (wet deck storage areas are only authorized if no chemical additives are used in the spray water or applied to the logs).
2421	General Sawmills and Planning Mills.
2426	Hardwood Dimension and Flooring Mills.
2429	Special Product Sawmills, Not Elsewhere Classified.
2431-2439 (except 2434 - see Sector W)	Millwork, Veneer, Plywood, and Structural Wood.
2441, 2448, 2449	Wood Containers.
2451, 2452	Wood Buildings and Mobile Homes.
2491	Wood Preserving.
2493	Reconstituted Wood Products.
2499	Wood Products, Not Elsewhere Classified (includes SIC Code 24991303 - Wood, Mulch and Bark facilities).
Sector B: Paper and Allied Products	
2611	Pulp Mills.
2621	Paper Mills.
2631	Paperboard Mills.
2652-2657	Paperboard Containers and Boxes.
2671-2679	Converted Paper and Paperboard Products, ~~Except~~ except Containers and Boxes.
Sector C: Chemical and Allied Products	
2812-2819	Industrial Inorganic Chemicals.
2821-2824	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Manmade Fibers, ~~Except~~ except Glass.
2833-2836	Medicinal Chemicals and Botanical Products; Pharmaceutical Preparations; In Vitro and In Vivo Diagnostic Substances; Biological Products, ~~Except~~ except Diagnostic Substances.
2841-2844	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations.
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products.
2861-2869	Industrial Organic Chemicals.
2873-2879	Agricultural Chemicals (includes SIC Code 2875 - Composting Facilities).
2891-2899	Miscellaneous Chemical Products.
3952 (limited to list)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints and Artist's Watercolors.

Sector D: Asphalt Paving and Roofing Materials and Lubricants	
2951, 2952	Asphalt Paving and Roofing Materials.
2992, 2999	Miscellaneous Products of Petroleum and Coal.
Sector E: Glass Clay, Cement, Concrete, and Gypsum Products.	
3211	Flat Glass.
3221, 3229	Glass and Glassware, Pressed or Blown.
3231	Glass Products Made of Purchased Glass.
3241	Hydraulic Cement.
3251-3259	Structural Clay Products.
3261-3269	Pottery and Related Products.
3274, 3275	Concrete, Gypsum and Plaster Products, Except: Concrete Block and Brick; Concrete Products, ~~Except~~ except Block and Brick; and ~~Ready-mixed~~ Ready-Mixed Concrete Facilities (SIC 3271-3273).
3281	Cut Stone and Stone Products
3291-3299	Abrasive, Asbestos, and Miscellaneous ~~Non-metallic~~ Non-Metallic Mineral Products.
Sector F: Primary Metals	
3312-3317	Steel Works, Blast Furnaces, and Rolling and Finishing Mills.
3321-3325	Iron and Steel Foundries.
3331-3339	Primary Smelting and Refining of Nonferrous Metals.
3341	Secondary Smelting and Refining of Nonferrous Metals.
3351-3357	Rolling, Drawing, and Extruding of Nonferrous Metals.
3363-3369	Nonferrous Foundries (Castings).
3398, 3399	Miscellaneous Primary Metal Products.

Sector G: Metal Mining (Ore Mining and Dressing)	
1011	Iron Ores.
1021	Copper Ores.
1031	Lead and Zinc Ores.
1041, 1044	Gold and Silver Ores.
1061	Ferroalloy Ores, Except Vanadium.
1081	Metal Mining Services.
1094, 1099	Miscellaneous Metal Ores.
Sector H: Coal Mines and Coal Mining Related Facilities	
1221-1241	Coal Mines and Coal Mining-Related Facilities.
Sector I: Oil and Gas Extraction and Refining	
1311	Crude Petroleum and Natural Gas.
1321	Natural Gas Liquids.
1381-1389	Oil and Gas Field Services.
2911	Petroleum Refineries.
Sector J: Mineral Mining and Dressing Facilities (SIC 1411-1499) are not authorized under this permit.	
Sector K: Hazardous Waste Treatment, Storage, or Disposal Facilities	
HZ	Hazardous Waste Treatment Storage or Disposal.
Sector L: Landfills and Land Application Sites	
LF	Landfills, Land Application Sites, and Open Dumps.
Sector M: Automobile Salvage Yards	
5015	Automobile Salvage Yards.
Sector N: Scrap Recycling Facilities	
5093	Scrap Recycling Facilities.
4499 (limited to list)	Dismantling Ships, Marine Salvaging, and Marine Wrecking - Ships ~~For~~ for Scrap.
Sector O: Steam Electric Generating Facilities	
SE	Steam Electric Generating Facilities.
Sector P: Land Transportation and Warehousing	
4011, 4013	Railroad Transportation.

4111-4173	Local and Highway Passenger Transportation.
4212-4231	Motor Freight Transportation and Warehousing.
4311	United States Postal Service.
5171	Petroleum Bulk Stations and Terminals.
Sector Q: Water Transportation	
4412-4499 (except 4499 facilities as specified in Sector N)	Water Transportation.
Sector R: Ship and Boat Building or Repairing Yards	
3731, 3732	Ship and Boat Building or Repairing Yards.
Sector S: Air Transportation	
4512-4581	Air Transportation Facilities.
Sector T: Treatment Works	
TW	Treatment Works.
Sector U: Food and Kindred Products	
2011-2015	Meat Products.
2021-2026	Dairy Products.
2032-2038	Canned, Frozen, and Preserved Fruits, Vegetables, and Food Specialties.
2041-2048	Grain Mill Products.
2051-2053	Bakery Products.
2061-2068	Sugar and Confectionery Products.
2074-2079	Fats and Oils.
2082-2087	Beverages.
2091-2099	Miscellaneous Food Preparations and Kindred Products.
2111-2141	Tobacco Products.
Sector V: Textile Mills, Apparel, and Other Fabric Product Manufacturing, Leather and Leather Products	
2211-2299	Textile Mill Products.
2311-2399	Apparel and Other Finished Products Made ~~From~~ from Fabrics and Similar Materials.
3131-3199 (except 3111 - see Sector Z)	Leather and Leather Products, except Leather Tanning and Finishing.
Sector W: Furniture and Fixtures	
2434	Wood Kitchen Cabinets.
2511-2599	Furniture and Fixtures.
Sector X: Printing and Publishing	
2711-2796	Printing, Publishing, and Allied Industries.
Sector Y: Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries.	
3011	Tires and Inner Tubes.
3021	Rubber and Plastics Footwear.
3052, 3053	Gaskets, Packing, and Sealing Devices and Rubber and Plastics Hose and Belting.
3061, 3069	Fabricated Rubber Products, Not Elsewhere Classified.
3081-3089	Miscellaneous Plastics Products.
3931	Musical Instruments.
3942-3949	Dolls, Toys, Games, and Sporting and Athletic Goods.
3951-3955 (except 3952 facilities as specified in Sector C)	Pens, Pencils, and Other Artists' Materials.
3961, 3965	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal.
3991-3999	Miscellaneous Manufacturing Industries.
Sector Z: Leather Tanning and Finishing	
3111	Leather Tanning, Currying, and Finishing.
Sector AA: Fabricated Metal Products	
3411–3499	Fabricated Metal Products, ~~Except~~ except Machinery and Transportation Equipment.
3911–3915	Jewelry, Silverware, and Plated Ware

Sector AB: Transportation Equipment, Industrial or Commercial Machinery	
3511-3599 (except 3571-3579 - see Sector AC)	Industrial and Commercial Machinery ~~(Except~~ (except Computer and Office Equipment).
3711-3799 (except 3731, 3732 - see Sector R)	Transportation Equipment ~~(Except~~ (except Ship and Boat Building and Repairing).
Sector AC: Electronic, Electrical, Photographic, and Optical Goods	
3571-3579	Computer and Office Equipment.
3612-3699	Electronic~~,~~ and Other Electrical Equipment and Components, ~~Except~~ except Computer Equipment.
3812-3873	Measuring, Analyzing, and Controlling ~~Instrument~~ Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks.
Sector AD: Nonclassified Facilities/Storm Water Discharges Designated ~~By~~ by the Board ~~As~~ as Requiring Permits	
N/A	~~Other~~ Storm Water Discharges Designated ~~By~~ by the Board ~~As Needing a Permit (see~~ for Permitting under the Provisions of 9VAC25-31-120 A 1 ~~c)~~c, or ~~Any Facility Discharging Storm Water Associated With Industrial Activity Not Described By Any of Sectors A-AC~~ under 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation. Note: Facilities may not elect to be covered under Sector AD. Only the board may assign a facility to Sector AD.

~~C.~~ D. Conditional exclusion for no exposure. ~~If an~~ Any owner ~~is~~ covered by this permit~~, but later is able to file a no exposure certification to be excluded~~ who becomes eligible for a no exposure exclusion from permitting under 9VAC25-31-120 E~~, the owner is no longer authorized by nor required to comply with this permit. If the owner is no longer required to have permit coverage due to a no exposure exclusion,~~ may file a no exposure certification. Upon submission and acceptance by the board of a complete and accurate no exposure certification, the permit requirements no longer apply, and the owner is not required to submit a notice of termination. A no exposure certification must be submitted to the board once every five years.

~~D. Receipt of~~ E. Compliance with this general permit constitutes compliance with the federal Clean Water Act and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

F. Continuation of permit coverage.

1. Any owner that was authorized to discharge under the industrial activity storm water general permit issued in 2009 and that submits a complete registration statement [~~on or~~] before July 1, 2014, is authorized to continue to discharge under the terms of the 2009 general permit until such time as the board either:

a. Issues coverage to the owner under this general permit; or

b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the 2009 general permit;

b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by administratively continued coverage under the terms of the 2009 general permit or be subject to enforcement action for discharging without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-151-60. Registration statement and Storm Water Pollution Prevention Plan (SWPPP).

A. ~~The owner of a facility with storm water discharges associated with industrial activity who is proposing to be covered by this general permit shall submit a VPDES general permit registration statement in accordance with this chapter.~~ An owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for discharges of storm water associated with industrial activity.

~~Owners of facilities that were covered~~ Any owner that was authorized to discharge under the ~~2004 Industrial Storm Water General Permit who intend~~ industrial storm water general permit that became effective on July 1, 2009, and that intends to continue coverage under this general permit shall review and update the Storm Water Pollution Prevention Plan (SWPPP) to meet all provisions of the general permit (9VAC25-151-70 et seq.) ~~by October 1, 2009~~ within 90 days of the board granting coverage under this permit. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit who wish to obtain coverage under this general permit shall prepare and implement a written SWPPP for the facility in accordance with the general permit (9VAC25-151-70 et seq.) prior to submitting the registration statement.

B. Deadlines for submitting registration ~~statement~~ statements.

1. Existing facilities.

a. ~~Owners of facilities that were covered~~ Any owner that was authorized to discharge under the ~~2004 Industrial Storm Water General Permit who intend~~ industrial storm water general permit that became effective on July 1, 2009, and that intends to continue coverage under this general permit shall submit a complete registration statement ~~prior to July 1, 2009~~ to the board on or before May 2, 2014.

b. ~~Owners of facilities previously covered by an expiring~~ Any owner covered by an individual VPDES permit for storm water discharges associated with industrial activity ~~may elect~~ that is proposing to be covered under this general permit ~~by submitting~~ shall submit a complete registration statement at least ~~30~~ 240 days prior to the expiration date of the individual VPDES permit.

c. ~~Owners~~ Any owner of an existing ~~facilities~~ facility with storm water discharges associated with industrial activity, not currently covered by a VPDES permit, ~~who intend to obtain coverage~~ that is proposing to be covered under this general permit ~~for storm water discharges associated with industrial activity~~ shall submit a complete registration statement to the board.

2. New facilities. ~~Owners of new facilities who wish to obtain coverage under this general permit~~ Any owner proposing a new discharge of storm water associated with industrial activity shall submit a complete registration statement at least ~~30~~ 60 days prior to the date planned for the commencement of the industrial activity at the facility.

[3. New owners of existing facilities. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility shall submit a complete registration statement] ~~or a "Change of Ownership" form~~ [within 30 days of the ownership change.]

~~4. Late notifications. An owner of a storm water discharge associated with industrial activity is not precluded from submitting a registration statement after the applicable dates provided in subdivisions 1 through 3 of this subsection. If a late registration statement is submitted, the owner is only authorized for discharges that occur after permit coverage is granted. The department reserves the right to take appropriate enforcement actions for any unpermitted discharges.~~

~~5. Additional notification for discharges to municipal separate storm sewer systems. Where the discharge of storm water associated with industrial activity is through a municipal separate storm sewer system (MS4), the owner shall notify the operator of the municipal system receiving the discharge and submit a copy of their registration statement to the municipal system operator.~~

[~~3.~~ 4.] Late registration statements. Registration statements for existing facilities covered under subdivision 1 a of this subsection will be accepted after [~~July 1,~~ June 30,] 2014, but authorization to discharge will not be retroactive. Owners described in subdivision 1 a of this subsection that submit registration statements after May 2, 2014, are authorized to discharge under the provisions of 9VAC25-151-50 F (Continuation of permit coverage) if a complete registration statement is submitted [~~on or~~] before July 1, 2014.

C. ~~Registration statement contents.~~ The required registration statement shall contain the following information:

1. Name, mailing address, email address (where available), and telephone number of the:

a. ~~Property~~ Facility owner ~~of the site~~; and

b. Operator applying for permit coverage (if different than ~~subdivision 1 a of this subsection)~~ the facility owner);

~~c. Responsible party requesting permit coverage, and who will be legally responsible for compliance with this permit;~~

2. ~~Name~~ Facility name [~~(or other identifier)~~], street address, county (or city), contact name, email address (where available), ~~and~~ phone number ~~for the facility for which the registration statement is submitted~~, and FAX number (where available);

3. ~~Facility ownership status: federal, state, public or private~~ The nature of the business;

4. ~~Name(s) of the receiving water(s) that storm water is discharged into~~ The receiving waters of the industrial activity discharges;

5. ~~A statement indicating if storm water runoff is discharged to a municipal separate storm sewer system (MS4). Provide the name of the MS4 operator if applicable~~ Whether the facility discharges, or will discharge, to an MS4. If so, provide the name of the MS4 owner. (Note: Permit special condition [~~#12~~ 13] requires the permittee

to notify the MS4 owner in writing of the existence of the discharge within 30 days of coverage under this permit. The notification shall include the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit registration number);

6. ~~VPDES~~ The permit ~~numbers~~ number for ~~all permits~~ any existing VPDES permit assigned to the facility ~~(including coverage under the 2004 Industrial Storm Water General Permit)~~;

7. Whether an SWPPP has been prepared prior to submitting this registration statement by the owner of a new facility, a facility previously covered by an expiring individual permit, or an existing facility not currently covered by a VPDES permit.

~~7.~~ 8. [~~An indication as to whether~~ Whether or not] this facility ~~discharges~~ will discharge storm water runoff from coal storage piles;

~~8. A copy of the SWPPP general location map and the SWPPP site map prepared in accordance with 9VAC25-151-80 B 2 b and c (general permit Part III B 2 b and c) and any applicable sector specific site map requirements. Owners covered under the 2004 Industrial Storm Water General Permit shall update their site map to meet all requirements listed in 9VAC25-151-80 B 2 c (general permit Part III B 2 c) and any applicable sector specific site map requirements, and shall submit the map to the department as soon as practicable, but not later than October 1, 2009;~~

9. Identification of up to four 4-digit Standard Industrial Classification (SIC) Codes or 2-letter Industrial Activity Codes that best represent the principal products or services rendered by the facility and major colocated industrial activities (2-letter Industrial Activity Codes are: HZ – hazardous waste treatment, storage, or disposal facilities; LF – ~~landfills/disposal~~ landfills and disposal facilities that receive or have received any industrial wastes; SE – steam electric power generating facilities; or~~,~~ TW – treatment works treating domestic sewage);

10. Identification of all applicable industrial sectors in this permit (as designated in Table ~~50-1)~~ 50-2) that cover the ~~discharges associated with~~ industrial ~~activity from~~ activities at the facility, and major colocated industrial activities to be covered under this permit, and the storm water outfalls associated with each industrial sector.

a. If the facility is a landfill (sector L), indicate the type of landfill ~~(MSWLF~~ (i.e., MSWLF (municipal solid waste landfill), CDD (construction ~~debris/demolition),~~ debris and demolition), or other), and which outfalls (if any) receive contaminated storm water runoff~~.~~;

b. If the facility is a timber products operation (sector A), indicate which outfalls (if any) receive discharges from wet decking areas;

c. For all facilities, indicate which outfalls (if any) receive discharges from coal storage piles;

d. If the facility manufactures asphalt paving and roofing materials (sector D), indicate which outfalls (if any) receive discharges from areas where production of asphalt paving and roofing emulsions occurs;

e. If the facility manufactures cement (sector E), indicate which outfalls (if any) receive discharges from material storage piles;

f. If a scrap recycling and waste recycling facility (sector N - SIC 5093) only receives source-separated recyclable materials, indicate which outfalls (if any) receive discharges from this activity. List the metals (if any) that are received; or

g. For primary airports (sector S), list the average deicing season and indicate which outfalls (if any) receive discharges from deicing of non-propeller aircraft, and the annual average departures of non-propeller aircraft;

11. Facility [~~site~~ area] information. List the total area of the [~~site~~ facility] (in acres), the area of industrial activity at the [~~site~~ facility] (in acres), [~~and~~] the total impervious area of the [~~site~~ industrial activity at the facility] (in acres) [, and the area (in acres) draining to each industrial activity outfall at the facility. Outfalls shall be numbered using a unique numerical identification code for each outfall (e.g., Outfall No. 001, No. 002, etc.)];

12. The following maps shall be included with the registration statement:

a. General location map. A USGS 7.5 minute topographic map, or other equivalent computer generated map, with sufficient resolution to clearly show the location of the facility and the surrounding locale; and

b. Site map. A map showing the property boundaries, the location of all industrial activity areas, all storm water outfalls, and all water bodies receiving storm water discharges from the site. [~~Outfalls shall be numbered using a unique numerical identification code for each outfall (e.g., Outfall No. 001, No. 002, etc.)~~ Outfall numbering shall be the same as that used for the facility area information in subdivision 11 of this subsection];

13. Virginia's [Phase I] Chesapeake Bay TMDL Watershed Implementation Plan (November 29, 2010) [~~requires~~ states] that waste loads [for future growth] for new facilities in the Chesapeake Bay watershed with industrial stormwater discharges [~~not~~ cannot] exceed the nutrient and sediment loadings that were discharged prior to the land being developed for the industrial activity. For purposes of this permit regulation, facilities [~~constructed after November 29, 2010 that~~ commence construction after June 30, 2014], must be

consistent with this requirement to be eligible for coverage under this general permit.

If this is a new facility [~~constructed after November 29, 2010~~ that commenced construction after June 30, 2014], in the Chesapeake Bay watershed, and applying for first time general permit coverage, attach documentation to the registration statement to show:

a. That the total phosphorus load does not exceed the greater of: (i) the total phosphorus load that was discharged from the [~~site~~ industrial area of the property] prior to the land being developed for the [new] industrial activity [~~,~~] or (ii) 0.41 pounds per acre per year (VSMP water quality design criteria). The documentation must include the measures and controls that were employed to meet this requirement, along with the supporting calculations. [The owner may include additional nonindustrial land on the site as part of any plan to comply with the no net increase requirement. Consistent with the definition of "site," this includes adjacent land used in connection with the facility.] Compliance with the water quality design criteria may be determined utilizing the Virginia Runoff Reduction Method or another equivalent methodology approved by the board. Design specifications and pollutant removal efficiencies for [specific] BMPs can be found on the Virginia Storm Water BMP Clearinghouse website at http://www.vwrrc.vt.edu/swc; or

b. [~~That nutrient credits have been acquired~~ The owner may consider utilization of any pollutant trading or offset program in accordance with §§ 62.1-44.19:20 through 62.1-44.19:23 of the Code of Virginia, governing trading and offsetting,] to meet the no net increase requirement [~~in accordance with applicable regulations~~]; and

~~11.~~ 14. 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."

D. The registration statement shall be signed in accordance with ~~9VAC25-151-70, Part II K~~ 9VAC25-31-110 A of the VPDES Permit Regulation.

E. Where to submit. The registration statement may be delivered to the department by either postal or electronic mail and shall be submitted to the DEQ regional office serving the area where the industrial facility is located.

~~F. A facility's registration statement will be posted to the department's public website for 30 days prior to the department granting the facility general permit coverage.~~

9VAC25-151-65. ~~Termination of permit coverage.~~ (Repealed)

~~A. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination may be filed after one or more of the following conditions have been met:~~

~~1. Operations have ceased at the facility and there are no longer discharges of storm water associated with industrial activity from the facility;~~

~~2. A new owner has assumed responsibility for the facility (NOTE: A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement form has been submitted); or~~

~~3. All storm water discharges associated with industrial activity have been covered by an individual VPDES permit.~~

~~B. The notice of termination shall contain the following information:~~

~~1. Owner's name, mailing address and telephone number;~~

~~2. Facility name and location;~~

~~3. VPDES Industrial storm water general permit number;~~

~~4. The basis for submitting the notice of termination, including:~~

~~a. A statement indicating that a new owner has assumed responsibility for the facility;~~

~~b. A statement indicating that operations have ceased at the facility and there are no longer discharges of storm water associated with industrial activity from the facility;~~

~~c. A statement indicating that all storm water discharges associated with industrial activity have been covered by an individual VPDES permit; or~~

~~d. A statement indicating that termination of coverage is being requested for another reason (state the reason);~~

~~5. The following certification: "I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual permit, or that I am no longer the owner of the industrial activity, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity in accordance with the general permit, and that discharging pollutants in storm water associated with industrial activity to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an~~

~~owner from liability for any violations of this permit or the Clean Water Act."~~

~~C. The notice of termination shall be signed in accordance with 9VAC25-151-70, Part II K.~~

~~D. Where to submit. The notice of termination shall be submitted to the DEQ regional office serving the area where the industrial facility is located.~~

9VAC25-151-70. General permit.

Any owner whose registration statement is accepted by the director will receive the following general permit and shall comply with the requirements therein and be subject to the VPDES Permit Regulation, 9VAC25-31. Facilities with colocated industrial activities shall comply with all applicable monitoring and pollution prevention plan requirements of each industrial activity sector of this chapter in which a colocated industrial activity is described. All pages of 9VAC25-151-70 and 9VAC25-151-80 apply to all storm water discharges associated with industrial activity covered under this general permit. Not all pages of 9VAC25-151-90 et seq. will apply to every permittee. The determination of which pages apply will be based on an evaluation of the regulated activities located at the facility.

General Permit No.: VAR05
Effective Date: July 1, ~~2009~~ 2014
Expiration Date: June 30, ~~2014~~ 2019
GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of facilities with storm water discharges associated with industrial activity are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in board regulation ~~or policies which~~ that prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I-Effluent Limitations, Monitoring Requirements and Special Conditions, Part II-Conditions Applicable to All VPDES Permits, Part III-Storm Water Pollution Prevention Plan, and Part IV-Sector-Specific Permit Requirements, as set forth herein.

Part I
Effluent Limitations, Monitoring Requirements and Special Conditions

A. Effluent limitations and monitoring requirements.

There are ~~three~~ four individual and separate categories of monitoring requirements that a facility may be subject to under this permit: (i) quarterly visual monitoring; (ii) benchmark monitoring of discharges associated with specific industrial activities; ~~and~~ (iii) compliance monitoring for discharges subject to numerical effluent limitations; and (iv) monitoring of discharges to impaired waters, both those with an approved TMDL and those without an approved TMDL. The monitoring requirements and numeric effluent limitations applicable to a facility depend on the types of industrial activities generating storm water runoff from the facility, and for TMDL monitoring, the location of the ~~facility~~ facility's discharge or discharges. Part IV of the permit (9VAC25-151-90 et seq.) identifies monitoring requirements applicable to specific sectors of industrial activity. The permittee shall review Part I A 1 and Part IV of the permit to determine which monitoring requirements and numeric limitations apply to his facility. Unless otherwise specified, limitations and monitoring requirements under Part I A 1 and Part IV are additive.

Sector-specific monitoring requirements and limitations are applied discharge by discharge at facilities with colocated activities. Where storm water from the colocated activities are commingled, the monitoring requirements and limitations are additive. Where more than one numeric limitation for a specific parameter applies to a discharge, compliance with the more restrictive limitation is required. Where monitoring requirements for a monitoring period overlap (e.g., need to monitor TSS ~~one/year~~ twice per year for a limit and also ~~one/year~~ twice per year for benchmark monitoring), the permittee may use a single sample to satisfy both monitoring requirements.

1. Types of monitoring requirements and limitations.

a. Quarterly visual monitoring. The requirements and procedures for quarterly visual monitoring are applicable to all facilities covered under this permit, regardless of the facility's sector of industrial activity.

(1) The permittee shall perform and document a quarterly visual examination of a storm water discharge associated with industrial activity from each outfall, except discharges exempted ~~below (Part I A 1 a (2) and (4), and Part I A 3)~~ in Part I A 3 or Part I A 4. The examination(s) shall be made at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December. The visual examination shall be made during ~~daylight hours (e.g., normal working hours)~~ normal working hours, where practicable, and when considerations for safety and feasibility allow. If no storm event resulted in runoff from the facility during a monitoring quarter, the permittee is excused from visual monitoring for that quarter provided that documentation is included with the monitoring records indicating that no runoff occurred. The documentation shall be signed and certified in accordance with Part II K of this permit.

(2) ~~Visual examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of~~

~~when the runoff or snowmelt begins discharging from the facility.~~ Samples shall be collected in accordance with Part I A 2. The examination shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The examination shall be conducted in a well-lit area. No analytical tests are required to be performed on the samples. ~~All samples (except snowmelt samples) shall be collected from the discharge resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event"), and that occurs at least 72 hours from the previously measurable storm event. The 72 hour storm interval is waived if the permittee is able to document that less than a 72 hour interval is representative for local storm events during the sampling period. [Where practicable, the same individual shall carry out the collection and examination of discharges for the entire permit term.] If no qualifying storm event resulted in runoff during daylight hours from the facility during a monitoring quarter, the permittee is excused from visual monitoring for that quarter provided that documentation is included with the monitoring records indicating that no qualifying storm event occurred during daylight hours that resulted in storm water runoff during that quarter. The documentation shall be signed and certified in accordance with Part II K.~~

(3) The visual examination reports shall be maintained on-site with the Storm Water Pollution Prevention Plan (SWPPP). The report shall include the outfall location, the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

~~(4) Inactive and unstaffed sites: When the permittee is unable to conduct visual storm water examinations at an inactive and unstaffed site, a waiver of the monitoring requirement may be exercised as long as the facility remains inactive and unstaffed, and there are no industrial materials or activities exposed to storm water. If this waiver is exercised, the permittee shall maintain a certification with the SWPPP stating that the site is inactive and unstaffed, there are no industrial materials or activities exposed to storm water, and that performing visual examinations during a qualifying event is not feasible. The waiver shall be signed and certified in accordance with Part II K.~~

~~(5) Representative outfalls — essentially identical discharges. If the facility has two or more outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, and storm water management practices occurring within the drainage areas of the outfalls, the permittee may conduct visual monitoring on the effluent of just one of the outfalls and report that the observations also apply to the substantially identical outfall(s). The permittee shall include the following information in the SWPPP:~~

~~(a) The locations of the outfalls;~~

~~(b) Why the outfalls are expected to discharge substantially identical effluents, including evaluation of monitoring data, where available;~~

~~(c) Estimates of the size of the drainage area (in square feet) for each of the outfalls; and~~

~~(d) An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%).~~

~~(6) If a facility's permit coverage is effective less than one month from the end of a quarterly monitoring period, the first quarterly period starts with the next respective quarterly monitoring period (e.g., if permit coverage begins March 5, the permittee will not need to start quarterly visual monitoring until the April-June quarter).~~

b. Benchmark monitoring of discharges associated with specific industrial activities.

Table 70-1 identifies the specific industrial sectors subject to the benchmark monitoring requirements of this permit and the industry-specific pollutants of concern. The permittee shall refer to the tables found in the individual sectors in Part IV (9VAC25-151-90 et seq.) for benchmark monitoring concentration values. Colocated industrial activities at the facility that are described in more than one sector in Part IV shall comply with all applicable benchmark monitoring requirements from each sector.

The results of benchmark monitoring are primarily for the permittee to use to determine the overall effectiveness of the SWPPP in controlling the discharge of pollutants to receiving waters. Benchmark concentration values, included in Part IV of this permit, are not effluent limitations. Exceedance of a benchmark concentration does not constitute a violation of this permit and does not indicate that violation of a water quality standard has occurred; however, it does signal that modifications to the SWPPP are necessary, unless justification is provided in the comprehensive site compliance evaluation (Part III E). In addition, exceedance of benchmark concentrations may identify facilities that would be more appropriately covered under an individual, or alternative general permit where more specific pollution prevention controls could be required.

TABLE 70-1.
INDUSTRIAL SECTORS SUBJECT TO BENCHMARK MONITORING.

Industry Sector[1]	Industry Sub-sector	Benchmark Monitoring Parameters
A	General Sawmills and Planing Mills	TSS.
	Wood Preserving Facilities	Arsenic, Chromium, Copper.
	Log Storage and Handling	TSS.
	Hardwood Dimension and Flooring Mills	TSS.
	Mulch, Wood and Bark Facilities	BOD, TSS.
	Mulching Dying Operations	BOD, TSS, COD, Aluminum, Arsenic, Cadmium, Chromium, Copper, Iron, Lead, Manganese, Mercury, Nickel, Selenium, Silver, Zinc, Total N, Total P.
B	Paperboard Mills	BOD.
C	Industrial Inorganic Chemicals	Aluminum, Iron, Total N.
	Plastics, Synthetic Resins, etc.	Zinc.
	Soaps, Detergents, Cosmetics, Perfumes	Total N, Zinc.
	Agricultural Chemicals	Total N, Iron, Zinc, ~~Phosphorus~~ Total P.
	Composting Facilities	TSS, BOD, COD, Ammonia, Total N, Total P.
D	Asphalt Paving and Roofing Materials	TSS.
E	Clay Products	Aluminum.
	Lime and Gypsum Products	TSS, pH, Iron.
F	Steel Works, Blast Furnaces, and Rolling and Finishing Mills	Aluminum, Zinc.
	Iron and Steel Foundries	Aluminum, TSS, Copper, Iron, Zinc.
	Nonferrous Rolling and Drawing	Copper, Zinc.
	Nonferrous Foundries (Castings)	Copper, Zinc.
G[2]	Copper Ore Mining and Dressing	TSS
H	Coal Mines and Coal-Mining Related Facilities	TSS, Aluminum, Iron
K	Hazardous Waste Treatment, Storage or Disposal	TKN, TSS, TOC, Arsenic, Cadmium, Cyanide, Lead, Magnesium, Mercury, Selenium, Silver.
L	Landfills, Land Application Sites, and Open Dumps	~~Iron,~~ TSS.
M	Automobile Salvage Yards	TSS, Aluminum, Iron, Lead.
N	Scrap Recycling and Waste Recycling Facilities	Copper, Aluminum, Iron, Lead, Zinc, TSS, Cadmium, Chromium.
	Ship Dismantling, Marine Salvaging and Marine Wrecking	Aluminum, Cadmium, Chromium, Copper, Iron, Lead, Zinc, TSS.
O	Steam Electric Generating Facilities	Iron.
P	Land Transportation and Warehousing	TPH, TSS.

Q	Water Transportation Facilities	~~Aluminum, Iron~~ TSS, Copper, Zinc.
R	Ship and Boat Building or Repairing Yards	TSS, Copper, Zinc.
S	Airports ~~with deicing activities~~[3]	~~BOD, TKN, pH, COD,~~ TSS, TPH.
U	Dairy Products.	BOD, TSS.
	Grain Mill Products	TSS, TKN.
	Fats and Oils	BOD, Total N, TSS.
Y	Rubber Products	Zinc.
Z	Leather Tanning and Finishing	TKN.
AA	Fabricated Metal Products Except Coating	Iron, Aluminum, Copper, Zinc.
	Fabricated Metal Coating and Engraving	Zinc.
AB	Transportation Equipment, Industrial, or Commercial Machinery	TSS, TPH, Copper, Zinc.
AD	Nonclassified Facilities/Storm Water Discharges Designated By the Board As Requiring Permits	TSS.

[1]Table does not include parameters for compliance monitoring under effluent limitations guidelines.

[2]See Sector G (Part IV G) for additional monitoring discharges from waste rock and overburden piles from active ore mining or dressing facilities, inactive ore mining or dressing facilities, and sites undergoing reclamation.

~~[3]Monitoring requirement is for airports with deicing activities that utilize more than 100 tons of urea or more than 100,000 gallons of glycol per year.~~

(1) ~~(a) If a facility falls within a sector(s) required to conduct benchmark monitoring, monitoring~~ Benchmark monitoring shall be performed for all benchmark parameters specified for the industrial sector or sectors applicable to a facility's discharge. Monitoring shall be performed at least once during each of the first ~~two~~ four, and potentially all, monitoring periods after ~~the facility is granted~~ coverage under the permit begins. Monitoring commences with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2.

Depending on the results of ~~two~~ four consecutive monitoring periods, benchmark monitoring may not be required to be conducted in subsequent monitoring periods ~~(see Part I A 1 b (2))~~ (see subdivision (2) below).

~~(b) Monitoring periods for benchmark monitoring. The benchmark monitoring periods are as follows: (i) July 1, 2009, to December 31, 2009; (ii) January 1, 2010, to December 31, 2010; (iii) January 1, 2011, to December 31, 2011; (iv) January 1, 2012, to December 31, 2012; and, (v) January 1, 2013, to December 31, 2013.~~

~~(c) If a facility's permit coverage is effective less than one month from the end of a monitoring period, the facility's first monitoring period starts with the next respective monitoring period (e.g., if permit coverage begins December 5, the permittee will not need to start sampling until the next January December monitoring period).~~

(2) Benchmark monitoring waivers for facilities testing below benchmark concentration values. Waivers from benchmark monitoring are available to facilities whose discharges are below benchmark concentration values on an outfall by outfall basis. Sector-specific benchmark monitoring is not required to be conducted in subsequent monitoring periods during the term of this permit provided:

(a) Samples were collected in ~~two~~ four consecutive monitoring periods, and ~~all~~ the ~~parameter concentrations were~~ average of the four samples for all parameters at the outfall is below the applicable benchmark concentration ~~values~~ value in Part IV. (Note: facilities that were covered under the 2009 industrial storm water general permit may use sampling data from the last two monitoring periods of that permit and the first two monitoring periods of this permit to satisfy the four consecutive monitoring periods requirement); and

(b) The facility is not subject to a numeric effluent limitation ~~for that parameter~~ established in Part I A 1 c (1) ~~(Storm Water Effluent Limitations, Coal Pile Runoff, and TMDL Wasteload Allocations)~~ (Storm Water Effluent Limitations), Part I A 1 c (2) (Coal Pile Runoff), or Part IV (Sector Specific Permit Requirements) for any of the parameters at that outfall; and

(c) A waiver request is submitted to and approved by the ~~department~~ board. The waiver request shall be sent to the appropriate DEQ regional office, along with the supporting monitoring data for ~~two~~ four consecutive monitoring periods, and a certification that, based on current potential pollutant sources and [~~BMPs~~ control measures] used, discharges from the facility are reasonably expected to be essentially the same (or cleaner) compared to when the benchmark monitoring

for the ~~two~~ four consecutive monitoring periods was done.

Waiver requests will be evaluated by the ~~department~~ board based upon: (i) benchmark monitoring results below the benchmark concentration values; (ii) a favorable compliance history (including inspection results); and (iii) no outstanding enforcement actions.

The monitoring waiver may be revoked by the ~~department~~ board for just cause. The permittee will be notified in writing that the monitoring waiver is revoked, and that the benchmark monitoring requirements are again in force and will remain in effect until the permit's expiration date.

(3) Samples shall be collected and analyzed in accordance with Part I A 2. ~~For each outfall, one signed Discharge Monitoring Report (DMR) form shall be submitted to the department for each storm event sampled. Monitoring results shall be~~ Monitoring results shall be reported in accordance with Part I A 5 and Part II C and retained in accordance with Part II B.

~~(4) Inactive and unstaffed sites. If the permittee is unable to conduct benchmark monitoring at an inactive and unstaffed site, a waiver of the monitoring requirement may be exercised as long as the facility remains inactive and unstaffed, and there are no industrial materials or activities exposed to storm water. If the permittee exercises this waiver, a certification shall be submitted to the department and maintained with the SWPPP stating that the site is inactive and unstaffed, there are no industrial materials or activities exposed to storm water, and that performing benchmark monitoring during a qualifying storm event is not feasible. The waiver shall be signed and certified in accordance with Part II K.~~

~~(5) Representative outfalls — essentially identical discharges. If the facility has two or more outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, and storm water management practices occurring within the drainage areas of the outfalls, the permittee may perform benchmark monitoring on the effluent of just one of the outfalls and report that the quantitative data also applies to the substantially identical outfall(s). The permittee shall include the following information in the SWPPP, and in any DMRs that are required to be submitted to the department:~~

~~(a) The locations of the outfalls;~~

~~(b) Why the outfalls are expected to discharge substantially identical effluents, including evaluation of monitoring data, where available;~~

~~(c) Estimates of the size of the drainage area (in square feet) for each of the outfalls; and~~

~~(d) An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%).~~

c. Compliance monitoring for discharges subject to numerical effluent limitations or discharges to impaired waters.

(1) Facilities subject to storm water effluent limitation guidelines.

(a) Facilities subject to storm water effluent limitation guidelines (see Table 70-2) are required to monitor such discharges to evaluate compliance with numerical effluent limitations. Industry-specific numerical limitations and compliance monitoring requirements are described in Part IV of the permit (9VAC25-151-90 et seq.). ~~Colocated~~ Permittees with colocated industrial activities at the facility that are described in more than one sector in Part IV shall comply on a discharge-by-discharge basis with all applicable effluent limitations from each sector.

(b) Permittees shall monitor the discharges for the presence of the pollutant subject to the effluent limitation at least once during each of the monitoring periods after ~~the facility is granted~~ coverage under the permit begins. ~~If a facility's permit coverage is effective less than one month from the end of a monitoring period, the facility's first monitoring period starts with the next respective monitoring period (e.g., if permit coverage begins December 5, the permittee will not need to start the effluent limitation monitoring until the next January–December monitoring period).~~ Monitoring commences with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2. The substantially identical outfall monitoring provisions (Part I A 2 f) are not available for numeric effluent limits monitoring.

~~(c) The monitoring periods for effluent limitation monitoring are as follows: (i) July 1, 2009, to December 31, 2009; (ii) January 1, 2010, to December 31, 2010; (iii) January 1, 2011, to December 31, 2011; (iv) January 1, 2012, to December 31, 2012; and (v) January 1, 2013, to December 31, 2013.~~

~~(d)~~ (c) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A ~~4~~ 5 and Part II C, and retained in accordance with Part II B.

TABLE 70-2~~.~~
STORM WATER-SPECIFIC EFFLUENT LIMITATION GUIDELINES~~.~~

Effluent Limitation Guideline	Sectors with Affected Facilities
Runoff from material storage piles at cement manufacturing facilities (40 CFR Part 411 Subpart C ~~(2006) (established February 23, 1977))~~ (established February 20, 1974))	E
Contaminated runoff from phosphate fertilizer manufacturing facilities (40 CFR Part 418 Subpart A ~~(2006) (established April 8, 1974))~~ (established April 8, 1974))	C
Coal pile runoff at steam electric generating facilities (40 CFR Part 423 ~~(2006)~~ (established November 19, 1982))	O
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas (40 CFR Part 429, Subpart I ~~(2007)~~ (established January 26, 1981))	A
Runoff from asphalt emulsion facilities (40 CFR Part 443 Subpart A ~~(2007)~~ (established July 24, 1975))	D
Runoff from landfills~~,~~ (40 CFR Part 445, Subpart A and B ~~(2007)~~ (established ~~February 2, 2000))~~ January 19, 2000))	K ~~&~~ and L
Discharges from airport deicing operations (40 CFR Part 449 (established May 16, 2012))	S

(2) Facilities subject to coal pile runoff monitoring.

(a) Facilities with discharges of storm water from coal storage piles shall comply with the limitations and monitoring requirements of Table 70-3 for all discharges containing the coal pile runoff, regardless of the facility's sector of industrial activity.

(b) Permittees shall monitor such storm water discharges at least once during each of the monitoring periods after ~~the facility is granted~~ coverage under the permit begins. ~~If a facility's permit coverage is effective less than one month from the end of a monitoring period, the facility's first monitoring period starts with the next respective monitoring period (e.g., if permit coverage begins December 5, the permittee will not need to start the coal pile runoff monitoring until the next January December monitoring period).~~ Monitoring commences with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2. The substantially identical outfall monitoring provisions (Part I A 2 f) are not available for coal pile numeric effluent limits monitoring.

~~(c) Coal pile runoff monitoring periods are as follows: (i) July 1, 2009, to December 31, 2009; (ii) January 1, 2010, to December 31, 2010; (iii) January 1, 2011, to December 31, 2011; (iv) January 1, 2012, to December 31, 2012; and (v) January 1, 2013, to December 31, 2013.~~

~~(d)~~ (c) The coal pile runoff shall not be diluted with other storm water or other flows in order to meet this limitation.

~~(e)~~ (d) If a facility is designed, constructed and operated to treat the volume of coal pile runoff that is associated with a 10-year, 24-hour rainfall event, any untreated overflow of coal pile runoff from the treatment unit is not subject to the 50 mg/L limitation for total suspended solids.

~~(f)~~ (e) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A ~~4~~ 5 and Part II C, and retained in accordance with Part II B.

TABLE 70-3~~.~~
NUMERIC LIMITATIONS FOR COAL PILE RUNOFF~~.~~

Parameter	Limit	Monitoring Frequency	Sample Type
Total Suspended Solids (TSS)	50 mg/l, max.	1/year	Grab
pH	6.0 min. - 9.0 max.	1/year	Grab

(3) Facilities ~~(discharging~~ discharging to an impaired water with ~~a board established and EPA approved~~ an approved TMDL wasteload allocation.

[Owners of facilities that are a source of the specified pollutant of concern to waters for which a TMDL wasteload allocation has been approved prior to the term of this permit will be notified as such by the department when they are approved for coverage under the general permit.]

(a) Upon written notification from the department, facilities subject to TMDL wasteload allocations will be required to monitor such discharges to evaluate compliance with the TMDL requirements.

(b) Permittees shall monitor the discharges for the pollutant subject to the TMDL wasteload allocation at least ~~semiannually (twice per year)~~ once during each of the monitoring periods after coverage under the permit begins. ~~The TMDL semiannual monitoring periods are~~

~~from July 1 to December 31, and January 1 to June 30. If a facility's notification that they are subject to the TMDL monitoring requirements is effective less than one month from the end of a semiannual monitoring period, the facility's first monitoring period starts with the next respective monitoring period (e.g., if notification is given on December 5, the permittee will not need to start semiannual monitoring until the next January 1 to June 30 monitoring period).~~ Monitoring commences with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2.

[~~Note: Facilities discharging to waters impaired for PCBs shall follow the monitoring schedule and the pollutant minimization plan (PMP) requirements described in the written notification from the department.~~]

(c) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A ~~4~~ 5 and Part II C, and retained in accordance with Part II B.

(d) If the pollutant subject to the TMDL waste load allocation is [~~not detected in any~~ below the quantitation level in all] of the samples from the first four monitoring periods (i.e., the first two years of coverage under the permit), the permittee may request to the ~~department~~ board in writing that further sampling be discontinued, unless the TMDL has specific instructions to the contrary (in which case those instructions shall be followed). The laboratory certificate of analysis shall be submitted with the request. If approved, documentation of this shall be kept with the SWPPP.

If the pollutant subject to the TMDL waste load allocation is [~~detected~~ above the quantitation level] in any of the samples from the first four monitoring periods, the permittee shall continue the scheduled TMDL monitoring throughout the term of the permit.

(4) Facilities discharging to an impaired water without ~~a board established and EPA approved~~ an approved TMDL wasteload allocation.

[Owners of facilities that discharge to waters listed as impaired in the 2012 Final 305(b)/303(d) Water Quality Assessment Integrated Report, and for which a TMDL wasteload allocation has not been approved prior to the term of this permit, will be notified as such by the department when they are approved for coverage under the general permit.]

(a) Upon written notification from the department, facilities discharging to an impaired water without ~~a board established and EPA approved~~ an approved TMDL wasteload allocation will be required to monitor such discharges for the pollutant(s) that caused the impairment.

(b) Permittees shall monitor the discharges for all pollutants for which the waterbody is impaired, and for which a standard analytical method exists, at least once during each of the monitoring periods after ~~the facility is granted~~ coverage under the permit begins. ~~If a facility's permit coverage is effective less than one month from the end of a monitoring period, the facility's first monitoring period starts with the next respective monitoring period (e.g., if permit coverage begins December 5, the permittee will not need to start the impaired water monitoring until the next January December monitoring period).~~ Monitoring commences with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2.

[~~Note: Facilities discharging to waters impaired for PCBs shall follow the monitoring schedule and the pollutant minimization plan (PMP) requirements described in the written notification from the department.~~]

~~(c) The impaired water monitoring periods are as follows: (i) July 1, 2009, to December 31, 2009; (ii) January 1, 2010, to December 31, 2010; (iii) January 1, 2011, to December 31, 2011; (iv) January 1, 2012, to December 31, 2012; and (v) January 1, 2013, to December 31, 2013.~~

~~(d)~~ (c) If the pollutant for which the waterbody is impaired is suspended solids, turbidity ~~or sediment/sedimentation~~, or sediment, or sedimentation, monitor for ~~Total Suspended Solids~~ total suspended solids (TSS). If the pollutant for which the waterbody is impaired is expressed in the form of an indicator or surrogate pollutant, monitor for that indicator or surrogate pollutant. No monitoring is required when a waterbody's biological communities are impaired but no pollutant, including indicator or surrogate pollutants, is specified as causing the impairment, or when a waterbody's impairment is related to hydrologic modifications, impaired hydrology, or temperature.

Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A ~~4~~ 5 and Part II C, and retained in accordance with Part II B.

~~(e)~~ (d) If the pollutant for which the water is impaired is [~~not present~~ below the quantitation level] in the discharges from the facility, or it is [~~present~~ above the quantitation level] but its presence is caused solely by natural background sources, ~~a notification to this effect shall be included in the first discharge monitoring report submitted by the facility, after which~~ the permittee may request to the board in writing that further impaired water monitoring ~~may~~ be discontinued. The laboratory certificate of analysis shall be submitted with the request.

If approved, documentation of this shall be kept with the SWPPP.

To support a determination that the pollutant's presence is caused solely by natural background sources, the following documentation shall be submitted with the request and kept with the SWPPP: (i) an explanation of why it is believed that the presence of the impairment pollutant in the facility's discharge is not related to the activities at the facility; and (ii) data or studies that tie the presence of the impairment pollutant in the facility's discharge to natural background sources in the watershed. Natural background pollutants include those substances that are naturally occurring in soils or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity at the facility's site, or pollutants in run-on from neighboring sources that are not naturally occurring.

2. Monitoring instructions.

a. Collection and analysis of samples. Sampling requirements shall be assessed on an outfall by outfall basis. Samples shall be collected and analyzed in accordance with the requirements of Part II A.

b. When and how to sample. A minimum of one grab sample shall be taken from the discharge associated with industrial activity resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event"), providing the interval from the preceding measurable storm event is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document that less than a 72-hour interval is representative for local storm events during the sampling period. In the case of snowmelt, the monitoring ~~must~~ shall be performed at a time when a measurable discharge occurs at the site. For discharges from a storm water management structure, the monitoring shall be performed at a time when a measurable discharge occurs from the structure.

The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first ~~hour~~ three hours of the discharge, provided that the permittee explains why a grab sample during the first 30 minutes was impracticable. This information shall be submitted on or with the Discharge Monitoring Report (DMR), ~~or~~ and maintained with the SWPPP ~~if reports are not required to be submitted~~. If the sampled discharge commingles with process or nonprocess water, the permittee shall attempt to sample the storm water discharge before it mixes with the nonstorm water.

c. Storm event data. For each monitoring event (except snowmelt monitoring), along with the monitoring results, the permittee shall identify the date and duration (in hours) of the storm event(s) sampled; rainfall total (in inches) of the storm event that generated the sampled runoff; and the duration between the storm event sampled and the end of the previous measurable storm event. For snowmelt monitoring, the permittee shall identify the date of the sampling event.

d. Monitoring periods.

(1) Quarterly visual monitoring. The quarterly visual examinations shall be made at least once in each of the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December.

(2) Benchmark monitoring, effluent limitation monitoring, and impaired waters monitoring (for waters both with and without an approved TMDL). Monitoring shall be conducted at least once in each of the following semiannual periods each year of permit coverage: January through June, and July through December.

~~d.~~ e. Documentation explaining a facility's inability to obtain a sample (including ~~dates/times~~ dates and times the outfalls were viewed ~~and/or~~ or sampling was attempted), of no rain event, or of no "measurable" storm event shall be maintained with the SWPPP. Acceptable documentation includes, but is not limited to, ~~NCDC~~ National Climatic Data Center (NCDC) weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.

f. Representative outfalls - substantially identical discharges. If the facility has two or more outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, and storm water management practices occurring within the drainage areas of the outfalls, the permittee may conduct monitoring on the effluent of just one of the outfalls and report that the observations also apply to the substantially identical outfall or outfalls. The substantially identical outfall monitoring provisions apply to quarterly visual monitoring, benchmark monitoring, and impaired waters monitoring (both those with and without an approved TMDL). The substantially identical outfall monitoring provisions are not available for numeric effluent limits monitoring.

The permittee shall include the following information in the SWPPP:

(1) The locations of the outfalls;

(2) Why the outfalls are expected to discharge substantially identical effluents, including evaluation of monitoring data where available; and

(3) Estimates of the size of the drainage area (in square feet) for each of the outfalls.

3. Adverse climatic conditions waiver. When adverse weather conditions prevent the collection of samples, a substitute sample may be taken during a qualifying storm

event in the next monitoring period. Adverse weather conditions are those that are dangerous or create inaccessibility for personnel, and may include such things as local flooding, high winds, electrical storms, or situations that otherwise make sampling impracticable, such as drought or extended frozen conditions. Unless specifically stated otherwise, this waiver may be applied to any monitoring required under this permit.

4. Inactive and unstaffed sites (including temporarily inactive sites).

a. A waiver of the quarterly visual assessments, routine facility inspections, and monitoring requirements (including benchmark, effluent limitation, and impaired waters monitoring) may be granted by the board at a facility that is both inactive and unstaffed, as long as the facility remains inactive and unstaffed and there are no industrial materials or activities exposed to stormwater. The owner of such a facility is only required to conduct an annual comprehensive site inspection in accordance with the requirements in Part III E.

b. An inactive and unstaffed sites waiver request shall be submitted to the board for approval and shall include: the name of the facility; the facility's VPDES general permit registration number; a contact person, phone number and email address (if available); the reason for the request; and the date the facility became or will become inactive and unstaffed. The waiver request shall be signed and certified in accordance with Part II K. If this waiver is granted, a copy of the request and the board's written approval of the waiver shall be maintained with the SWPPP.

c. If circumstances change and industrial materials or activities become exposed to stormwater, or the facility becomes either active or staffed, the permittee shall notify the department within 30 days, and all quarterly visual assessments, routine facility inspections, and monitoring requirements shall be resumed immediately.

d. The board retains the right to revoke this waiver when it is determined that the discharge is causing, has a reasonable potential to cause, or contributes to a water quality standards violation.

e. Inactive and unstaffed facilities covered under Sector G (Metal Mining) and Sector H (Coal Mines and Coal Mining-Related Facilities) are not required to meet the "no industrial materials or activities exposed to stormwater" standard to be eligible for this waiver, consistent with the conditional exemption requirements established in Part IV Sector G and Part IV Sector H.

~~4.~~ 5. Reporting monitoring results.

a. Reporting to the department. ~~Depending on the types of monitoring required at a permitted facility, monitoring results may have to be submitted to the department, or they may only have to be kept with the SWPPP.~~ The permittee shall follow the reporting requirements and deadlines below for the types of monitoring that apply to the facility:

TABLE 70-4~~.~~
MONITORING REPORTING REQUIREMENTS~~.~~

~~Monitoring for Numeric Effluent Limitations (other than TMDL Wasteload Allocations)~~	~~For monitoring results that do not exceed the effluent limitations, submit the results on a DMR by January 10.~~ ~~For monitoring results that exceed the effluent limitations, submit the results on a DMR by January 10, or no later than 30 days after the results are received by the facility, whichever date is earlier.~~
Semiannual Monitoring ~~for TMDL Wasteload Allocations~~	~~For monitoring results that do not exceed the TMDL wasteload allocation, submit~~ Submit the results on a DMR by January 10 and by July 10. ~~For monitoring results that exceed the TMDL wasteload allocation, submit the results on a DMR by January 10 or July 10, or no later than 30 days after the results are received by the facility, whichever date is earlier.~~
~~Monitoring for Facilities Discharging to an Impaired Water Without an Approved TMDL Wasteload Allocation.~~	~~Submit results on a DMR by January 10.~~
~~Benchmark Monitoring~~	~~Submit results on a DMR by January 10.~~
~~Annual Monitoring for Metal Mining Facilities (see Part IV, Sector G)~~	~~Submit results to the department by January 10.~~
Quarterly Visual Monitoring	Retain results with SWPPP - do not submit unless requested to do so by the department.
~~Follow up Monitoring (see subsection A 5 c below).~~	~~Submit results on a DMR no later than 30 days after the results are received.~~

Permittees ~~that are required to submit monitoring~~ shall submit results for each outfall associated with industrial

activity according to the requirements of Part II C. For each outfall sampled, one signed discharge monitoring report (DMR) form shall be submitted to the department per storm event sampled. For representative outfalls, the sampled outfall will be reported on the DMR, and the outfalls that are representative of the sampled outfall will be listed in the comment section of the DMR. Signed DMRs are not required for each of the outfalls that are representative of the sampled outfall.

b. Additional reporting. In addition to ~~filing~~ submitting copies of discharge monitoring reports in accordance with Part II C, permittees with at least one storm water discharge associated with industrial activity through a regulated municipal separate storm sewer system (MS4)~~, or a municipal system designated by the director, must~~ shall submit signed copies of DMRs to the MS4 operator at the same time as the reports are submitted to the department. Permittees not required to report monitoring data and permittees that are not otherwise required to monitor their discharges need not comply with this provision.

c. Significant digits. The permittee shall report at least the same number of significant digits as a numeric effluent limitation or TMDL wasteload allocation for a given parameter; otherwise, at least two significant digits shall be reported for a given parameter. Regardless of the rounding convention used by the permittee (i.e., five always rounding up or to the nearest even number), the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

~~5.~~ 6. Corrective actions.

a. Data exceeding benchmarks concentration values.

(1) If the benchmark monitoring result exceeds the benchmark concentration value for that parameter, the permittee ~~must~~ shall review the SWPPP and modify it as necessary to address any deficiencies that caused the exceedance. Revisions to the SWPPP ~~must~~ shall be completed within 30 days after an exceedance is discovered. When [~~BMPs~~ control measures] need to be modified or added (distinct from regular preventive maintenance of existing [~~BMPs~~ control measures] described in Part III C), implementation ~~must~~ shall be completed before the next anticipated storm event if possible, but no later than 60 days after the exceedance is discovered, or as otherwise provided or approved by the department. In cases where construction is necessary to implement [~~BMPs~~ control measures], the permittee shall include a schedule in the SWPPP that provides for the completion of the [~~BMPs~~ control measures] as expeditiously as practicable, but no later than three years after the exceedance is discovered. Where a construction compliance schedule is included in the SWPPP, the plan shall include appropriate nonstructural ~~and/or~~ and temporary controls to be implemented in the affected portion(s) of the facility prior to completion of the permanent [~~BMP~~ control measure]. Any [~~BMP~~ control measure] modifications ~~must~~ shall be documented and dated, and retained with the SWPPP, along with the amount of time taken to modify the applicable [~~BMPs~~ control measures] or implement additional [~~BMPs~~ control measures].

(2) Natural background pollutant levels. If the concentration of a pollutant exceeds a benchmark concentration value, and the permittee determines that exceedance of the benchmark is attributable solely to the presence of that pollutant in the natural background, corrective action is not required provided that:

(a) The concentration of the benchmark monitoring result is less than or equal to the concentration of that pollutant in the natural background;

(b) The permittee documents and maintains with the SWPPP the supporting rationale for concluding that benchmark exceedances are in fact attributable solely to natural background pollutant levels. The supporting rationale shall include any data previously collected by the facility or others (including literature studies) that describe the levels of natural background pollutants in the facility's storm water discharges; and

(c) The permittee notifies the department on the benchmark monitoring DMR that the benchmark exceedances are attributable solely to natural background pollutant levels.

Natural background pollutants include those substances that are naturally occurring in soils or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity on the facility's site, or pollutants in run-on from neighboring sources that are not naturally occurring.

b. Corrective actions. The permittee ~~must~~ shall take corrective action whenever:

(1) Routine facility inspections, comprehensive site compliance evaluations, inspections by local, state or federal officials, or any other process, observation or event result in a determination that modifications to the storm water control measures are necessary to meet the permit requirements; [~~or~~]

(2) There is any exceedance of an effluent limitation (including coal pile runoff), ~~or~~ TMDL wasteload allocation, or a reduction required by a local ordinance established by a municipality to meet Chesapeake Bay TMDL requirements; [or]

(3) The department determines, or the permittee becomes aware, that the storm water control measures are not stringent enough for the discharge to meet applicable water quality standards.

The permittee ~~must~~ shall review the SWPPP and modify it as necessary to address any deficiencies. Revisions to the SWPPP ~~must~~ shall be completed within 30 days following the discovery of the deficiency. When [~~BMPs~~ control measures] need to be modified or added (distinct from regular preventive maintenance of existing [~~BMPs~~ control measures] described in Part III C), implementation ~~must~~ shall be completed before the next anticipated storm event if possible, but no later than 60 days after the deficiency is discovered, or as otherwise provided or approved by the department. In cases where construction is necessary to implement [~~BMPs~~ control measures], the permittee shall include a schedule in the SWPPP that provides for the completion of the [~~BMPs~~ control measures] as expeditiously as practicable, but no later than three years after the deficiency is discovered. Where a construction compliance schedule is included in the SWPPP, the plan shall include appropriate nonstructural ~~and/or~~ and temporary controls to be implemented in the affected portion(s) of the facility prior to completion of the permanent [~~BMP~~ control measure]. The amount of time taken to modify a [~~BMP~~ control measure] or implement additional [~~BMPs~~ control measures] ~~must~~ shall be documented in the SWPPP.

Any corrective actions taken ~~must~~ shall be documented and retained with the SWPPP. Reports of corrective actions ~~must~~ shall be signed in accordance with Part II K.

c. Follow-up ~~monitoring and~~ reporting. If at any time monitoring results indicate that discharges from the facility exceed an effluent limitation or a TMDL wasteload allocation, or the department determines that discharges from the facility are causing or contributing to an exceedance of a water quality standard, immediate steps ~~must~~ shall be taken to eliminate the exceedances in accordance with the above Part I A ~~5~~ 6 b (Corrective actions). Within 30 calendar days of implementing the relevant corrective action(s) ~~(or during the next qualifying runoff event, should none occur within 30 calendar days) follow-up monitoring must be undertaken to verify that the BMPs that were modified are effectively protecting water quality. Follow-up monitoring need only be conducted for pollutant(s) with prior exceedances unless there are reasons to believe that facility modifications may have reduced pollutant prevention or removal capacity for other pollutants of concern. The follow-up monitoring data must be submitted to the department no later than 30 days after the results are received. If the follow-up monitoring value does not exceed the effluent limitation or other relevant standard, no additional follow-up monitoring is required for this corrective action. Should the follow-up monitoring indicate that the effluent limitation, TMDL wasteload allocation, water quality standard or other relevant standard is still being exceeded~~, an exceedance report ~~must~~ shall be submitted to the department ~~no later than 30 days after the follow-up monitoring results are received~~. The following information ~~must~~ shall be included in the report: general permit registration number; facility name, address, and location; receiving water; monitoring data from this ~~and the preceding monitoring event(s)~~ event; an explanation of the situation; description of what has been done and the intended actions (should the corrective actions not yet be complete) to further reduce pollutants in the discharge; and an appropriate contact name and phone number. ~~Additional follow-up monitoring must be continued at an appropriate frequency, but no less often than quarterly, until the discharge no longer exceeds the standard.~~

B. Special conditions.

1. Allowable nonstorm water discharges. Except as provided in this section or in Part IV (9VAC25-151-90 et seq.), all discharges covered by this permit shall be composed entirely of storm water. The following nonstorm water discharges are authorized by this permit:

a. Discharges from fire fighting activities;

b. Fire hydrant flushings;

c. Potable water including water line flushings;

d. Uncontaminated ~~air conditioning or compressor condensate (excluding air compressors)~~ condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;

e. Irrigation drainage;

f. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with ~~manufacturer's instructions~~ the approved labeling;

g. Routine external building ~~wash-down~~ washdown that does not use detergents;

h. Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed);

i. Uncontaminated ground water or spring water;

j. Foundation or footing drains where flows are not contaminated with process materials; and

k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

All other nonstorm water discharges ~~shall be in compliance with a~~ are not authorized and shall either be eliminated or covered under a separate VPDES permit ~~(other than this permit) issued for the discharge~~.

The following nonstorm water discharges are specifically not authorized by this permit:

Sector A - Timber products. Discharges of storm water from areas where there may be contact with chemical formulations sprayed to provide surface protection.

Sector C - Chemical and allied products manufacturing. Inks, paints, or substances (hazardous, nonhazardous, etc.) resulting from an on-site spill, including materials collected in drip pans; washwaters from material handling and processing areas; or washwaters from drum, tank, or container rinsing and cleaning.

Sector G - Metal mining (ore mining and dressing). Adit drainage or contaminated springs or seeps; and contaminated seeps and springs discharging from waste rock dumps that do not directly result from precipitation events.

Sector H - Coal mines and coal mining-related facilities. Discharges from pollutant seeps or underground drainage from inactive coal mines and refuse disposal areas that do not result from precipitation events; and discharges from floor drains in maintenance buildings and other similar drains in mining and preparation plant areas.

Sector I - Oil and gas extraction and refining. Discharges of vehicle and equipment washwater, including tank cleaning operations.

Sector K - Hazardous waste treatment, storage, or disposal facilities. Leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory-derived wastewater and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

Sector L - Landfills, land application sites and open dumps. Leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory wastewater, and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

Sector N - Scrap recycling and waste recycling facilities. Discharges from turnings containment areas in the absence of a storm event.

Sector O - Steam electric generating facilities. Nonstorm water discharges subject to effluent limitation guidelines.

Sector P - Land transportation and warehousing. ~~Vehicle/equipment/surface~~ Vehicle, equipment, or surface washwater, including tank cleaning operations.

Sector Q - Water transportation. Bilge and ballast water, sanitary wastes, pressure wash water, and cooling water originating from vessels.

Sector R - Ship and boat building or repair yards. Bilge and ballast water, pressure wash water, sanitary wastes, and cooling water originating from vessels.

Sector S - Air transportation. Aircraft, ground vehicle, runway and equipment washwaters; and dry weather discharges of ~~deicing/anti-icing~~ deicing and anti-icing chemicals.

Sector T - Treatment works. Sanitary and industrial wastewater; and ~~equipment/vehicle~~ equipment or vehicle washwaters.

Sector U - Food and kindred products. Boiler blowdown, cooling tower overflow and blowdown, ammonia refrigeration purging, and vehicle ~~washing/clean-out~~ washing and clean-out operations.

Sector V - Textile mills, apparel, and other fabric products. Discharges of wastewater (e.g., wastewater as a result of wet processing or from any processes relating to the production process); ~~reused/recycled~~ reused or recycled water; and waters used in cooling towers.

2. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the storm water discharge(s) from the facility shall be prevented or minimized in accordance with the storm water pollution prevention plan for the facility. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110 ~~(2007)~~, 40 CFR Part 117 ~~(2007)~~, and 40 CFR Part 302 ~~(2007)~~ 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 ~~(2007)~~, 40 CFR Part 117 ~~(2007)~~, or 40 CFR Part 302 ~~(2007)~~ occurs during a 24-hour period:

a. The permittee is required to notify the department in accordance with the requirements of Part II G as soon as he has knowledge of the discharge;

b. Where a release enters a municipal separate storm sewer system (MS4), the permittee shall also notify the owner of the MS4; and

c. The storm water pollution prevention plan required under Part III shall be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan shall be modified where appropriate.

3. Colocated industrial activity. If the facility has industrial activities occurring on-site which are described by any of the activities in Part IV of the permit (9VAC25-151-90 et seq.), those industrial activities are considered to be colocated industrial activities. Storm water discharges from colocated industrial activities are authorized by this permit, provided that the permittee complies with any and all additional pollution prevention plan and monitoring requirements from Part IV applicable to that particular colocated industrial activity. The permittee shall determine which additional pollution prevention plan and monitoring requirements are applicable to the colocated industrial

activity by examining the narrative descriptions of each coverage section (Discharges covered under this section).

4. The storm water discharges authorized by this permit may be combined with other sources of storm water which are not required to be covered under a VPDES permit, so long as the combined discharge is in compliance with this permit.

5. There shall be no discharge of waste, garbage, or floating ~~solids or visible foam~~ debris in other than trace amounts.

~~6. Salt storage piles or piles containing salt. Storage piles of salt or piles containing salt used for deicing or other commercial or industrial purposes shall be enclosed or covered to prevent exposure to precipitation. The permittee shall implement appropriate measures (e.g., good housekeeping, diversions, containment) to minimize exposure resulting from adding to or removing materials from the pile. All salt storage piles shall be located on an impervious surface. All runoff from the pile, and/or runoff that comes in contact with salt, including under drain systems, shall be collected and contained within a bermed basin lined with concrete or other impermeable materials, or within an underground storage tank(s), or within an above ground storage tank(s), or disposed of through a sanitary sewer (with the permission of the treatment facility). A combination of any or all of these methods may be used. In no case shall salt contaminated storm water be allowed to discharge directly to the ground or to state waters.~~ [6. Approval for coverage under this general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.]

[7. ~~6.~~] Discharges to waters subject to TMDL wasteload allocations.

~~Facilities~~ a. Owners of facilities that are a source of the specified pollutant of concern to waters for which a ~~"~~total maximum daily load~~"~~ (TMDL) wasteload allocation has been ~~established by the board and~~ approved ~~by EPA~~ prior to the term of this permit shall incorporate measures and controls into the SWPPP required by Part III that are consistent with the assumptions and requirements of the TMDL. The department will provide written notification to the owner that a facility is subject to the TMDL requirements. The facility's SWPPP shall specifically address any conditions or requirements included in the TMDL that are applicable to discharges from the facility. If the TMDL establishes a specific numeric wasteload allocation that applies to discharges from the facility, the owner shall perform any required monitoring in accordance with Part I A 1 c (3), and implement [~~BMPs~~ control measures] designed to meet that allocation.

b. Facilities in the Chesapeake Bay watershed.

(1) Owners of facilities in the Chesapeake Bay watershed shall monitor their discharges for total suspended solids (TSS), total nitrogen (TN), and total phosphorus (TP) to characterize the contributions from their facility's specific industrial sector for these parameters [~~.~~] After the facility is granted coverage under the permit, samples shall be collected during each of the first four monitoring periods (i.e., the first two years of permit coverage). Monitoring periods are specified in Part I A 2. Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C, and retained in accordance with Part II B.

[(2) Facilities that were covered under the 2009 industrial stormwater general permit that sampled for TSS, TN, or TP may use applicable sampling data from the last two monitoring periods of that permit and the first two monitoring periods of this permit to satisfy the four consecutive monitoring periods requirement.

(3) Chesapeake Bay TMDL wasteload allocations and Chesapeake Bay TMDL action plans.

(a) EPA's Chesapeake Bay TMDL (December 29, 2010) includes wasteload allocations for VPDES permitted industrial storm water facilities as part of the regulated stormwater aggregate load. EPA used data submitted by Virginia with the Phase I Chesapeake Bay TMDL Watershed Implementation Plan, including the number of industrial stormwater permits per county and the number of urban acres regulated by industrial stormwater permits, as part of their development of the aggregate load. Aggregate loads for industrial storm water facilities were appropriate because actual facility loading data were not available to develop individual facility wasteload allocations.

Virginia estimated the loadings from industrial stormwater facilities using actual and estimated facility acreage information and TP, TN, and TSS loading values from the Northern Virginia Planning District Commission (NVPDC) Guidebook for Screening Urban Nonpoint Pollution Management Strategies (Annandale, VA November 1979), prepared for the Metropolitan Washington Council of Governments. The loading values used were as follows:

TP - High (80%) imperviousness industrial; 1.5 lb/ac/yr

TN - High (80%) imperviousness industrial; 12.3 lb/ac/yr

TSS - High (80%) imperviousness industrial; 440 lb/ac/yr

The actual facility area information and the TP, TN, and TSS data collected for this permit will be used by the board to quantify the nutrient and sediment loads from VPDES permitted industrial storm water facilities and will be submitted to EPA to aid in further refinements to its Chesapeake Bay TMDL model. The loading information will also be used by the board to determine any additional load reductions needed for industrial

storm water facilities for the next reissuance of this permit.

(b) Data analysis and Chesapeake Bay TMDL action plans. The permittee shall analyze the nutrient and sediment data collected in accordance with subdivision 7 b (1) of this subsection to determine if additional action is needed for this permit term. The permittee shall average the data collected at the facility for each of the pollutants of concern (POC) (e.g., TP, TN, and TSS) and compare the results to the loading values for TP, TN, and TSS presented in subdivision 7 b (3) (a) of this subsection. To calculate the facility loadings, the permittee may use either (i) actual annual average rainfall data for the facility location (in inches/year), or the Virginia annual average rainfall of 44.3 inches/year; or (ii) another method approved by the board.

The following formula may be used to determine the loading value:

L = (0.2263 x R x C) / A

where:

L = the POC loading value (lb/acre/year)

R = the annual average rainfall (inches/year)

C = the POC average concentration of all facility samples (mg/L)

A = the facility industrial activity area (acres)

(c) If the calculated facility loading value for TP, TN, or TSS is above the loading values for TP, TN, or TSS presented in subdivision 7 b (3) (a) of this subsection, then the permittee shall develop and submit to the board for review and approval a Chesapeake Bay TMDL Action Plan. The plan shall be submitted within 90 days from the end of the second year's monitoring period (by September 28, 2016). The permittee shall implement the approved plan over the remaining term of this permit to achieve all the necessary reductions by June 30, 2024. The action plan shall include:

(i) A determination of the total pollutant load reductions for TP, TN, and TSS (as appropriate) necessary to reduce the annual loads from industrial activities. This shall be determined by calculating the difference between the loading values listed in subdivision 7 b (3) (a) of this subsection, and the average of the sampling data for TP, TN, or TSS (as appropriate) for the entire facility. The reduction applies to the total difference calculated for each pollutant of concern;

(ii) The means and methods, such as management practices and retrofit programs, that will be utilized to meet the required reductions determined in subdivision 7 b (3) (c) (i) of this subsection, and a schedule to achieve those reductions by June 30, 2024. The schedule should include annual benchmarks to demonstrate the ongoing progress in meeting those reductions; and

(iii) The permittee may consider utilization of any pollutant trading or offset program in accordance with §§ 62.1-44.19:20 through 62.1-44.19:23 of the Code of Virginia, governing trading and offsetting, to meet the required reductions.

(d) A permittee required to develop and implement a Chesapeake Bay TMDL Action Plan shall submit an annual report to the department by June 30 of each year describing the progress in meeting the required reductions.]

[~~7.~~ 8.] Discharges through a [~~Virginia Stormwater Management Program (VSMP)~~] regulated MS4 to waters subject to the Chesapeake Bay TMDL. [~~Any~~ In addition to the requirements of this permit, any] facility with industrial activity discharges through a [~~VSMP~~] regulated MS4 that is notified by the MS4 operator that the locality has adopted ordinances to meet the Chesapeake Bay TMDL shall incorporate measures and controls into its SWPPP to comply with [~~the local ordinances~~ applicable local TMDL ordinance requirements].

[~~8.~~ 9.] Expansion of facilities that discharge to waters subject to the Chesapeake Bay TMDL. [~~a. After November 29, 2010, (the date of~~] Virginia's Phase I Chesapeake Bay TMDL Watershed Implementation Plan [(November 29, 2010]), [states that] the waste loads from any expansion of an existing permitted facility discharging storm water in the Chesapeake Bay watershed cannot exceed the nutrient and sediment loadings that were discharged from the expanded portion of the land prior to the land being developed for the [expanded] industrial activity.

[~~b. The~~ a. For any industrial activity area expansions (i.e., construction activities, including clearing, grading, and excavation activities) that commence on or after July 1, 2014, (the effective date of this permit), the] permittee shall document in the SWPPP the information and calculations used to determine the nutrient and sediment loadings discharged from the expanded [~~portion of the~~] land [area] prior to the land being developed [,] and the measures and controls that were employed to meet the no net increase of stormwater nutrient and sediment load as a result of the expansion of the industrial activity. [Any land disturbance that is exempt from permitting under the VPDES construction stormwater general permit regulation (9VAC25-880) is exempt from this requirement.]

[~~c.~~ b.] The permittee may use the VSMP water quality design criteria to meet the requirements of [~~subdivisions a and b~~ subdivision 9 a] of this subsection. Under this criteria, the total phosphorus load shall not exceed the greater of: (i) the total phosphorus load that was discharged from the expanded portion of the land prior to the land being developed for the industrial activity or (ii) 0.41 pounds per acre per year. Compliance with the

water quality design criteria may be determined utilizing the Virginia Runoff Reduction Method or another equivalent methodology approved by the board. Design specifications and pollutant removal efficiencies for [specific] BMPs can be found on the Virginia [~~Storm Water~~ Stormwater] BMP Clearinghouse website at http://www.vwrrc.vt.edu/swc.

[~~d. The facility owner may acquire nutrient credits~~ c. The permittee may consider utilization of any pollutant trading or offset program in accordance with §§ 62.1-44.19:20 through 62.1-44.19:23 of the Code of Virginia, governing trading and offsetting,] to meet the no net increase requirement [~~in accordance with applicable regulations~~].

~~8.~~ [~~9.~~ 10.] Water quality protection. The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards. ~~The permittee shall employ an iterative, BMP based program to select, install, implement and maintain best management practices (BMPs) at the facility designed to minimize pollutants in the storm water discharges, and to address any exceedance of any applicable water quality standard, effluent limitation, or TMDL waste load allocation.~~ The board expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards. ~~If there is evidence indicating that the storm water discharges authorized by this permit are causing, have the reasonable potential to cause, or are contributing to an excursion above an applicable water quality standard, an excursion above a TMDL wasteload allocation, or are causing downstream pollution (as defined in § 62.1 44.3 of the Code of Virginia), the board may require the permittee to take corrective action in accordance with Part I A 5 b and c, and include and implement appropriate controls in the SWPPP to correct the problem, or may require the permittee to obtain an individual permit in accordance with 9VAC25 31 170 B 3.~~

~~9. Adding/deleting~~ [~~10.~~ 11.] Adding or deleting storm water outfalls. The permittee may add new ~~and/or~~ or delete existing storm water outfalls at the facility as ~~necessary/appropriate~~ necessary and appropriate. The permittee shall update the SWPPP and notify the department of all outfall changes within 30 days of the change. The permittee shall submit a copy of the updated SWPPP site map with [~~their~~ this] notification.

~~10.~~ [~~11.~~ 12.] Antidegradation requirements for new or increased discharges to high quality waters. Facilities that add new outfalls, or increase their discharges from existing outfalls that discharge directly to high quality waters designated under Virginia's water quality standards antidegradation policy under 9VAC25-260-30 A 2 may be notified by the department that additional control measures, or other permit conditions are necessary to comply with the applicable antidegradation requirements, or may be notified that an individual permit is required in accordance with 9VAC25-31-170 B 3.

[~~12.~~ 13.] If the permittee discharges to surface waters through a municipal separate storm sewer system (MS4), the permittee shall, within 30 days of coverage under this general permit, notify the owner of the MS4 in writing of the existence of the discharge and provide the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit registration number. A copy of such notification shall be provided to the department.

[~~13.~~ 14.] Termination of permit coverage.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer discharges of storm water associated with industrial activity from the facility;

(2) A new owner has assumed responsibility for the facility (Note: A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement Form has been submitted);

(3) All storm water discharges associated with industrial activity have been covered by an individual VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES industrial storm water general permit registration number;

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility, and there are no longer discharges of storm water associated with industrial activity from the facility;

(c) A statement indicating that all storm water discharges associated with industrial activity have been covered by an individual VPDES permit; or

(d) A statement indicating that termination of coverage is being requested for another reason (state the reason); and

(5) The following certification: "I certify under penalty of law that all storm water discharges associated with

industrial activity from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual permit, or that I am no longer the owner of the industrial activity, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity in accordance with the general permit, and that discharging pollutants in storm water associated with industrial activity to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

c. The notice of termination shall be signed in accordance with Part II K.

d. The notice of termination shall be submitted to the DEQ regional office serving the area where the industrial facility is located.

Part II

Conditions Applicable to All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 ~~(2007)~~ or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will [~~insure~~ ensure] accuracy of measurements.

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

B. Records.

1. Records of monitoring information shall include:

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

b. The 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 permittee shall retain copies of the SWPPP, including any modifications made during the term of this permit, records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date that coverage under this permit expires or is terminated. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 ~~(2007)~~ 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 on the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from ~~his~~ the discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request, copies of records required to be kept by this permit.

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

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse [~~affects~~ effects] on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

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

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this 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 may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

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

NOTE: The immediate (within 24 hours) reports required in Part II G, H and I may be made to the department's regional office. Reports may be made by telephone ~~or by fax~~, FAX, or online at http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx. For reports outside normal working hours, ~~leave~~ a message may be left and this 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.

J. Notice of planned changes.

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

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

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

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

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

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

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

K. Signatory requirements.

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

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) 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 permit ~~application~~ registration 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 section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

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

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II 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 Part II K 1 or 2 shall make the following certification:

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

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain

provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit coverage renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least ~~90~~ 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

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

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

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

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

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

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

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

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and 3.

2. Notice.

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

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

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

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

(3) The permittee submitted notices as required under Part II U 2.

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

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit

effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

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

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

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

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

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

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

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

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

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

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

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

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

Y. Transfer of permits.

~~1.~~ Permits are not transferable to any person except after notice to the department. ~~Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.~~

~~2. As an alternative to transfers under Part II Y 1,~~ Coverage under this permit may be automatically transferred to a new permittee if:

~~a.~~ 1. The current permittee notifies the department [~~at least~~ within] 30 days [~~in advance~~] of the proposed transfer of the title to the facility or property, unless permission for a later date has been granted by the board;

~~b.~~ 2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

~~c.~~ 3. The board does not notify the existing permittee and the proposed new permittee of its intent to ~~modify or revoke and reissue~~ deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 ~~b~~.

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

Part III
Storm Water Pollution Prevention Plan

9VAC25-151-80. Storm Water Pollution Prevention Plans.

A Storm Water Pollution Prevention Plan (SWPPP) shall be developed and implemented for the facility covered by this permit. The SWPPP [~~shall include~~] ~~Best Management Practices (BMPs) that are reasonable, economically practicable, and appropriate in light of current industry practices. The BMPs shall be~~ [is intended to document the selection, design, and installation of] control measures [~~selected, designed, installed, implemented and maintained in accordance with good engineering practices and manufacturer's specifications~~, including BMPs,] to eliminate or reduce the pollutants in all storm water discharges from the facility~~. The SWPPP shall also include any control measures necessary for the storm water discharges~~, and to meet applicable effluent limitations and water quality standards.

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents such as a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act, or best management practices (BMP) programs otherwise required for the facility, provided that the incorporated plan meets or exceeds the plan requirements of Part III B (Contents of the Plan). All plans incorporated by reference into the SWPPP become

enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Part III B, the permittee shall develop the missing SWPPP elements and include them in the required plan.

A. Deadlines for plan preparation and compliance.

1. Facilities that were covered under the ~~2004~~ 2009 Industrial Storm Water General Permit. Owners of facilities that were covered under the ~~2004~~ 2009 Industrial Storm Water General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP ~~not later than October 1, 2009~~ within 90 days of the board granting coverage under this permit.

2. New facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit who elect to be covered under this general permit shall prepare and implement the SWPPP prior to submitting the registration statement.

3. New owners of existing facilities. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility shall update and implement any revisions to the SWPPP within 60 days of the ownership change.

4. Extensions. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.

B. Contents of the plan. The contents of the SWPPP shall comply with the requirements listed below and those in the appropriate sectors of Part IV (9VAC25-151-90 et seq.) [.] These requirements are cumulative. If a facility has colocated activities that are covered in more than one sector of Part IV, that facility's pollution prevention plan shall comply with the requirements listed in all applicable sectors. The following requirements are applicable to all SWPPPs developed under this general permit. The plan shall include, at a minimum, the following items:

1. Pollution prevention team. The plan shall identify the staff individuals by name or title ~~that~~ who comprise the facility's storm water pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising and ensuring compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.

2. Site description. The SWPPP shall include the following:

a. Activities at the facility. A description of the nature of the industrial activities at the facility.

b. General location map. A general location map (e.g., USGS quadrangle or other map) with enough detail to identify the location of the facility and the receiving waters within one mile of the facility.

c. Site map. A site ~~Map~~ map identifying the following:

(1) The [boundaries of the property and the] size of the property (in acres);

(2) The location and extent of significant structures and impervious surfaces (roofs, paved areas and other impervious areas);

(3) Locations of all storm water conveyances including ditches, pipes, swales, and inlets, and the directions of storm water flow (use arrows to show which ways storm water will flow);

(4) Locations of all existing structural and source control [measures, including] BMPs;

(5) Locations of all surface water bodies, including wetlands;

(6) Locations of potential pollutant sources identified under Part III B 3;

(7) Locations where significant spills or leaks identified under Part III B 4 have occurred;

(8) Locations of the following activities where such activities are exposed to precipitation: fueling stations; vehicle and equipment maintenance ~~and/or~~ and cleaning areas; ~~loading/unloading~~ loading and unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; processing and storage areas; access roads, rail cars and tracks; transfer areas for substances in bulk; and machinery;

(9) Locations of storm water outfalls and an approximate outline of the area draining to each outfall, and location of municipal storm sewer systems, if the storm water from the facility discharges to them. Outfalls shall be numbered using a unique numerical identification code for each outfall (e.g., Outfall No. 001, No. 002, etc.);

(10) Location and description of all nonstorm water discharges;

(11) Location of any storage piles containing salt used for deicing or other commercial or industrial purposes; ~~and~~

(12) Locations and sources of runon to the site from adjacent property, where the runon contains significant quantities of pollutants~~. The permittee shall include an evaluation with the SWPPP of how the quality of the storm water running onto the facility impacts the facility's storm water discharges.~~; and

(13) Locations of all storm water monitoring points.

d. Receiving waters and wetlands. The name of all surface waters receiving discharges from the site, including intermittent streams, dry sloughs, and arroyos. Provide a description of wetland sites that may receive discharges from the facility. If the facility discharges through a municipal separate storm sewer system (MS4),

identify the MS4 operator, and the receiving water to which the MS4 discharges.

3. Summary of potential pollutant sources. The plan shall identify each separate area at the facility where industrial materials or activities are exposed to storm water. Industrial materials or activities include, but are not limited to: material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, and waste products. Material handling activities include, but are not limited to: the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product or waste product. For each separate area identified, the description shall include:

a. Activities in the area. A list of the industrial activities exposed to storm water (e.g., material storage, equipment fueling and cleaning, cutting steel beams); ~~and~~

b. Pollutants. A list of the ~~associated~~ pollutant(s) or pollutant constituents (e.g., crankcase oil, zinc, sulfuric acid, cleaning solvents, etc.) ~~for~~ associated with each industrial activity. The pollutant list shall include all significant materials handled, treated, stored or disposed that have been exposed to storm water in the three years prior to the date this SWPPP was prepared or amended. The list shall include any hazardous substances or oil at the facility.

~~4.~~ c. Spills and leaks. The SWPPP shall clearly identify areas where potential spills and leaks that can contribute pollutants to storm water discharges can occur and their corresponding outfalls. The plan shall include a list of significant spills and leaks of toxic or hazardous pollutants that actually occurred at exposed areas, or that drained to a storm water conveyance during the three-year period prior to the date this SWPPP was prepared or amended. The list shall be updated if significant spills or leaks occur in exposed areas of the facility during the term of the permit. Significant spills and leaks include, but are not limited to, releases of oil or hazardous substances in excess of reportable quantities~~, and may also include releases of oil or hazardous substances that are not in excess of reporting requirements~~.

~~5.~~ d. Sampling data. The plan shall include a summary of existing storm water discharge sampling data taken at the facility. The summary shall include, at a minimum, any data collected during the previous permit term.

~~6.~~ 4. Storm water controls.

a. Control measures [~~(~~BMPs~~)~~] shall be implemented for all the areas identified in Part III B 3 (summary of potential pollutant sources) to prevent or control pollutants in storm water discharges from the facility. ~~All reasonable steps shall be taken to control or address the quality of discharges from the site that may not originate at the facility.~~ Regulated storm water discharges from the facility include storm water runon that commingles with storm water discharges associated with industrial activity at the facility. The SWPPP shall describe the type, location and implementation of all ~~BMPs~~ control measures for each area where industrial materials or activities are exposed to storm water.

Selection of ~~BMPs~~ control measures shall take into consideration:

(1) That preventing storm water from coming into contact with polluting materials is generally more effective, and less costly, than trying to remove pollutants from storm water;

(2) ~~BMPs~~ Control measures generally shall be used in combination with each other for most effective water quality protection;

(3) Assessing the type and quantity of pollutants, including their potential to impact receiving water quality, is critical to designing effective control measures;

(4) That minimizing impervious areas at the facility can reduce runoff and improve groundwater recharge and stream base flows in local streams (however, care must be taken to avoid ground water contamination);

(5) Flow attenuation by use of open vegetated swales and natural depressions can reduce in-stream impacts of erosive flows;

(6) Conservation or restoration of riparian buffers will help protect streams from storm water runoff and improve water quality; and

(7) Treatment interceptors (e.g., swirl separators and sand filters) may be appropriate in some instances to minimize the discharge of pollutants.

b. ~~Control measures (Nonnumeric technology based effluent limits)~~ Nonnumeric technology-based effluent limits. The permittee shall implement the following types of ~~BMPs~~ control measures to prevent and control pollutants in the storm water discharges from the facility, unless it can be demonstrated and documented that such controls are not relevant to the discharges (e.g., there are no storage piles containing salt).

(1) Good housekeeping. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants to storm water discharges. Typical problem areas include areas around trash containers, storage areas, loading docks, and vehicle fueling and maintenance areas. The plan shall include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks and containers. ~~The introduction of raw, final or waste materials to exposed areas of the facility shall be minimized to the maximum extent practicable. The generation of dust, along with off site vehicle tracking of~~

~~raw, final or waste materials, or sediments, shall be minimized to the maximum extent practicable.~~

(2) Eliminating and minimizing exposure. To the extent practicable, ~~industrial materials and activities~~ manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) shall be located inside, or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff. Note: Eliminating exposure at all industrial areas may make the facility eligible for the "Conditional Exclusion for No Exposure" provision of 9VAC25-31-120 E, thereby eliminating the need to have a permit.

(3) Preventive maintenance. The permittee shall have a preventive maintenance program that includes regular inspection, testing, maintenance and repairing of all industrial equipment and systems to avoid ~~breakdowns or failures~~ situations that could result in leaks, ~~spill~~ spills and other releases of pollutants in storm water discharged from the facility. This program is in addition to the specific ~~BMP~~ control measure maintenance required under Part III C ~~(Maintenance of BMPs)~~ (Maintenance of control measures).

(4) Spill prevention and response procedures. The plan shall describe the procedures that will be followed for preventing and responding to spills and leaks~~.~~, including:

(a) Preventive measures ~~include~~, such as barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling~~.~~;

(b) Response procedures ~~shall include~~, including notification of appropriate facility personnel, emergency agencies, and regulatory agencies, and procedures for stopping, containing and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable RCRA regulations at 40 CFR Part 264 ~~(2007)~~ and 40 CFR Part 265 ~~(2007)~~. Employees who may cause, detect or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals shall be a member of the Pollution Prevention Team~~.~~;

(c) Procedures for plainly labeling containers (e.g., "used oil," "spent solvents," "fertilizers and pesticides," etc.) that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur; and

~~(c)~~ (d) Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP, and in other locations where it will be readily available.

~~(5) Routine facility inspections. Facility personnel who possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility, and who can also evaluate the effectiveness of BMPs shall regularly inspect all areas of the facility where industrial materials or activities are exposed to storm water. These inspections are in addition to, or as part of, the comprehensive site evaluation required under Part III E. At least one member of the Pollution Prevention Team shall participate in the routine facility inspections.~~

~~The inspection frequency shall be specified in the plan based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit or written approval is received from the department for less frequent intervals. The requirement for routine facility inspections is waived for facilities that have maintained an active E3/E4 status. At least once each calendar year, the routine facility inspection must be conducted during a period when a storm water discharge is occurring.~~

~~Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 30 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP, along with the date(s) and description(s) of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.~~

(5) Salt storage piles or piles containing salt. Storage piles of salt or piles containing salt used for deicing or other commercial or industrial purposes shall be enclosed or covered to prevent exposure to precipitation. The permittee shall implement appropriate measures (e.g., good housekeeping, diversions, containment) to minimize exposure resulting from adding to or removing materials from the pile. All salt storage piles shall be located on an impervious surface. All runoff from the pile, and runoff that comes in contact with salt, including under drain systems, shall be collected and contained within a bermed basin lined with concrete or other impermeable materials, or within an underground storage tank or tanks, or within an above ground storage tank or tanks, or disposed of through a sanitary sewer (with the permission of the owner of the treatment facility). A combination of any or all of these methods may be used. In no case shall salt contaminated storm water be allowed to discharge directly to the ground or to surface waters.

(6) Employee training. The permittee shall implement a storm water employee training program for the facility. [~~Employee training shall take place, at a minimum, once per calendar year. The storm water employee training program shall include initial training for new hires.~~] The SWPPP shall include a schedule for all types of

necessary training, and shall document all training sessions and the employees who received the training. Training shall be provided for all employees who work in areas where industrial materials or activities are exposed to storm water, and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance personnel, etc.). The training shall cover the components and goals of the SWPPP, and include such topics as spill response, good housekeeping, material management practices, [~~BMP~~ control measure] operation and maintenance, etc. The SWPPP shall include a summary of any training performed.

(7) Sediment and erosion control. The plan shall identify areas at the facility that, due to topography, land disturbance (e.g., construction, landscaping, site grading), or other factors, have a potential for soil erosion. The permittee shall identify and implement structural, vegetative, ~~and/or~~ and stabilization [~~BMPs~~ control measures] to prevent or control on-site and off-site erosion and sedimentation. Flow velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel if the flows would otherwise create erosive conditions.

(8) Management of runoff. The plan shall describe the storm water runoff management practices (i.e., permanent structural [~~BMPs)~~ control measures)] for the facility. These types of ~~BMPs~~ control measures are typically used to divert, infiltrate, reuse, or otherwise reduce pollutants in storm water discharges from the site.

Structural [~~BMPs~~ control measures] may require a separate permit under § 404 of the CWA and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.

(9) Dust suppression and vehicle tracking of industrial materials. The permittee shall implement control measures to minimize the generation of dust and off-site tracking of raw, final, or waste materials. Storm water collected on-site may be used for the purposes of dust suppression or for spraying stockpiles. Potable water [~~and,~~] well water [, and uncontaminated reuse water] may also be used for this purpose. There shall be no direct discharge to surface waters from dust suppression activities or as a result of spraying stockpiles.

5. Routine facility inspections. Facility personnel who possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility and who can also evaluate the effectiveness of control measures shall regularly inspect all areas of the facility where industrial materials or activities are exposed to storm water. These inspections are in addition to, or as part of, the comprehensive site evaluation required under Part III E. At least one member of the pollution prevention team shall participate in the routine facility inspections.

The inspection frequency shall be specified in the plan based upon a consideration of the level of industrial activity at the facility, but shall be at a minimum quarterly unless more frequent intervals are specified elsewhere in the permit or written approval is received from the department for less frequent intervals. Inspections shall be performed during periods when the facility is in operation. At least once each calendar year, the routine facility inspection shall be conducted during a period when a storm water discharge is occurring.

The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status. Note: Certain sectors in Part IV have additional inspection requirements. If the VEEP E3/E4 waiver language is not included for the sector specific inspections, these additional inspection requirements may not be waived.

Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 30 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP and shall include at a minimum:

a. The inspection date and time;

b. The name(s) and signature(s) of the inspector(s);

c. Weather information and a description of any discharges occurring at the time of the inspection;

d. Any previously unidentified discharges of pollutants from the site;

e. Any control measures needing maintenance or repairs;

f. Any failed control measures that need replacement;

g. Any incidents of noncompliance observed; and

h. Any additional control measures needed to comply with the permit requirements.

C. Maintenance. ~~All BMPs identified in the SWPPP shall be maintained in effective operating condition. Storm water BMPs identified in the SWPPP shall be observed during active operation (i.e., during a storm water runoff event) to ensure that they are functioning correctly. Where discharge locations are inaccessible, nearby downstream locations shall be observed. The observations shall be documented in the SWPPP.~~ The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all [~~BMPs~~ control measures], and shall include a description of the back-up practices that are in place should a runoff event occur while a [~~BMP~~ control measure] is off-line. The effectiveness of nonstructural [~~BMPs~~ control measures] shall also be maintained by appropriate means (e.g., spill response supplies available and personnel trained, etc.).

All control measures [~~and structural BMPs~~] identified in the SWPPP shall be maintained in effective operating

condition and shall be observed at least annually during active operation (i.e., during a storm water runoff event) to ensure that they are functioning correctly. Where discharge locations are inaccessible, nearby downstream locations shall be observed. The observations shall be documented in the SWPPP.

If site inspections required by Part III B ~~6 b (5)~~ 5 (Routine facility inspections) or Part III E (Comprehensive site compliance evaluation) identify [~~BMPs~~ control measures] that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. If maintenance prior to the next anticipated storm event is not possible, maintenance shall be scheduled and accomplished as soon as practicable. In the interim, back-up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. Documentation shall be kept with the SWPPP of maintenance and repairs of [~~BMPs~~ control measures], including the date(s) of regular maintenance, date(s) of discovery of areas in need of repair or replacement, ~~and~~ date(s) for repairs, date(s) that the [~~BMP(s)~~ control measure(s)] returned to full function, and the justification for any extended maintenance or repair schedules.

D. ~~Allowable nonstorm~~ Nonstorm water discharges.

1. Discharges of certain sources of nonstorm water are allowable discharges under this permit ~~(see Part I B 1 - Allowable nonstorm water discharges) provided the permittee includes the following information in the SWPPP:~~ (see Part I B, Special Condition No. 1 - Allowable nonstorm water discharges). All other nonstorm water discharges are not authorized and shall be either eliminated or covered under a separate VPDES permit.

~~a. Identification of each allowable nonstorm water source, except for flows from fire fighting activities;~~

~~b. The location where the nonstorm water is likely to be discharged; and~~

~~c. Descriptions of appropriate BMPs for each source.~~

2. ~~If mist blown from cooling towers is included as one of the allowable nonstorm water discharges from the facility, the permittee shall specifically evaluate the discharge for the presence of chemicals used in the cooling tower. The evaluation shall be included in the SWPPP.~~ Annual outfall evaluation for unauthorized discharges.

a. The SWPPP shall include documentation that all [stormwater] outfalls [associated with industrial activity] have been evaluated annually for the presence of unauthorized discharges (i.e., discharges other than stormwater; the authorized nonstormwater discharges described in Part I B, Special Condition No. 1; or discharges covered under a separate VPDES permit, other than this permit). The documentation shall include:

(1) The date of the evaluation;

(2) A description of the evaluation criteria used;

(3) A list of the outfalls or on-site drainage points that were directly observed during the evaluation;

(4) A description of the results of the evaluation for the presence of unauthorized discharges; and

(5) The actions taken to eliminate unauthorized discharges if any were identified (i.e., a floor drain was sealed, a sink drain was rerouted to sanitary, or an VPDES permit application was submitted for a cooling water discharge).

b. The permittee may request in writing to the department that the facility be allowed to conduct annual outfall evaluations at 20% of the outfalls. If approved, the permittee shall evaluate at least 20% of the facility outfalls each year on a rotating basis such that all facility outfalls will be evaluated during the period of coverage under this permit.

E. Comprehensive site compliance evaluation. The permittee shall conduct comprehensive site compliance evaluations at least once ~~a~~ each calendar year after coverage under the permit begins. The evaluations shall be done by qualified personnel who possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility, and who can also evaluate the effectiveness of [~~BMPs~~ control measures]. The personnel conducting the evaluations may be either facility employees or outside ~~constituents~~ personnel hired by the facility.

1. Scope of the compliance evaluation. Evaluations shall include all areas where industrial materials or activities are exposed to storm water, as identified in Part III B 3. The personnel shall evaluate:

a. Industrial materials, residue or trash that may have or could come into contact with storm water;

b. Leaks or spills from industrial equipment, drums, barrels, tanks or other containers that have occurred within the past three years;

c. Off-site tracking of industrial or waste materials or sediment where vehicles enter or exit the site;

d. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas;

e. Evidence of, or the potential for, pollutants entering the drainage system;

f. Evidence of pollutants discharging to surface waters at all facility outfalls, and the condition of and around the outfall, including flow dissipation measures to prevent scouring;

g. Review of storm water related training performed, inspections completed, maintenance performed, quarterly visual examinations, and effective operation of [control measures, including] BMPs;

h. ~~Annual~~ A summary of the annual outfall evaluation for unauthorized discharges required by [~~subsection~~ subdivision] D 2 of this section.

~~(1) The SWPPP shall include documentation that all outfalls have been evaluated annually for the presence of unauthorized discharges (i.e., discharges other than: storm water; the authorized nonstorm water discharges described in Part I B 1; or discharges covered under a separate VPDES permit, other than this permit.) The documentation shall include:~~

~~(a) The date of the evaluation;~~

~~(b) A description of the evaluation criteria used;~~

~~(c) A list of the outfalls or on site drainage points that were directly observed during the evaluation;~~

~~(d) A description of the results of the evaluation for the presence of unauthorized discharges; and~~

~~(e) The actions taken to eliminate unauthorized discharges, if any were identified (i.e., a floor drain was sealed, a sink drain was rerouted to sanitary, or an VPDES permit application was submitted for a cooling water discharge.)~~

~~(2) The permittee may request in writing to the department that the facility be allowed to conduct annual outfall evaluations at 20% of the outfalls. If approved, the permittee shall evaluate at least 20% of the facility outfalls each year on a rotating basis such that all facility outfalls will be evaluated during the period of coverage under this permit.~~

i. Results of both visual and any analytical monitoring done during the past year shall be taken into consideration during the evaluation.

2. Based on the results of the evaluation, the SWPPP shall be modified as necessary (e.g., show additional controls on the map required by Part III B 2 c; revise the description of controls required by Part III B [~~6~~ 4] to include additional or modified [~~BMPs~~ control measures] designed to correct problems identified). Revisions to the SWPPP shall be completed within 30 days following the evaluation, unless permission for a later date is granted in writing by the director. If existing [~~BMPs~~ control measures] need to be modified or if additional [~~BMPs~~ control measures] are necessary, implementation shall be completed before the next anticipated storm event, if practicable, but not more than 60 days after completion of the comprehensive site evaluation, unless permission for a later date is granted in writing by the department;

3. Compliance evaluation report. A report shall be written summarizing the scope of the evaluation, name(s) of personnel making the evaluation, the date of the evaluation, and all observations relating to the implementation of the SWPPP, including elements stipulated in Part III E 1 (a) through ~~(f)~~ (i) above. Observations shall include such things as: the location(s) of discharges of pollutants from the site; location(s) of previously unidentified sources of pollutants; location(s) of [~~BMPs~~ control measures] that need to be maintained or repaired; location(s) of failed [~~BMPs~~ control measures] that need replacement; and location(s) where additional [~~BMPs~~ control measures] are needed. The report shall identify any incidents of noncompliance that were observed. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part II K and maintained with the SWPPP.

4. Where compliance evaluation schedules overlap with routine inspections required under Part III B ~~6 b (5)~~ 5 the annual compliance evaluation may be used as one of the routine inspections.

F. Signature and plan review.

1. ~~Signature/location~~ Signature and location. The SWPPP, including revisions to the SWPPP to document any corrective actions taken as required by Part I A ~~5~~ 6, shall be signed in accordance with Part II K, dated, and retained on-site at the facility covered by this permit in accordance with Part II B 2. All other changes to the SWPPP, and other permit compliance documentation, ~~must~~ shall be signed and dated by the person preparing the change or documentation. For inactive facilities, the plan may be kept at the nearest office of the permittee.

2. Availability. The permittee shall ~~make~~ retain a copy of the current SWPPP~~, annual site compliance evaluation report, and other information~~ required by this permit at the facility, and it shall be immediately available to the department, EPA, or the operator of an MS4 receiving discharges from the site at the time of an on-site inspection or upon request.

3. Required modifications. The permittee shall modify the SWPPP whenever necessary to address all corrective actions required by Part I A 6 a (Data exceeding benchmark concentration values) or Part I A 6 b (Corrective actions). Changes to the SWPPP shall be made in accordance with the corrective action deadlines in Part I A 6 a and Part I A 6 b, and shall be signed and dated in accordance with Part III F 1.

The director may notify the permittee at any time that the SWPPP, [~~BMPs~~ control measures], or other components of the facility's storm water program do not meet one or more of the requirements of this permit. The notification shall identify specific provisions of the permit that are not being met, and may include required modifications to the storm water program, additional monitoring requirements, and special reporting requirements. The permittee shall make any required changes to the SWPPP within 60 days of receipt of such notification, unless permission for a later date is granted in writing by the director, and shall submit a written certification to the director that the requested changes have been made.

G. Maintaining an updated SWPPP.

1. The permittee shall review and amend the SWPPP as appropriate whenever:

a. There is construction or a change in design, operation, or maintenance at the facility that has a significant effect on the discharge, or the potential for the discharge, of pollutants from the facility;

b. Routine inspections or compliance evaluations determine that there are deficiencies in the [control measures, including] BMPs;

c. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;

d. There is a spill, leak or other release at the facility;

e. There is an unauthorized discharge from the facility; or

f. The department notifies the permittee that a TMDL has been developed and applies to the permitted facility, consistent with Part I B, [~~Special Condition No. 6~~ special condition 7] (Discharges to waters subject to TMDL waste load allocations).

2. SWPPP modifications shall be made within 30 calendar days after discovery, observation or event requiring a SWPPP modification. Implementation of new or modified [~~BMPs~~ control measures] (distinct from regular preventive maintenance of existing [~~BMPs~~ control measures] described in Part III C) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a [~~BMP~~ control measure] or implement additional [~~BMPs~~ control measures] shall be documented in the SWPPP.

3. If the SWPPP modification is based on a release or unauthorized discharge, include a description and date of the release, the circumstances leading to the release, actions taken in response to the release, and measures to prevent the recurrence of such releases. Unauthorized releases and discharges are subject to the reporting requirements of Part II G of this permit.

Part IV
Sector Specific Permit Requirements

The permittee must only comply with the additional requirements of Part IV (9VAC25-151-90 et seq.) that apply to the sector(s) of industrial activity located at the facility. These sector specific requirements are in addition to the "basic" requirements specified in Parts I, II and III of this permit. All numeric effluent limitations and benchmark monitoring concentration values reflect two significant digits, unless otherwise noted.

9VAC25-151-90. Sector A - Timber products facilities (including mulch, wood, and bark facilities and mulch dyeing facilities).

A. Discharges covered under this section.

1. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities generally classified under Standard Industrial Classification (SIC) Major Group 24 that are engaged in the following activities: cutting timber and pulpwood (those that have log storage or handling areas), mills, including merchant, lath, shingle, cooperage stock, planing, plywood and veneer, and producing lumber and wood materials; wood preserving, manufacturing wood buildings or mobile homes; and manufacturing finished articles made entirely of wood or related materials, except for wood kitchen cabinet manufacturers (SIC Code 2434), which are addressed under Sector W (9VAC25-151-300).

2. The requirements listed under this section also apply to storm water discharges associated with industrial activity from mulch, wood, and bark facilities, including mulch dyeing operations (SIC Code 24991303).

B. Special conditions.

1. Prohibition of nonstorm water discharges. Discharges of storm water from areas where there may be contact with chemical formulations sprayed to provide surface protection are not authorized by this permit. These discharges must be covered under a separate VPDES permit. Discharge of wet dye drippings from mulch dyeing operations are also prohibited.

2. Authorized nonstorm water discharges. In addition to the discharges described in Part I B 1, the following nonstorm water discharges may be authorized by this permit provided the nonstorm water component of the discharge is in compliance with 9VAC25-151-90 C and the effluent limitations described in 9VAC25-151-90 D: discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray down waters and no chemicals are applied to the wood during storage.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: processing areas; treatment chemical storage areas; treated wood and residue storage areas; wet decking areas; dry decking areas; untreated wood and residue storage areas; and treatment equipment storage areas.

b. Summary of potential pollutant sources. Where information is available, facilities that have used chlorophenolic, creosote, or chromium-copper-arsenic formulations for wood surface protection or wood preserving activities on-site in the past shall identify in the inventory the following: areas where contaminated soils, treatment equipment, and stored materials still

remain, and the management practices employed to minimize the contact of these materials with storm water runoff.

2. Storm water controls. The description of storm water management controls shall address the following areas of the site: log, lumber and ~~other~~ wood product storage areas; residue storage areas; loading and unloading areas; material handling areas; chemical storage areas; and ~~equipment/vehicle~~ equipment and vehicle maintenance, storage and repair areas. Facilities that surface protect ~~and/or~~ or preserve wood products shall address specific [control measures, including any] BMPs [,] for wood surface protection and preserving activities. Facilities that dye mulch shall address specific [~~BMPs~~ control measures] to prevent the discharge of wet dye drippings and to prevent seepage of pollutants to groundwater.

The SWPPP shall address the following minimum components:

a. Good housekeeping. Good housekeeping measures in storage areas, loading and unloading areas, and material handling areas shall be designed to:

(1) Limit the discharge of wood debris;

(2) Minimize the leachate generated from decaying wood materials; and

(3) Minimize the generation of dust.

b. Routine facility inspections. Inspections at processing areas, transport areas, and treated wood storage areas of facilities performing wood surface protection and preservation activities shall be performed monthly to assess the usefulness of practices in minimizing the deposit of treatment chemicals on unprotected soils and in areas that will come in contact with storm water discharges. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

D. Numeric effluent limitations.

[~~1.~~] In addition to the numeric effluent limitations described in Part I A 1 c, the following limitations shall be met by existing and new facilities.

Wet deck storage area runoff. Nonstorm water discharges from areas used for the storage of logs where water, without chemical additives, is intentionally sprayed or deposited on logs to deter decay or infestation by insects are required to meet the following effluent limitations: pH shall be within the range of 6.0-9.0, and there will be no discharge of debris. Chemicals are not allowed to be applied to the stored logs. The term "debris" is defined as woody material such as bark, twigs, branches, heartwood or sapwood that will not pass through a 2.54 cm (1 in.) diameter round opening and is present in the discharge from a wet deck storage area. Permittees subject to these numeric limitations shall be in compliance with these limitations through the duration of permit coverage.

Table 90-1.
Sector A - Numeric Effluent Limitations.

Parameter	Effluent Limitations
Wet Decking Discharges at Log Storage and Handling Areas (SIC 2411)	
pH	6.0 - 9.0 s.u.
Debris (woody material such as bark, twigs, branches, heartwood, or sapwood)	No discharge of debris that will not pass through a 2.54 cm (1") diameter round opening.

[~~2. Compliance monitoring requirements. In addition to the parameters listed above, the permittee shall provide an estimate of the total volume (in gallons) of the discharge sampled.~~]

E. Benchmark monitoring and reporting requirements. Timber product facilities; mulch, wood, and bark facilities; and mulch dyeing facilities are required to monitor their storm water discharges for the pollutants of concern listed in the appropriate section of Table 90-2.

Table 90-2.
Sector A - Benchmark Monitoring Requirements.

Pollutants of Concern	Benchmark Concentration
General Sawmills and Planing Mills (SIC 2421)	
Total Suspended Solids (TSS)	100 mg/L
Wood Preserving Facilities (SIC 2491)	
Total Recoverable Arsenic[1]	50 µg/L
Total Recoverable Chromium[1]	16 µg/L
Total Recoverable Copper[1]	18 µg/L
Log Storage and Handling Facilities (SIC 2411)	
Total Suspended Solids (TSS)	100 mg/L
Hardwood Dimension and Flooring Mills; Special Products Sawmills, not elsewhere classified; Millwork, Veneer, Plywood and Structural Wood; Wood Containers; Wood Buildings and Mobile Homes; Reconstituted Wood Products; and Wood Products Facilities not elsewhere classified (SIC Codes 2426, 2429, 2431-2439 (except 2434), 2441, 2448, 2449, 2451, 2452, 2493, and 2499).	
Total Suspended Solids (TSS)	100 mg/L
Mulch, Wood, and Bark Facilities (SIC Code 24991303)	
Total Suspended Solids (TSS)	100 mg/L
Biochemical Oxygen Demand (BOD_5)	30 mg/L

Facilities with Mulch Dyeing/Coloring Operations (SIC Code 24991303): Monitor ONLY those outfalls from the facility that collect runoff from areas where mulch dyeing/coloring activities occur, including but not limited to areas where loading, transporting, and storage of dyed/colored mulch occurs.[2]	
Total Suspended Solids (TSS)	100 mg/L
Biochemical Oxygen Demand (BOD5)	30 mg/L
Chemical Oxygen Demand (COD)	120 mg/L
Total Recoverable Aluminum	750 [~~mg/L~~ µg/L]
Total Recoverable Arsenic	150 [~~mg/L~~ µg/L]
Total Recoverable Cadmium	2.1 [~~mg/L~~ µg/L]
Total Recoverable Chromium	16 [~~mg/L~~ µg/L]
Total Recoverable Copper	18 [~~mg/L~~ µg/L]
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 [~~mg/L~~ µg/L]
Total Recoverable Manganese	64 [~~mg/L~~ µg/L]
Total Recoverable Mercury	1.4 [~~mg/L~~ µg/L]
Total Recoverable Nickel	470 [~~mg/L~~ µg/L]
Total Recoverable Selenium	5.0 [~~mg/L~~ µg/L]
Total Recoverable Silver	3.8 [~~mg/L~~ µg/L]
Total Recoverable Zinc	120 [~~mg/L~~ µg/L]
Total Nitrogen	2.2 mg/L
Total Phosphorus	2.0 mg/L

[1]Monitoring for metals (arsenic, chromium and copper) is not required for wood preserving facilities using only oil-based preservatives.

[2]Benchmark monitoring waivers are available to facilities utilizing mulch dye or colorant products that do not contain the specified parameters provided that: (i) monitoring from samples collected during one monitoring period demonstrates that [~~all parameters are nondetectable~~ the specific parameter in question is below the quantitation level]; (ii) a waiver request is submitted to and approved by the board [(The laboratory certificate of analysis must be submitted with the request. If approved, documentation of this shall be kept with the SWPPP.)]; and (iii) a certification statement is submitted to the department annually that the facility does not use mulch dyeing products that contain any of the [~~specified~~ specifically waived] parameters.

9VAC25-151-110. Sector C - Chemical and allied products manufacturing.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities engaged in manufacturing the following products and generally described by the SIC code shown:

1. Basic industrial inorganic chemicals (including SIC Code 281);

2. Plastic materials and synthetic resins, synthetic rubbers, and cellulosic and other humanmade fibers, except glass (including SIC Code 282);

3. Medicinal chemicals and pharmaceutical products, including the grading, grinding and milling of botanicals (including SIC Code 283).

4. Soap and other detergents, including facilities producing glycerin from vegetable and animal fats and oils; specialty cleaning, polishing, and sanitation preparations; surface active preparations used as emulsifiers, wetting agents, and finishing agents, including sulfonated oils; and perfumes, cosmetics, and other toilet preparations (including SIC Code 284);

5. Paints (in paste and ready-mixed form); varnishes; lacquers; enamels and shellac; putties, wood fillers, and sealers; paint and varnish removers; paint brush cleaners; and allied paint products (including SIC Code 285);

6. Industrial organic chemicals (including SIC Code 286);

7. Nitrogenous and phosphatic basic fertilizers, mixed fertilizer, pesticides, and other agricultural chemicals (including SIC Code 287). Note: SIC Code 287 includes Composting Facilities (SIC Code 2875);

8. Industrial and household adhesives, glues, caulking compounds, sealants, and linoleum, tile, and rubber cements from vegetable, animal, or synthetic plastics materials; explosives; printing ink, including gravure ink, screen process and lithographic inks; miscellaneous chemical preparations, such as fatty acids, essential oils, gelatin (except vegetable), sizes, bluing, laundry sours, and writing and stamp pad ink; industrial compounds, such as boiler and heat insulating compounds; and chemical supplies for foundries (including SIC Code 289); and

9. Ink and paints, including china painting enamels, India ink, drawing ink, platinum paints for burnt wood or leather work, paints for china painting, artists' paints and artists' water colors (SIC Code 3952, limited to those listed; for others in SIC Code 3952 not listed above, see Sector Y (9VAC25-151-320)).

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: inks, paints, or substances (hazardous, nonhazardous, etc.) resulting from an on-site spill, including materials collected in drip pans; washwaters from material handling and processing areas; or washwaters from drum, tank, or container rinsing and cleaning.

~~C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.~~

~~1. Site description.~~

~~a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: processing and storage areas; access roads, rail cars and tracks; areas where substances are transferred in bulk; and operating machinery.~~

~~b. Summary of potential pollutant sources. A description of the following sources and activities that have potential pollutants associated with them: loading, unloading and transfer of chemicals; outdoor storage of salt, pallets, coal, drums, containers, fuels, fueling stations; vehicle and equipment maintenance/cleaning areas; areas where the treatment, storage or disposal (on site or off site) of waste/wastewater occur; storage tanks and other containers; processing and storage areas; access roads, rail cars and tracks; areas where the transfer of substances in bulk occurs; and areas where machinery operates.~~

~~2. Storm water controls. Good housekeeping. The SWPPP shall include:~~

~~a. A schedule for regular pickup and disposal of garbage and waste materials, or a description of other appropriate measures used to reduce the potential for the discharge of storm water that has come into contact with garbage or waste materials;~~

~~b. Routine inspections of the condition of drums, tanks and containers for potential leaks.~~

~~D.~~ C. Numeric effluent limitations. In addition to the numeric effluent limitations described in Part I A 1 c, the following effluent limitations shall be met by existing and new discharges with phosphate fertilizer manufacturing runoff. The provisions of this paragraph are applicable to storm water discharges from the phosphate subcategory of the fertilizer manufacturing point source category (40 CFR 418.10 ~~(2006))~~). The term contaminated storm water runoff shall mean precipitation runoff, that during manufacturing or processing, comes into contact with any raw materials, intermediate product, finished product, by-products or waste product. The concentration of pollutants in storm water discharges shall not exceed the effluent limitations in Table 110-1.

Table 110-1~~.~~
Sector C – Numeric Effluent Limitations~~.~~

Parameter	Effluent Limitations	
	Daily Maximum	30-day Average
Phosphate Subcategory of the Fertilizer Manufacturing Point Source Category (40 CFR 418.10 ~~(2006))~~) - applies to precipitation runoff that, during manufacturing or processing, comes into contact with any raw materials, intermediate product, finished product, by-products or waste product (SIC 2874)		
Total Phosphorus (as P)	105 mg/L	35 mg/L
Fluoride	75 mg/L	25 mg/L

~~E.~~ D. Benchmark monitoring and reporting requirements. Agricultural chemical manufacturing facilities; industrial inorganic chemical facilities; soaps, detergents, cosmetics, and perfume manufacturing facilities; and plastics, synthetics, and resin manufacturing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 110-2 below.

Table 110-2~~.~~
Sector C – Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Agricultural Chemicals (SIC 2873-2879)	
Total Nitrogen	2.2 mg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Zinc	120 µg/L
Total Phosphorus	2.0 mg/L
Industrial Inorganic Chemicals (SIC 2812-2819)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	1.0 mg/L
Total Nitrogen	2.2 mg/L
Soaps, Detergents, Cosmetics, and Perfumes (SIC 2841-2844)	
Total Nitrogen	2.2 mg/L
Total Recoverable Zinc	120 µg/L
Plastics, Synthetics, and Resins (SIC 2821-2824)	
Total Recoverable Zinc	120 µg/L
Composting Facilities (SIC 2875)	

Total Suspended Solids (TSS)	100 mg/L
Biochemical Oxygen Demand (BOD_5)	30 mg/L
Chemical Oxygen Demand (COD)	120 mg/L
Ammonia	2.14 mg/L
Total Nitrogen	2.2 mg/L
Total Phosphorus	2.0 mg/L

9VAC25-151-120. Sector D - Asphalt paving and roofing materials and lubricant manufacturers.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities engaged in the following activities: manufacturing asphalt paving and roofing materials, including those facilities commonly identified by SIC Codes 2951 and 2952; portable asphalt plants (also commonly identified by SIC Code 2951); and manufacturing miscellaneous products of petroleum and coal, including those facilities classified as SIC Code 2992 and 2999.

B. Limitations on coverage. The following storm water discharges associated with industrial activity are not authorized by this section of the permit:

1. Storm water discharges from petroleum refining facilities, including those that manufacture asphalt or asphalt products, that are ~~classified as SIC Code 2911~~ subject to effluent limitation guidelines for the Petroleum Refining Point Source Category (40 CFR 419);

2. Storm water discharges from oil recycling facilities; and

3. Storm water discharges associated with fats and oils rendering.

~~C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following item: routine facility inspections. Material storage and handling areas, liquid storage tanks, hoppers or silos, vehicle and equipment maintenance, cleaning, and fueling areas, material handling vehicles, equipment and processing areas shall be inspected at least once per month, as part of the maintenance program. The permittee shall ensure that appropriate action is taken in response to the inspection by implementing tracking or follow up procedures.~~

~~D.~~ C. Numeric effluent limitations. In addition to the numeric effluent limitations listed in Part I A c, discharges from areas where production of asphalt paving and roofing emulsions occurs may not exceed the limitations in Table 120-1.

Table 120-1.
Sector D – Numeric Effluent Limitations.

Parameter	Effluent Limitations	
	Daily Maximum	30-day Average
Discharges from areas where production of asphalt paving and roofing emulsions occurs (SIC 2951, 2952)		
Total Suspended Solids (TSS)	23 mg/L	15 mg/L
Oil and Grease	15 mg/L	10 mg/L
pH	6.0 - 9.0 s.u.	

~~E.~~ D. Benchmark monitoring and reporting requirements. Asphalt paving and roofing materials manufacturing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 120-2.

Table 120-2.
Sector D – Benchmark Monitoring Requirements.

Pollutants of Concern	Benchmark Concentration
Asphalt Paving and Roofing Materials (SIC 2951, 2952)	
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-130. Sector E - Glass, clay, cement, concrete, and gypsum products.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities generally classified under SIC Major Group 32 that are engaged in either manufacturing the following products or performing the following activities: flat, pressed, or blown glass or glass containers; hydraulic cement; clay products including tile and brick; pottery and porcelain electrical supplies; gypsum products; nonclay refractories; minerals and earths, ground or otherwise treated; lime manufacturing; cut stone and stone products; asbestos products; and mineral wool and mineral wool insulation products.

Concrete block and brick facilities (SIC Code 3271), concrete products facilities, except block and brick (SIC Code 3272), and ready-mixed concrete facilities (SIC Code 3273) are not covered by this permit.

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items:

1. Site description and site map. The site map shall identify the locations of the following, if applicable: bag house or other dust control device; ~~recycle/sedimentation~~ recycle or sedimentation pond, clarifier or other device used for the

treatment of process wastewater and the areas that drain to the treatment device.

2. Storm water controls. ~~a.~~ Good housekeeping.

~~(1)~~ a. Facilities shall prevent or minimize the discharge of: spilled cement; aggregate (including sand or gravel); kiln dust; fly ash; settled dust; and other significant materials in storm water from paved portions of the site that are exposed to storm water. Measures used to minimize the presence of these materials may include regular sweeping, or other equivalent measures. The plan shall indicate the frequency of sweeping or equivalent measures. The frequency shall be determined based upon consideration of the amount of industrial activity occurring in the area and frequency of precipitation, but shall not be less than once per week if cement, aggregate, kiln dust; fly ash, or settled dust are being handled or processed.

~~(2)~~ b. Facilities shall prevent the exposure of fine granular solids (such as cement, fly ash, kiln dust, etc.) to storm water. Where practicable, these materials shall be stored in enclosed silos or hoppers, buildings, or under other covering.

~~b. Routine facility inspections. The inspection shall take place while the facility is in operation and shall include all of the following areas that are exposed to storm water: material handling areas, aboveground storage tanks, hoppers or silos, dust collection/containment systems, truck wash down/equipment cleaning areas.~~

~~c. Certification of outfall evaluation for unauthorized discharges. Facilities engaged in production of ready-mix concrete, concrete block, brick or similar products shall include in the certification a description of measures that ensure that process wastewater that results from washing of trucks, mixers, transport buckets, forms or other equipment are discharged in accordance with a separate VPDES permit or are recycled.~~

C. Numeric effluent limitations. In addition to the numeric effluent limitations described by Part I A 1 c, the following limitations shall be met by existing and new facilities: cement manufacturing facility, material storage runoff. Any discharge composed of runoff that derives from the storage of materials including raw materials, intermediate products, finished products, and waste materials that are used in or derived from the manufacture of cement shall not exceed the limitations in Table 130-1. Runoff from the storage piles shall not be diluted with other storm water runoff or flows to meet these limitations. Any untreated overflow from facilities designed, constructed and operated to treat the volume of material storage pile runoff that is associated with a 10-year, 24-hour rainfall event shall not be subject to the TSS or pH limitations. Facilities subject to these numeric effluent limitations shall be in compliance with these limits upon commencement of coverage and for the entire term of this permit.

Table 130-1~~.~~
Sector E – Numeric Effluent Limitations~~.~~

Parameter	Effluent Limitations	
	Daily Maximum	30-day Average
Cement Manufacturing Facility, Material Storage Runoff: Any discharge composed of runoff that derives from the storage of materials including raw materials, intermediate products, finished products, and waste materials that are used in or derived from the manufacture of cement.		
Total Suspended Solids (TSS)	50 mg/L	
pH	6.0 - 9.0 s.u.	

D. Benchmark monitoring and reporting requirements. Clay product manufacturers (SIC 3251-3259, SIC 3261-3269) and lime and gypsum product manufacturers (SIC 3274, 3275) are required to monitor their storm water discharges for the pollutants of concern listed in Table 130-2.

Table 130-2~~.~~
Sector E – Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Clay Product Manufacturers (SIC 3251-3259, 3261-3269)	
Total Recoverable Aluminum	750 ug/L
Lime and Gypsum Product Manufacturers (SIC 3274, 3275)	
Total Suspended Solids (TSS)	100 mg/L
pH	6.0 - 9.0 s.u.
Total Recoverable Iron	1.0 mg/L

9VAC25-151-140. Sector F - Primary metals.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from the following types of facilities in the primary metal industry, and generally described by the SIC code shown:

1. Steel works, blast furnaces, and rolling and finishing mills, including: steel wire drawing and steel nails and spikes; cold-rolled steel sheet, strip, and bars; and steel pipes and tubes (SIC Code 331).

2. Iron and steel foundries, including: gray and ductile iron, malleable iron, steel investment, and steel foundries not elsewhere classified (SIC Code 332).

3. Primary smelting and refining of nonferrous metals, including: primary smelting and refining of copper, and primary production of aluminum (SIC Code 333).

4. Secondary smelting and refining of nonferrous metals (SIC Code 334).

5. Rolling, drawing, and extruding of nonferrous metals, including: rolling, drawing, and extruding of copper; rolling, drawing and extruding of nonferrous metals except copper and aluminum; and drawing and insulating of nonferrous wire (SIC Code 335).

6. Nonferrous foundries (castings), including: aluminum die-castings, nonferrous die-castings, except aluminum, aluminum foundries, copper foundries, and nonferrous foundries, except copper and aluminum (SIC Code 336).

7. Miscellaneous primary metal products, not elsewhere classified, including: metal heat treating, and primary metal products, not elsewhere classified (SIC Code 339).

Activities covered include, but are not limited to, storm water discharges associated with coking operations, sintering plants, blast furnaces, smelting operations, rolling mills, casting operations, heat treating, extruding, drawing, or forging of all types of ferrous and nonferrous metals, scrap, and ore.

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following activities may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: storage or disposal of wastes such as spent ~~solvents/baths~~ solvents and baths, sand, ~~slag/dross~~ slag and dross; liquid storage ~~tanks/drums~~ tanks and drums; processing areas including pollution control equipment (e.g., baghouses); and storage areas of raw materials such as coal, coke, scrap, sand, fluxes, refractories, or metal in any form. In addition, indicate sources where an accumulation of significant amounts of particulate matter could occur from such sources as furnace or oven emissions, losses from ~~coal/coke~~ coal and coke handling operations, etc., and that could result in a discharge of pollutants to surface waters.

b. Summary of potential pollutant sources. The inventory of materials handled at the site that potentially may be exposed to ~~precipitation/runoff~~ precipitation or runoff shall include areas where deposition of particulate matter from process air emissions or losses during material handling activities are possible.

2. Storm water controls.

a. Good housekeeping. The [~~SWPPP~~ permittee] shall [~~consider implementation of~~ implement] the following measures, or equivalent measures, where applicable.

(1) Establishment of a ~~cleaning/maintenance~~ cleaning and maintenance program for all impervious areas of the facility where particulate matter, dust, or debris may accumulate, especially areas where material ~~loading/unloading~~ loading and unloading, storage, handling, and processing occur.

(2) The paving of areas, where practicable, where vehicle traffic or material storage occur, but where vegetative or other stabilization methods are not practicable. Sweeping programs shall be instituted in these areas as well.

(3) For unstabilized areas of the facility where sweeping is not practical, the permittee shall consider using storm water management devices such as sediment traps, vegetative buffer strips, filter fabric fence, sediment filtering boom, gravel outlet protection, or other equivalent measures, that effectively trap or remove sediment.

b. Routine facility inspections. Inspections shall be conducted ~~monthly, and~~ quarterly. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status. Inspections shall address all potential sources of pollutants, including (if applicable):

(1) Air pollution control equipment (e.g., baghouses, electrostatic precipitators, scrubbers, and cyclones) shall be inspected for any signs of degradation (e.g., leaks, corrosion, or improper operation) that could limit their efficiency and lead to excessive emissions. The permittee shall consider monitoring air flow at ~~inlets/outlets~~ inlets and outlets, or equivalent measures, to check for leaks (e.g., particulate deposition) or blockage in ducts;

(2) All process or material handling equipment (e.g., conveyors, cranes, and vehicles) shall be inspected for leaks, drips, or the potential loss of materials; and

(3) Material storage areas (e.g., piles, bins or hoppers for storing coke, coal, scrap, or slag, as well as chemicals stored in ~~tanks/drums)~~ tanks and drums) shall be examined for signs of material losses due to wind or storm water runoff.

C. Benchmark monitoring and reporting requirements. Primary metals facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 140 below.

Table 140~~.~~
Sector F – Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Steel Works, Blast Furnaces, and Rolling and Finishing Mills (SIC 3312-3317)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Zinc	120 µg/L
Iron and Steel Foundries (SIC 3321-3325)	

Total Recoverable Aluminum	750 µg/L
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Zinc	120 µg/L
Rolling, Drawing, and Extruding of Nonferrous Metals (SIC 3351-3357)	
Total Recoverable Copper	18 µg/L
Total Recoverable Zinc	120 µg/L
Nonferrous Foundries (SIC 3363-3369)	
Total Recoverable Copper	18 µg/L
Total Recoverable Zinc	120 µg/L

9VAC25-151-150. Sector G - Metal mining (ore mining and dressing).

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from active, temporarily inactive and inactive metal mining and ore dressing facilities including mines abandoned on federal lands, as classified under SIC Major Group 10. Coverage is required for facilities that discharge storm water that has come into contact with, or is contaminated by, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the operation. SIC Major Group 10 includes establishments primarily engaged in mining of ores, developing mines, or exploring for metallic minerals (ores) and also includes ore dressing and beneficiating operations, whether performed at colocated, dedicated mills or at separate mills, such as custom mills. For the purposes of this section, the term "metal mining" includes any of the separate activities listed above. Covered discharges include:

1. All storm water discharges from inactive facilities;

2. Storm water discharges from the following areas of active and temporarily inactive metal mining facilities: waste ~~rock/overburden~~ rock and overburden piles if composed entirely of storm water and not combining with mine drainage; topsoil piles; off-site ~~haul/access~~ haul and access roads; on-site ~~haul/access~~ haul and access roads constructed of waste ~~rock/overburden~~ rock and overburden if composed entirely of storm water and not combining with mine drainage; on-site ~~haul/access~~ haul and access roads not constructed of waste ~~rock/overburden/spent~~ rock, overburden, or spent ore except if mine drainage is used for dust control; runoff from tailings ~~dams/dikes~~ dams and dikes when not constructed of waste ~~rock/tailings~~ rock or tailings and no process fluids are present; runoff from tailings ~~dams/dikes~~ dams or dikes when constructed of waste ~~rock/tailings~~ rock or tailings and no process fluids are present if composed entirely of storm water and not combining with mine drainage; concentration building if no contact with material piles; mill site if no contact with material piles; ~~office/administrative~~ office or administrative building and housing if mixed with storm water from industrial area; chemical storage area; docking facility if no excessive contact with waste product that would otherwise constitute mine drainage; explosive storage; fuel storage; ~~vehicle/equipment~~ vehicle and equipment maintenance ~~area/building~~ area and building; parking areas (if necessary); power plant; truck wash areas if no excessive contact with waste product that would otherwise constitute mine drainage; unreclaimed, disturbed areas outside of active mining area; reclaimed areas released from reclamation bonds prior to December 17, 1990; and ~~partially/inadequately~~ partially or inadequately reclaimed areas or areas not released from reclamation bonds;

3. Storm water discharges from exploration and development of metal mining ~~and/or~~ and ore dressing facilities; and

4. Storm water discharges from facilities at mining sites undergoing reclamation.

B. Limitations on coverage. Storm water discharges from active metal mining facilities that are subject to the effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR Part 440 ~~(2007))~~) are not authorized by this permit.

Note: Discharges that come in contact with ~~overburden/waste~~ overburden and waste rock are subject to 40 CFR Part 440 ~~(2007)~~, providing: the discharges drain to a point source (either naturally or as a result of intentional diversion), and they combine with mine drainage that is otherwise regulated under 40 CFR Part 440 ~~(2007)~~. Discharges from ~~overburden/waste~~ overburden and waste rock can be covered under this permit if they are composed entirely of storm water and do not combine with sources of mine drainage that are subject to 40 CFR Part 440 ~~(2007)~~.

C. Special Conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following ~~discharges are~~ discharge is not covered by this permit: adit drainage ~~or contaminated springs or seeps~~. Contaminated seeps and springs discharging from waste rock dumps that do not directly result from precipitation events are also not authorized by this permit.

D. Special definitions. The following definitions are not intended to supersede the definitions of active and inactive

mining facilities established by 40 CFR 122.26(b)(14)(iii), and are only for this section of the general permit:

"Active metal mining facility" means a place where work or other related activity to the extraction, removal, or recovery of metal ore is being conducted. For surface mines, this definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun.

"Active phase" means activities including ~~each step from~~ the extraction ~~through production of a salable product~~, removal, or recovery of metal ore. For surface mines, this definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun.

"Construction phase" means the building of site access roads and removal of overburden and waste rock to expose mineable minerals. The construction phase is not considered part of "mining operations."

"Exploration ~~and development~~ phase" entails exploration and land disturbance activities to determine the financial viability of a site. ~~Development includes the building of site access roads and removal of overburden and waste rock to expose mineable minerals.~~ The exploration phase is not considered part of "mining operations."

"Final stabilization" - a site or portion of a site is "finally stabilized" when~~:~~ all applicable federal and state reclamation requirements have been implemented.

~~1. All soil disturbing activities at the site have been completed and either of the two following criteria are met:~~

~~a. A uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or~~

~~b. Equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.~~

~~2. When background native vegetation will cover less than 100% of the ground (e.g., arid areas, beaches), the 70% coverage criteria is adjusted as follows: if the native vegetation covers 50% of the ground, 70% of 50% (0.70 x 0.50 = 0.35) would require 35% total cover for final stabilization. On a beach with no natural vegetation, no stabilization is required.~~

"Inactive metal mining facility" means a site or portion of a site where metal mining ~~and/or~~ or milling occurred in the past but is not an active facility as defined in this permit, and where the inactive portion is not covered by an active mining permit issued by the applicable federal or state ~~governmental~~ agency. An inactive metal mining facility has an identifiable owner or operator. Sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials and sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim are not considered either active or inactive mining facilities and do not require a VPDES industrial stormwater permit.

"Mining operation" ~~typically~~ consists of ~~three~~ the active and temporarily inactive phases~~, any one of which individually qualifies as a "mining activity." The phases are the exploration and development phase, the active phase, and the reclamation phase~~ and the reclamation phase, but excludes the exploration and construction phases.

"Reclamation phase" means activities undertaken, in compliance with applicable mined land reclamation requirements, following the cessation of the "active phase," intended to return the land to ~~its premining use.~~ an appropriate post-mining land use in order to meet applicable federal and state reclamation requirements. The reclamation phase is considered part of "mining operations."

"Temporarily inactive metal mining facility" means a site or portion of a site where metal mining ~~and/or~~ or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable federal or state ~~government~~ agency.

E. Clearing, grading, and excavation activities. Clearing, grading, and excavation activities being conducted as part of the exploration and ~~development~~ construction phase of ~~a~~ mining ~~operation~~ activities are covered under this permit.

1. Management practices for clearing, grading, and excavation activities.

a. Selecting and installing control measures. A combination of erosion and sedimentation control measures are required to achieve maximum pollutant prevention and removal. All control measures shall be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices.

~~b. Removal of sediment. If sediment escapes the site, off-site accumulations of sediment shall be removed at a frequency sufficient to prevent off-site impacts.~~

~~c.~~ b. Good housekeeping. Litter, debris, and chemicals shall be prevented from becoming a pollutant source in storm water discharges.

~~d. Velocity dissipation. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide a nonerosive flow velocity from disturbed areas and from any storm water retention or detention facilities to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).~~

~~e.~~ c. Retention and detention of storm water runoff. For drainage locations serving more than one acre, sediment basins ~~and/or~~ or temporary sediment traps should be used. At a minimum, silt fences, vegetative buffer strips,

or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the development area unless a sediment basin providing storage for a calculated volume of runoff from a two-year, 24-hour storm or 3,600 cubic feet of storage per acre drained is provided. Sediment shall be removed from sediment traps or sedimentation ponds when the design capacity has been reduced by 50%.

~~f.~~ d. Temporary stabilization of disturbed areas. Stabilization measures shall be initiated immediately in portions of the site where development activities have temporarily ~~or permanently~~ ceased, but in no case more than 14 days after the ~~construction activity~~ clearing, grading, and excavation activities in that portion of the site ~~has~~ have temporarily ~~or permanently~~ ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after mining, exploration, or construction activity has temporarily ~~or permanently~~ ceased, final temporary vegetative stabilization measures shall be initiated as soon as ~~possible~~ practicable. Until ~~full~~ temporary vegetative stabilization is achieved, interim measures such as erosion control blankets with an appropriate seed base and tackifiers shall be employed. In areas of the site where exploration or construction has permanently ceased prior to active mining, temporary stabilization measures shall be implemented to minimize mobilization of sediment or other pollutants until such time as the active mining phase commences.

2. Requirements for inspection of clearing, grading, and excavation activities.

a. Inspection frequency. Inspections shall be conducted at least once every seven calendar days or at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater. Inspection frequency may be reduced to at least once every month if the entire site is temporarily stabilized, if runoff is unlikely due to winter ~~conditions~~ (e.g., site is covered with ~~snow, ice, or the ground is frozen)~~ snow or ice) or frozen conditions, or construction is occurring during seasonal ~~arid~~ dry periods in arid areas and semi-arid areas.

~~b. Qualified personnel for inspections. Inspections shall be conducted by qualified personnel. "Qualified personnel" means a person knowledgeable in the principles and practice of erosion and sediment control who possesses the skills to assess conditions at the construction site that could impact storm water quality and the effectiveness of any sediment and erosion control measures selected to control the quality of storm water discharges from the clearing, grading, and excavation activities.~~

~~c.~~ b. Location of inspections. Inspections shall include all areas of the site disturbed by clearing, grading, and excavation activities and areas used for storage of materials that are exposed to precipitation. Sedimentation and erosion control measures identified in the SWPPP shall be observed to ensure proper operation. Discharge locations shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to ~~state~~ surface waters, where accessible. 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.

~~d.~~ c. Inspection reports. For each inspection required above, an inspection report shall be completed. At a minimum, the inspection report shall include:

(1) The inspection date;

(2) Names, titles, and qualifications of personnel making the inspection;

(3) Weather information for the period since the last inspection (or note if it is the first inspection) including a best estimate of the beginning of each storm event, duration of each storm event, approximate amount of rainfall for each storm event (in inches), and whether any discharges occurred;

(4) Weather information and a description of any discharges occurring at the time of the inspection;

(5) Location(s) of discharges of sediment or other pollutants from the site;

(6) Location(s) of [~~BMPs~~ control measures] that need to be maintained;

(7) Location(s) of [~~BMPs~~ control measures] that failed to operate as designed or proved inadequate for a particular location;

(8) Location(s) where additional [~~BMPs~~ control measures] are needed that did not exist at the time of inspection; and

(9) Corrective action(s) required, including any changes to the SWPPP necessary and implementation dates.

A record of each inspection and of any actions taken in accordance with this section shall be retained as part of the SWPPP for at least three years from the date that permit coverage expires or is terminated. The inspection reports shall identify any incidents of noncompliance with the permit conditions. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the clearing, grading, and excavation activities are in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part II K of the permit.

~~3. Maintenance of controls for clearing, grading, and excavation activities.~~

~~a. Maintenance of BMPs. All erosion and sediment control measures and other protective measures identified in the SWPPP shall be maintained in effective operating condition. If site inspections required by subdivision 2 of this subsection identify BMPs that are not operating effectively, maintenance shall be performed as soon as possible and before the next storm event whenever practicable to maintain the continued effectiveness of storm water controls.~~

~~b. Modification of BMPs. Existing BMPs need to be modified or, if additional BMPs are necessary for any reason, implementation shall be completed before the next storm event whenever practicable. If implementation before the next storm event is impracticable, the situation shall be documented in the SWPPP and alternative BMPs shall be implemented as soon as possible.~~

~~c. Maintenance of sediment traps and ponds. Sediment from sediment traps or sedimentation ponds shall be removed when design capacity has been reduced by 50%.~~

~~4.~~ 3. Requirements for cessation of clearing, grading, and excavation activities.

a. Inspections and maintenance. Inspections and maintenance of control measures, including BMPs [,] associated with clearing, grading, and excavation activities being conducted as part of the exploration and construction phase of a mining operation shall continue until final stabilization has been achieved on all portions of the disturbed area, or until the commencement of the active mining phase for those areas that have been temporarily stabilized as a precursor to mining.

b. Final stabilization. Stabilization measures shall be initiated immediately in portions of the site where ~~development~~ exploration or construction activities have permanently ceased, but in no case more than 14 days after the exploration or construction activity in that portion of the site has permanently ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after exploration or construction activity has ~~temporarily or~~ permanently ceased, final vegetative stabilization measures shall be initiated as soon as possible. Until final stabilization is achieved temporary stabilization measures, such as erosion control blankets with an appropriate seed base and tackifiers, shall be used.

F. Storm water pollution prevention plan requirements for active, inactive, and temporarily inactive metal mining facilities and sites undergoing reclamation. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.

~~1. SWPPP requirements for active, inactive, and temporarily inactive metal mining facilities, and sites undergoing reclamation.~~

~~a.~~ 1. Site description.

~~(1)~~ a. Activities at the facility. A description of the mining and associated activities taking place at the site that can potentially affect storm water discharges covered by this permit. The description shall include a general description of the location of the site relative to major transportation routes and communities.

~~(2)~~ b. Site map. The site map shall identify the locations of the following, as appropriate: ~~mining/milling~~ mining and milling site boundaries; access and haul roads; an outline of the drainage areas of each storm water outfall within the facility, and an indication of the types of discharges from the drainage areas; location(s) of all permitted discharges covered under an individual VPDES permit; outdoor equipment storage, fueling and maintenance areas; materials handling areas; outdoor manufacturing, storage or material disposal areas; outdoor storage areas for chemicals and explosives; areas used for storage of overburden, materials, soils or wastes; location of mine drainage (where water leaves mine) or any other process water; tailings ~~piles/ponds~~ piles and ponds, both proposed and existing; heap leach pads; points of discharge from the property for mine ~~drainage/process~~ drainage and process water; surface waters; boundary of tributary areas that are subject to effluent limitations guidelines; and location(s) of reclaimed areas.

~~b.~~ 2. Summary of potential pollutant sources. For each area of the ~~mine/mill~~ mine or mill site where storm water discharges associated with industrial activities occur, the plan shall identify the types of pollutants likely to be present in significant amounts (e.g., heavy metals, sediment). The following factors shall be considered: the mineralogy of the ore and waste rock (e.g., acid forming); toxicity and quantity of chemicals used, produced or discharged; the likelihood~~, if any,~~ of contact with storm water; vegetation of site, if any; and history of significant ~~leaks/spills~~ leaks and spills of toxic or hazardous pollutants. A summary of any existing ore or waste ~~rock/overburden~~ rock and overburden characterization data and test results for potential generation of acid rock shall also be included. If the ore or waste ~~rock/overburden~~ rock and overburden characterization data are updated due to a change in the ore type being mined, the SWPPP shall be updated with the new data.

~~c.~~ 3. Storm water controls.

~~(1)~~ a. Routine facility inspections. ~~Sites~~ Except for areas subject to clearing, grading, and excavation activities subject to subdivision E 2 of this section, sites shall be inspected at least ~~monthly~~ quarterly unless adverse weather conditions make the site inaccessible. The

requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

~~(2)~~ b. Employee training. Employee training shall be conducted at least annually at active mining and temporarily inactive sites. All employee training shall be documented in the SWPPP.

~~(3)~~ c. Structural ~~BMPs~~ control measures. [~~Each~~ In addition to the control measures required by Part III B 4, each] of the following ~~BMPs~~ control measures shall be considered in the SWPPP. The potential pollutants identified in ~~subpart F~~ subdivision 1 b ~~above~~ of this subsection shall determine the priority and appropriateness of the ~~BMPs~~ control measures selected. If ~~BMPs~~ control measures are implemented or planned but are not listed here (e.g., substituting a less toxic chemical for a more toxic one), descriptions of them shall be included in the SWPPP.

~~(a) Sediment and erosion control. The measures to consider include: diversion of flow away from areas susceptible to erosion (measures such as interceptor dikes and swales, diversion dikes, curbs and berms); stabilization methods to prevent or minimize erosion (such as temporary or permanent seeding; vegetative buffer strips; protection of trees; topsoiling; soil conditioning; contouring; mulching; geotextiles (matting, netting, or blankets); riprap; gabions; and retaining walls); and structural methods for controlling sediment (such as check dams; rock outlet protection; level spreaders; gradient terraces; straw bale barriers; silt fences; gravel or stone filter berms; brush barriers; sediment traps; grass swales; pipe slope drains; earth dikes; other controls such as entrance stabilization, waterway crossings or wind breaks; or other equivalent measures).~~

~~(b)~~ (1) Storm water diversion. A description of how and where storm water will be diverted away from potential pollutant sources to prevent storm water contamination. [~~BMP~~ Control measure] options may include the following: interceptor dikes and swales; diversion dikes, curbs and berms; pipe slope drains; subsurface drains; ~~drainage/storm~~ drainage and storm water conveyance systems (channels or gutters, open top box culverts and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts) or equivalent measures.

~~(c) Management of runoff. The potential pollutant sources given in subdivision 1 b of this subsection shall be considered when determining reasonable and appropriate measures for managing runoff.~~

~~(d)~~ (2) Capping. When capping of a contaminant source is necessary, the source being capped and materials and procedures used to cap the contaminant source shall be identified.

~~(e)~~ (3) Treatment. If treatment of a storm water discharge is necessary to protect water quality, include a description of the type and location of storm water treatment that will be used. Storm water treatments include the following: chemical or physical systems; ~~oil/water~~ oil and water separators; artificial wetlands; etc. The permittee is encouraged to use both passive ~~and/or~~ and active treatment of storm water runoff. Treated runoff may be discharged as a storm water source regulated under this permit provided the discharge is not combined with discharges subject to effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR Part 440 ~~(2007))~~).

~~(f)~~ (4) Certification of discharge testing. The permittee shall test or evaluate all outfalls covered under this permit for the presence of specific mining-related nonstorm water discharges such as seeps or adit discharges or discharges subject to effluent limitations guidelines (e.g., 40 CFR Part 440 ~~(2007))~~), such as mine drainage or process water. Alternatively (if applicable), the permittee may certify in the SWPPP that a particular discharge composed of commingled storm water and nonstorm water is covered under a separate VPDES permit; and that permit subjects the nonstorm water portion to effluent limitations prior to any commingling. This certification shall identify the nonstorm water discharges, the applicable VPDES permit(s), the effluent limitations placed on the nonstorm water discharge by the permit(s), and the points at which the limitations are applied.

~~2.~~ G. Termination of permit coverage.

~~a.~~ 1. Termination of permit coverage for sites reclaimed after December 17, 1990. A site or a portion of a site that has been released from applicable state or federal reclamation requirements after December 17, 1990, is no longer required to maintain coverage under this permit~~, provided that the covered storm water discharges do not have the potential to cause or contribute to violations of state water quality standards~~. If the site or portion of a site reclaimed after December 17, 1990, was not subject to reclamation requirements, the site or portion of the site is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed as defined in ~~subpart 2 b below~~ subdivision 2 of this subsection.

~~b.~~ 2. Termination of permit coverage for sites reclaimed before December 17, 1990. A site or portion of a site that was released from applicable state or federal reclamation requirements before December 17, 1990, or that was otherwise reclaimed before December 17, 1990, is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed. A site or portion of a site is considered to have been reclaimed if: (i) storm water runoff that comes into contact with ~~(i)~~ raw

materials, intermediate byproducts, finished products, and waste products does not have the potential to cause or contribute to violations of state water quality standards, (ii) soil-disturbing activities related to mining at the sites or portion of the site have been completed, (iii) the site or portion of the site has been stabilized to minimize soil erosion, and (iv) as appropriate depending on location, size, and the potential to contribute pollutants to storm water discharges, the site or portion of the site has been revegetated, will be amenable to natural revegetation, or will be left in a condition consistent with the post-mining land use.

H. Inactive and unstaffed sites. Permittees in Sector G seeking to exercise a waiver from the quarterly visual assessment and routine facility inspection requirements for inactive and unstaffed sites (including temporarily inactive sites) are conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to stormwater" in Part I A 4.

This exemption is conditioned on the following:

1. If circumstances change and the facility becomes active or staffed, this exception no longer applies and the permittee shall immediately begin complying with the quarterly visual assessment and routine facility inspection requirements; and

2. The board retains the authority to revoke this exemption and the monitoring waiver when it is determined that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

Subject to the two conditions in subdivisions 1 and 2 of this subsection, if a facility is inactive and unstaffed, the permittee is waived from the requirement to conduct quarterly visual assessments and routine facility inspections. The permittee is not waived from conducting the Part III E comprehensive site inspection. The board encourages the permittee to inspect the site more frequently when there is reason to believe that severe weather or natural disasters may have damaged control measures.

~~G.~~ I. Benchmark monitoring and reporting requirements. Note: There are no benchmark monitoring requirements for inactive and unstaffed sites that have received a waiver in accordance with Part I A 4 (Inactive and unstaffed sites).

1. Copper ore mining and dressing facilities. Active copper ore mining and dressing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 150-1 below.

2. Discharges from waste rock and overburden piles at active sites~~, inactive sites, and sites undergoing reclamation~~. Discharges from waste rock and overburden piles at active sites~~, inactive sites, and sites undergoing reclamation~~ shall be analyzed for the parameters listed in Table 150-2. Facilities shall also monitor for the parameters listed in Table 150-3. The director may also notify the facility that additional monitoring must be performed to accurately characterize the quality and quantity of pollutants discharged from the waste ~~rock/overburden~~ rock or overburden piles.

Table 150-1~~.~~
Sector G – Benchmark Monitoring Requirements - Copper Ore Mining and Dressing Facilities~~.~~

Pollutants of Concern	Benchmark Concentration
Active Copper Ore Mining and Dressing Facilities (SIC 1021)	
Total Suspended Solids (TSS)	100 mg/L

Table 150-2~~.~~
Sector G – Benchmark Monitoring Requirements - Discharges from Waste Rock and Overburden Piles from Active Ore Mining or Dressing Facilities~~, Inactive Ore Mining or Dressing Facilities, and Sites Undergoing Reclamation.~~

Pollutants of Concern	Benchmark Concentration
Iron Ores; Copper Ores; Lead and Zinc Ores; Gold and Silver Ores; Ferroalloy Ores Except Vanadium; Miscellaneous Metal Ores (SIC Codes 1011, 1021, 1031, 1041, 1044, 1061, 1081, 1094, 1099)	
Total Suspended Solids (TSS)	100 mg/L
Turbidity (NTUs)	50 NTU
pH	6.0 - 9.0 s.u.
Hardness (as $CaCO_3$)	no benchmark value
Total Recoverable Antimony	640 µg/L
Total Recoverable Arsenic	50 µg/L
Total Recoverable Beryllium	130 µg/L
Total Recoverable Cadmium	2.1 µg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Mercury	1.4 µg/L
Total Recoverable Nickel	470 µg/L
Total Recoverable Selenium	5.0 µg/L
Total Recoverable Silver	3.8 µg/L
Total Recoverable Zinc	120 µg/L

Table 150-3~~.~~
Sector G – Additional Monitoring Requirements for Discharges ~~From~~ from Waste Rock and Overburden Piles ~~From~~ from Active Ore Mining or Dressing Facilities~~,~~ ~~Inactive Ore Mining or Dressing Facilities, and Sites Undergoing Reclamation.~~

Type of Ore Mined	Pollutants of Concern		
	TSS (mg/L)	pH	Metals, Total Recoverable
Tungsten Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Nickel Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Aluminum Ore	X	X	Iron.
Mercury Ore	X	X	Nickel (H).
Iron Ore	X	X	Iron (Dissolved).
Platinum Ore			Cadmium (H), Copper (H), Mercury, Lead (H), Zinc (H).
Titanium Ore	X	X	Iron, Nickel (H), Zinc (H).
Vanadium Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Copper, Lead, Zinc, Gold, Silver and Molybdenum	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Mercury, Zinc (H).
Uranium, Radium and Vanadium	X	X	Chemical Oxygen Demand, Arsenic, Radium (Dissolved and Total Recoverable), Uranium, Zinc (H).

Note: (H) indicates that hardness ~~must~~ shall also be measured when this pollutant is measured.

9VAC25-151-160. Sector H - Coal mines and coal mining-related facilities.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from coal mining-related areas (SIC Major Group 12) if (i) they are not subject to effluent limitations guidelines under 40 CFR Part 434 ~~(2007)~~ or (ii) they are not subject to the standards of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) and the Virginia Department of Mines, Minerals and Energy's individual permit requirements.

The requirements of this section shall apply to storm water discharges from coal mining-related activities exempt from SMCRA, including the public financed exemption, the 16-2/3% exemption, the private use exemption, the under 250 tons exemption, the nonincidental tipple exemption, and the exemption for coal piles and preparation plants associated with the end user. Storm water discharges from the following portions of eligible coal mines and coal mining related facilities may be eligible for this permit: haul roads (nonpublic roads on which coal or coal refuse is conveyed), access roads (nonpublic roads providing light vehicular traffic within the facility property and to public roadways), railroad spurs, sidings, and internal haulage lines (rail lines used for hauling coal within the facility property and to off-site commercial railroad lines or loading areas); conveyor belts, chutes, and aerial tramway haulage areas (areas under and around coal or refuse conveyor areas, including transfer stations); and equipment storage and maintenance yards, coal handling buildings and structures, coal tipples, coal loading facilities and inactive coal mines and related areas (abandoned and other inactive mines, refuse disposal sites and other mining-related areas).

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: discharges from pollutant seeps or underground drainage from inactive coal mines and refuse disposal areas that do not result from precipitation events and discharges from floor drains in maintenance buildings and other similar drains in mining and preparation plant areas.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to ~~precipitation/surface~~ precipitation or surface runoff:

(1) ~~Drainage direction and discharge points from all applicable mining related areas described in subsection A of this section~~ Haul and access roads;

(2) Railroad spurs, sliding, and internal hauling lines;

(3) Conveyor belts, chutes, and aerial tramways;

(4) Equipment storage and maintenance yards;

(5) Coal handling buildings and structures;

(6) Inactive mines and related areas;

~~(2)~~ (7) Acidic spoil, refuse or unreclaimed disturbed areas; and

~~(3)~~ (8) Liquid storage tanks containing pollutants such as caustics, hydraulic fluids and lubricants.

b. Summary of potential pollutant sources. A description of the potential pollutant sources from the following activities: truck traffic on haul roads and resulting generation of sediment subject to runoff and dust generation; fuel or other liquid storage; pressure lines containing slurry, hydraulic fluid or other potential harmful liquids; and loading or temporary storage of acidic ~~refuse/spoil~~ refuse or spoil.

2. Storm water controls.

a. Good housekeeping. As part of the facility's good housekeeping program [required by Part III B 4 b (1)], the permittee shall consider the following: using sweepers, covered storage, and watering of haul roads to minimize dust generation; and conservation of vegetation (where possible) to minimize erosion.

b. Preventive maintenance. The permittee shall also perform inspections of storage tanks and pressure lines for fuels, lubricants, hydraulic fluid or slurry to prevent leaks due to deterioration or faulty connections; or other equivalent measures.

c. Routine facility inspections. Sites shall be inspected at least quarterly unless adverse weather conditions make the site inaccessible. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

3. Comprehensive site compliance evaluation. The evaluation program shall also include inspections for pollutants entering the drainage system from activities located on or near coal mining-related areas. Among the areas to be inspected: haul and access roads; railroad spurs, sliding and internal hauling lines; conveyor belts, chutes and aerial tramways; equipment storage and maintenance yards; coal handling ~~buildings/structures~~ buildings and structures; and inactive mines and related areas.

D. Inactive and unstaffed sites. Permittees in Sector H seeking to exercise a waiver from the quarterly visual assessment and routine facility inspection requirements for inactive and unstaffed sites (including temporarily inactive sites) are conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to stormwater" in Part I A 4.

This exemption is conditioned on the following:

1. If circumstances change and the facility becomes active or staffed, this exception no longer applies and the permittee shall immediately begin complying with the quarterly visual assessment requirements and routine facility inspection requirements; and

2. The board retains the authority to revoke this exemption and the monitoring waiver when it is determined that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

Subject to the two conditions in subdivisions 1 and 2 of this subsection, if a facility is inactive and unstaffed, the permittee is waived from the requirement to conduct quarterly visual assessments and routine facility inspections. The permittee is not waived from conducting the Part III E comprehensive site inspection. The board encourages the permittee to inspect the site more frequently when there is reason to believe that severe weather or natural disasters may have damaged control measures.

~~D.~~ E. Benchmark monitoring and reporting requirements. Coal mining facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 160. Note: There are no benchmark monitoring requirements for inactive and unstaffed sites that have received a waiver in accordance with Part I A 4 (Inactive and unstaffed sites).

Table 160~~.~~
Sector H - Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Coal Mines and Related Areas (SIC 1221-1241)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	1.0 mg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-170. Sector I - Oil and gas extraction and refining.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from oil and gas extraction and refining facilities listed under SIC Major Group 13 which have had a discharge of a reportable quantity (RQ) of oil or a hazardous substance for which notification is required under 40 CFR 110.6 ~~(2007)~~, 40 CFR 117.21 ~~(2007)~~ or 40 CFR 302.6 ~~(2007)~~. These include oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with any overburden raw material, intermediate products, finished products, by-products or waste products located on the site of such operations. Industries in SIC Major Group 13 include the extraction and production of crude oil, natural gas, oil sands and shale; the production of hydrocarbon liquids and natural gas from coal; and associated oilfield service,

supply and repair industries. This section also covers petroleum refineries listed under SIC Code 2911.

Contaminated storm water discharges from petroleum refining or drilling operations that are subject to nationally established BAT or BPT guidelines found at 40 CFR Part 419 ~~(2006)~~ and 40 CFR Part 435 ~~(2007)~~ respectively are not authorized by this permit.

Note: most contaminated discharges from petroleum refining and drilling facilities are subject to these effluent guidelines and are not eligible for coverage under this permit.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: discharges of vehicle and equipment washwater, including tank cleaning operations. Alternatively, washwater discharges must be authorized under a separate VPDES permit, or be discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: reportable quantity (RQ) releases; locations used for the treatment, storage or disposal of wastes; processing areas and storage areas; chemical mixing areas; construction and drilling areas; all areas subject to the effluent guidelines requirement of "No Discharge" in accordance with 40 CFR 435.32 ~~(2007)~~ and the structural controls to achieve compliance with the "No Discharge" requirement.

b. Summary of potential pollutant sources.

(1) The plan shall also include a description of the potential pollutant sources from the following activities: chemical, cement, mud or gel mixing activities; drilling or mining activities; and equipment cleaning and rehabilitation activities.

(2) The plan shall include information about the RQ release which triggered the permit application requirements, including: the nature of the release (e.g., spill of oil from a drum storage area); the amount of oil or hazardous substance released; amount of substance recovered; date of the release; cause of the release (e.g., poor handling techniques and lack of containment in the area); areas affected by the release, including land and waters; procedure to cleanup release; actions or procedures implemented to prevent or improve response to a release; and remaining potential contamination of storm water from release (taking into account human health risks, the control of drinking water intakes, and the designated uses of the receiving water).

2. Storm water controls~~. a. Routine facility inspections. All equipment and areas addressed in the SWPPP shall be inspected at least monthly. Equipment and vehicles which store, mix (including all on site and off site mixing tanks) or transport chemicals/hazardous materials (including those transporting supplies to oil field activities) will be inspected on a monthly basis. For temporarily or permanently inactive oil and gas extraction facilities within Major SIC Group 13, which are remotely located and unstaffed, the inspections shall be performed at least annually. b.~~ : Sediment and erosion control. The [sediment and] erosion control [~~requirement~~ additional documentation requirements] for well drillings and ~~sand/shale~~ sand or shale mining areas are as follows:

~~(1)~~ a. Site description. Each plan shall provide a description of the following:

~~(a)~~ (1) A description of the nature of the exploration activity;

~~(b)~~ (2) Estimates of the total area of the site and the area of the site that is expected to be disturbed due to the exploration activity;

~~(c)~~ (3) An estimate of the runoff coefficient of the site;

~~(d)~~ (4) A site map indicating drainage patterns and approximate slopes; and

~~(e)~~ (5) The name of all receiving water(s).

~~(2)~~ b. Vegetative controls. The SWPPP shall include a description of vegetative practices designed to preserve existing vegetation where attainable and revegetate open areas as soon as practicable after grade drilling. Such practices may include: temporary or permanent seeding, mulching, sod stabilization, vegetative buffer strips, tree protection practices. The permittee shall initiate appropriate vegetative practices on all disturbed areas within 14 calendar days of the last activity at that area.

~~(3) Off site vehicle tracking of sediments shall be minimized.~~

~~(4)~~ c. Procedures in the plan shall provide that all erosion [and sedimentation] controls on the site are inspected at least once every seven calendar days.

~~c. Good housekeeping measures.~~

~~(1) Vehicle and equipment storage areas. The storage of vehicles and equipment awaiting or having completed maintenance shall be confined to designated areas (delineated on the site map). The plan shall describe measures that prevent or minimize contamination of the storm water runoff from these areas (e.g., drip pans under equipment, indoor storage, use of berms and dikes, or other equivalent measures.~~

~~(2) Materials and chemical storage areas. Storage units of all chemicals and materials shall be maintained in good condition so as to prevent contamination of storm water. Hazardous materials shall be plainly labeled.~~

~~(3) Chemical mixing areas. The plan shall describe measures that prevent or minimize contamination of the storm water runoff from chemical mixing areas.~~

~~d. Contact with waste water pollutants at exploration and production facilities. The permittee shall take all measures necessary to prevent the discharge of storm water that has come into contact with waste water pollutants from any sources associated with production, field exploration, drilling, well completion, or well treatment (i.e., produced water, drilling muds, drill cuttings, and produced sand).~~

Sector J – Mineral Mining and Dressing (SIC 1411-1499). Facilities described by this sector are not covered by this general permit. Facilities with storm water discharges that fall under this sector should apply for coverage under the VPDES Nonmetallic Mineral Mining General Permit (VAG 84).

9VAC25-151-180. Sector K - Hazardous waste treatment, storage, or disposal facilities.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities that treat, store, or dispose of hazardous wastes, including those that are operating under interim status or a permit under subtitle C of RCRA (Industrial Activity Code "HZ"). Disposal facilities that have been properly closed and capped, or clean closed, and have no significant materials exposed to storm water, ~~are considered inactive and~~ do not require ~~permits~~ this permit.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory-derived wastewater and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

C. Definitions.

"Contaminated storm water" means storm water that comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in this section. Some specific areas of a landfill that may produce contaminated storm water include, but are not limited to: the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.

"Drained free liquids" means aqueous wastes drained from waste containers (e.g., drums, etc.) prior to landfilling.

~~"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.~~

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, a salt bed formation, an underground mine or a cave as these terms are defined in 40 CFR 257.2 ~~(2006)~~, 40 CFR 258.2 ~~(2006)~~ and 40 CFR 260.10 ~~(2007)~~.

"Landfill wastewater" as defined in 40 CFR Part 445 ~~(2007)~~ (Landfills Point Source Category) means all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, noncontaminated storm water, contaminated ground water, and wastewater from recovery pumping wells. Landfill wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

"Noncontaminated storm water" means storm water that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined above. Noncontaminated storm water includes storm water that flows off the cap, cover, intermediate cover, daily cover, ~~and/or~~ or final cover of the landfill.

~~"Pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.~~

~~"Surface impoundment" means a facility or part of a facility that is a natural topographic depression, man-made excavation or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons.~~

D. Numeric effluent limitations. As set forth at 40 CFR Part 445 Subpart A ~~(2007)~~, the numeric limitations in Table 180-1 apply to contaminated storm water discharges from hazardous waste landfills subject to the provisions of RCRA Subtitle C at 40 CFR Parts 264 (Subpart N) ~~(2007)~~ and 265 (Subpart N) ~~(2007)~~ except for any of the following facilities ~~described in subdivisions 1 through 4 of this subsection~~:

1. Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

2. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation

directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N ~~(2007)~~ as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

3. Landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR Part 437 ~~(2007)~~ so long as the CWT facility commingles the landfill wastewater with other nonlandfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

4. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Table 180-1~~.~~
Sector K – Numeric Effluent Limitations~~.~~

Parameter	Effluent Limitations	
	Maximum Daily	Maximum Monthly Average
Hazardous Waste Treatment, Storage, or Disposal Facilities (Industrial Activity Code "HZ") Subject to the Provisions of 40 CFR Part 445 Subpart A ~~(2007)~~.		
Biochemical Oxygen Demand (BOD_5)	220 mg/L	56 mg/L
Total Suspended Solids (TSS)	88 mg/L	27 mg/L
Ammonia	10 mg/L	4.9 mg/L
Alpha Terpineol	0.042 mg/L	0.019 mg/L
Aniline	0.024 mg/L	0.015 mg/L
Benzoic Acid	0.119 mg/L*	0.073 mg/L
Naphthalene	0.059 mg/L	0.022 mg/L
p-Cresol	0.024 mg/L	0.015 mg/L
Phenol	0.048 mg/L	0.029 mg/L
Pyridine	0.072 mg/L	0.025 mg/L
Arsenic (Total)	1.1 mg/L	0.54 mg/L
Chromium (Total)	1.1 mg/L	0.46 mg/L
Zinc (Total)	0.535 mg/L*	0.296 mg/L*
pH	Within the range of 6.0 - 9.0 s.u.	

*These effluent limitations are three significant digits for reporting purposes.

E. Benchmark monitoring and reporting requirements. Permittees with hazardous waste treatment, storage, or disposal facilities (TSDFs) are required to monitor their storm water discharges for the pollutants of concern listed in Table 180-2. These benchmark monitoring cutoff concentrations apply to storm water discharges associated with industrial activity other than contaminated storm water discharges from landfills subject to the numeric effluent limitations set forth in Table 180-1.

Table 180-2~~.~~
Sector K – Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Hazardous Waste Treatment, Storage, or Disposal Facilities (Industrial Activity Code "HZ")	
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
Total Suspended Solids (TSS)	100 mg/L
Total Organic Carbon (TOC)	110 mg/L
Total Recoverable Arsenic	50 µg/L
Total Recoverable Cadmium	2.1 µg/L
Total Cyanide	22 µg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Magnesium	64 µg/L
Total Recoverable Mercury	1.4 µg/L
Total Recoverable Selenium	5.0 µg/L
Total Recoverable Silver	3.8 µg/L

9VAC25-151-190. Sector L - Landfills, land application sites and open dumps.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from waste disposal at landfills, land application sites, and open dumps that receive or have received industrial wastes (Industrial Activity Code "LF"), including sites subject to regulation under Subtitle D of RCRA. ~~Open dumps are solid waste disposal units that are not in compliance with state/federal criteria established under RCRA Subtitle D.~~ Landfills, land application sites, and open dumps that have storm water discharges from other types of industrial activities such as vehicle maintenance, truck

washing, ~~and/or~~ and recycling may be subject to additional requirements specified elsewhere in this permit. This permit does not cover discharges from landfills that receive only municipal wastes. Landfills [(including landfills in "post-closure care")] that have been properly closed and capped in accordance with 9VAC20-81-160 and 9VAC20-81-170 and have no significant materials exposed to stormwater do not require this permit. Landfills closed in accordance with regulations or permits in effect prior to December 21, 1988, do not require this permit, unless significant materials are exposed to stormwater.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory wastewater, and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

C. Definitions.

"Contaminated storm water" means storm water that comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater ~~as defined below~~. Some ~~specific~~ areas of a landfill that may produce contaminated storm water include, but are not limited to~~:~~, the ~~open~~ working face of an active landfill ~~with exposed waste (no cover added)~~; the areas around wastewater treatment operations; trucks, equipment, or machinery that has been in direct contact with the waste; and waste dumping areas.

"Drained free liquids" means aqueous wastes drained from waste containers (e.g., drums, etc.) prior to landfilling.

"Landfill wastewater" as defined in 40 CFR Part 445 ~~(2007)~~ (Landfills Point Source Category) means all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, noncontaminated storm water, contaminated groundwater, and wastewater from recovery pumping wells. Landfill ~~process~~ wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

"Noncontaminated storm water" means storm water that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined above. Noncontaminated storm water includes storm water that flows off the cap, ~~cover,~~ intermediate cover, ~~daily cover, and/or~~ or final cover of the landfill.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to present a threat of a release of harmful substances into the environment or present a hazard to human health. Such a site is subject to the open dump criteria in 9VAC20-81-45.

D. Storm water pollution prevention plan requirements. In addition to the requirements in Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: active and closed landfill cells or trenches; active and closed land application areas; locations where open dumping is occurring or has occurred; locations of any known leachate springs or other areas where uncontrolled leachate may commingle with runoff; and leachate collection and handling systems.

b. Summary of potential pollutant sources. The SWPPP shall also include a description of potential pollutant sources associated with any of the following: fertilizer, herbicide, and pesticide application; ~~earth/soil~~ earth and soil moving; waste hauling and ~~loading/unloading~~ loading and unloading; outdoor storage of significant materials including daily, interim and final cover material stockpiles as well as temporary waste storage areas; exposure of active and inactive landfill and land application areas; uncontrolled leachate flows; and failure or leaks from leachate collection and treatment systems.

2. Storm water controls.

a. Preventive maintenance program. As part of the preventive maintenance program, the permittee shall maintain: ~~all containers used for outdoor chemical/significant materials storage to prevent leaking;~~ all elements of leachate collection and treatment systems to prevent commingling of leachate with storm water~~;~~ and the integrity and effectiveness of any intermediate or final cover (including making repairs to the cover as ~~necessary~~ necessary), to minimize the effects of settlement, sinking, and ~~erosion)~~ erosion.

~~b. Good housekeeping measures. As part of the good housekeeping program, the permittee shall consider providing protected storage areas for pesticides, herbicides, fertilizer and other significant materials.~~

~~c.~~ b. Routine facility inspections.

(1) Inspections of active sites. Operating landfills, open dumps, and land application sites shall be inspected at least once every seven days. Qualified personnel shall inspect areas of landfills that have not yet been finally stabilized, active land application areas, areas used for storage of ~~materials/wastes~~ materials or wastes that are exposed to precipitation, stabilization and structural control measures, leachate collection and treatment systems, and locations where equipment and waste trucks

enter and exit the site. Erosion and sediment control measures shall be observed to ensure they are operating correctly. For stabilized sites and areas where land application has been completed, or where the climate is seasonally arid (annual rainfall averages from 0 to 10 inches) or semi-arid (annual rainfall averages from 10 to 20 inches), inspections shall be conducted at least once every month.

(2) Inspections of inactive sites. Inactive landfills, open dumps, and land application sites shall be inspected at least quarterly. Qualified personnel shall inspect landfill (or open dump) stabilization and structural erosion control measures and leachate collection and treatment systems, and all closed land application areas.

~~d.~~ c. Recordkeeping and internal reporting procedures. Landfill and open dump owners shall provide for a tracking system for the types of wastes disposed of in each cell or trench of a landfill or open dump. Land application site owners shall track the types and quantities of wastes applied in specific areas.

~~e. Certification of~~ d. Annual outfall evaluation for unauthorized discharges. The ~~discharge test and certification~~ evaluation shall also be conducted for the presence of leachate and vehicle washwater.

~~f.~~ e. Sediment and erosion control plan. Landfill and open dump owners shall provide for temporary stabilization of materials stockpiled for daily, intermediate, and final cover. Stabilization practices to consider include, but are not limited to, temporary seeding, mulching, and placing geotextiles on the inactive portions of the stockpiles. Landfill and open dump owners shall provide for temporary stabilization of inactive areas of the landfill or open dump which have an intermediate cover but no final cover. Landfill and open dump owners shall provide for temporary stabilization of any landfill or open dumping areas which have received a final cover until vegetation has established itself. Land application site owners shall also stabilize areas where waste application has been completed until vegetation has been established.

~~g.~~ f. Comprehensive site compliance evaluation. Areas contributing to a storm water discharge associated with industrial activities at landfills, open dumps and land application sites shall be evaluated for evidence of, or the potential for, pollutants entering the drainage system.

E. Numeric effluent limitations. As set forth at 40 CFR Part 445 Subpart B ~~(2007)~~, the numeric limitations in Table 190-1 apply to contaminated storm water discharges from municipal solid waste landfills (MSWLFs) that have not been closed in accordance with 40 CFR 258.60 ~~(2006)~~, and contaminated storm water discharges from those landfills that are subject to the provisions of 40 CFR Part 257 ~~(2006)~~ (these include CDD landfills (also known as C&D landfills), and industrial landfills) except for discharges from any of the following facilities ~~described in subdivisions 1 through 4 of this subsection~~:

1. Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

2. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N ~~(2007)~~ as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

3. Landfills operated in conjunction with centralized waste treatment (CWT) facilities subject to 40 CFR Part 437 ~~(2007)~~ so long as the CWT facility commingles the landfill wastewater with other nonlandfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

4. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Table 190-1~~.~~
Sector L – Numeric Effluent Limitations~~.~~

Parameter	Effluent Limitations	
	Maximum Daily	Maximum Monthly Average
Landfills (Industrial Activity Code "LF") that are Subject to the Requirements of 40 CFR Part 445 Subpart B ~~(2007)~~.		
Biochemical Oxygen Demand (BOD_5)	140 mg/L	37 mg/L
Total Suspended Solids (TSS)	88 mg/L	27 mg/L
Ammonia	10 mg/L	4.9 mg/L
Alpha Terpineol	0.033 mg/L	0.016 mg/L
Benzoic Acid	0.12 mg/L	0.071 mg/L
p-Cresol	0.025 mg/L	0.014 mg/L

Phenol	0.026 mg/L	0.015 mg/L
Zinc (Total)	0.20 mg/L	0.11 mg/L
pH	Within the range of 6.0 - 9.0 s.u.	

F. Benchmark monitoring and reporting requirements. ~~Landfill/land application/open~~ Landfill, land application, and open dump sites are required to monitor their storm water discharges for the pollutants of concern listed in Table 190-2. These benchmark monitoring cutoff concentrations apply to storm water discharges associated with industrial activity other than contaminated storm water discharges from landfills subject to the numeric effluent limitations set forth in Table 190-1.

Table 190-2~~.~~
Sector L – Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Landfills, Land Application Sites and Open Dumps (Industrial Activity Code "LF").	
Total Suspended Solids (TSS)	100 mg/L
~~Landfills, Land Application Sites and Open Dumps (Industrial Activity Code "LF"), except MSWLF Areas Closed in Accordance with the Requirements of the Solid Waste Management Regulations, 9VAC20-81~~	
~~Total Recoverable Iron~~	~~1.0 mg/L~~

9VAC25-151-200. Sector M - Automobile salvage yards.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities engaged in dismantling or wrecking used motor vehicles for parts ~~recycling/resale~~ recycling or resale, and for scrap (SIC Code 5015).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

1. Site description.

a. Site map. The map shall include the location of each monitoring point, and an estimation (in acres) of the total area used for industrial activity including, but not limited to, dismantling, storage, and maintenance of used motor vehicle parts. The site map shall also identify where any of the following may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: vehicle storage areas; dismantling areas; parts storage areas (e.g., engine blocks, tires, hub caps, batteries, hoods, mufflers); and liquid storage tanks and drums for fuel and other fluids.

b. Summary of potential pollutant sources. The permittee shall assess the potential for the following activities to contribute pollutants to storm water discharges: vehicle storage areas; dismantling areas; parts storage areas (e.g., engine blocks, tires, hub caps, batteries, and hoods); fueling stations.

2. Storm water controls.

a. Spill and leak prevention procedures. All vehicles that are intended to be dismantled shall be properly drained of all fluids prior to being dismantled or crushed, or other equivalent means shall be taken to prevent leaks or spills of fluids.

b. Inspections. Upon arrival at the site, or as soon thereafter as feasible, vehicles shall be inspected for leaks. Any equipment containing oily parts, hydraulic fluids, any other types of fluids, or mercury switches shall be inspected at least quarterly (four times per year) for signs of leaks. All vessels and areas where hazardous materials and general automotive fluids are stored, including, but not limited to, mercury switches, brake fluid, transmission fluid, radiator water, and antifreeze, shall be inspected at least quarterly for leaks.

c. Employee training. Employee training shall, at a minimum, address the following areas when applicable to a facility: proper handling (collection, storage, and disposal) of oil, used mineral spirits, anti-freeze, mercury switches, and solvents.

d. Management of runoff. The [~~plan~~ permittee] shall [~~consider~~ implement control measures to divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff to minimize pollutants in discharges from the facility. The following] management practices [~~, such as~~ shall be considered:] berms or drainage ditches on the property line, to help prevent runon from neighboring properties [~~. Berms shall be considered~~; berms] for uncovered outdoor storage of oily parts, engine blocks, and aboveground liquid storage [~~. The permittee shall consider~~; and] the installation of detention ponds, filtering devices, and oil/water separators.

C. Benchmark monitoring and reporting requirements. Automobile salvage yards are required to monitor their storm water discharges for the pollutants of concern listed in Table 200.

Table 200~~.~~
Sector M – Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Automobile Salvage Yards (SIC 5015)	
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L

9VAC25-151-210. Sector N - Scrap recycling and waste recycling facilities and material recovery facilities (MRF).

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities that are engaged in the processing, reclaiming and wholesale distribution of scrap and waste materials such as ferrous and nonferrous metals, paper, plastic, cardboard, glass, animal hides (these types of activities are typically identified as SIC Code 5093), and facilities that are engaged in reclaiming and recycling liquid wastes such as used oil, antifreeze, mineral spirits, and industrial solvents (also identified as SIC Code 5093). Separate permit requirements have been established for recycling facilities that only receive source-separated recyclable materials primarily from nonindustrial and residential sources (also identified as SIC Code 5093) (e.g., common consumer products including paper, newspaper, glass, cardboard, plastic containers, aluminum and tin cans). ~~This includes recycling facilities commonly referred to as material recovery facilities (MRF).~~

Separate permit requirements have also been established for facilities that are engaged in dismantling ships, marine salvaging, and marine wrecking–ships for scrap (SIC 4499, limited to those listed; for others in SIC 4499 not listed above, see Sector Q (9VAC25-151-240)).

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, nonstorm water discharges from turnings containment areas are not covered by this permit (see also subdivision C 2 c of this section). Discharges from containment areas in the absence of a storm event are prohibited unless covered by a separate VPDES permit.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, all facilities are required to comply with the general SWPPP requirement in subdivision 1 of this subsection.

Subdivisions 2 through 5 of this subsection have SWPPP requirements for specific types of recycling facilities. The permittee shall implement and describe in the SWPPP a program to address those items that apply. Included are lists of [~~BMP~~ control measure] options that, along with any functional equivalents, shall be considered for implementation. [~~Selection or deselection of a particular BMP or approach is up to the best professional judgment of the permittee, as long as the objective of the requirement is met.~~]

1. Site description. Site map. The site map shall identify the locations where any of the following activities or sources may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: scrap and waste material storage, outdoor scrap and waste processing equipment, and containment areas for turnings exposed to cutting fluids.

2. Scrap recycling and waste recycling facilities (nonsource-separated, nonliquid recyclable materials). The following SWPPP special conditions have been established for facilities that receive, process and do wholesale distribution of nonliquid recyclable wastes (e.g., ferrous and nonferrous metals, plastics, glass, cardboard and paper). These facilities may receive both nonrecyclable and recyclable materials. This section is not intended for those facilities that only accept recyclable materials primarily from nonindustrial and residential sources.

a. Inbound recyclable and waste material control program. The plan shall include a recyclable and waste material inspection program to minimize the likelihood of receiving materials that may be significant pollutant sources to storm water discharges. [~~BMP~~ Control measure] options:

(1) Provide ~~information/education~~ information and education flyers, brochures and pamphlets to suppliers of scrap and recyclable waste materials on draining and properly disposing of residual fluids prior to delivery to the facility (e.g., from vehicles and equipment engines, radiators, and transmissions, oil-filled transformers, and individual containers or drums), and on removal of mercury switches prior to delivery to the facility;

(2) Establish procedures to minimize the potential of any residual fluids from coming in contact with ~~precipitation/runoff~~ precipitation or runoff;

(3) Establish procedures for accepting scrap lead-acid batteries. Additional requirements for the handling, storage and disposal or recycling of batteries are contained in the scrap lead-acid battery program provisions in subdivision 2 f of this subsection;

(4) Provide training targeted for those personnel engaged in the inspection and acceptance of inbound recyclable materials;

(5) Establish procedures to ensure that liquid wastes, including used oil, are stored in materially compatible and nonleaking containers and disposed or recycled in accordance with all requirements under the Resource Recovery and Conservation Act (RCRA), and other state or local requirements.

b. Scrap and waste material ~~stockpiles/storage~~ stockpiles and storage (outdoor). The plan shall describe measures and controls to minimize contact of storm water runoff with stockpiled materials, processed materials and nonrecyclable wastes. [~~BMP~~ Control measure] options:

(1) Permanent or semipermanent covers;

(2) The use of sediment traps, vegetated swales and strips, catch basin filters and sand filters to facilitate settling or filtering of pollutants;

(3) Diversion of runoff away from storage areas via dikes, berms, containment trenches, culverts and surface grading;

(4) Silt fencing;

(5) Oil/water separators, sumps and dry adsorbents for areas where potential sources of residual fluids are stockpiled (e.g., automotive engine storage areas).

c. Stockpiling of turnings exposed to cutting fluids (outdoor storage). The plan shall implement measures necessary to minimize contact of surface runoff with residual cutting fluids. [~~BMP~~ Control measure] options (use singularly or in combination):

(1) Storage of all turnings exposed to cutting fluids under some form of permanent or semipermanent cover. Storm water discharges from these areas are permitted provided the runoff is first treated by an oil/water separator or its equivalent. Procedures to collect, handle, and dispose or recycle residual fluids that may be present shall be identified in the plan;

(2) Establish dedicated containment areas for all turnings that have been exposed to cutting fluids. Storm water runoff from these areas can be discharged provided:

(a) The containment areas are constructed of either concrete, asphalt or other equivalent type of impermeable material;

(b) There is a barrier around the perimeter of the containment areas to prevent contact with storm water runon (e.g., berms, curbing, elevated pads, etc.);

(c) There is a drainage collection system for runoff generated from containment areas;

(d) There is a schedule to maintain the oil/water separator (or its equivalent); and

(e) Procedures are identified for the proper disposal or recycling of collected residual fluids.

d. Scrap and waste material ~~stockpiles/storage~~ stockpiles and storage (covered or indoor storage). The plan shall address measures and controls to minimize contact of residual liquids and particulate matter from materials stored indoors or under cover from coming in contact with surface runoff. [~~BMP~~ Control measure] options:

(1) Good housekeeping measures, including the use of dry absorbent or wet vacuum ~~clean up~~ cleanup methods, to contain ~~or dispose/recycle~~, dispose, or recycle residual liquids originating from recyclable containers, or mercury spill kits from storage of mercury switches;

(2) Prohibiting the practice of allowing washwater from tipping floors or other processing areas from discharging to the storm sewer system;

(3) Disconnecting or sealing off all floor drains connected to the storm sewer system.

e. Scrap and recyclable waste processing areas. The plan shall include measures and controls to minimize surface runoff from coming in contact with scrap processing equipment. In the case of processing equipment that generate visible amounts of particulate residue (e.g., shredding facilities), the plan shall describe measures to minimize the contact of residual fluids and accumulated particulate matter with runoff (i.e., through good housekeeping, preventive maintenance, etc.). [~~BMP~~ Control measure] options:

(1) A schedule of regular inspections of equipment for leaks, spills, malfunctioning, worn or corroded parts or equipment;

(2) A preventive maintenance program for processing equipment;

(3) Removal of mercury switches from the hood and trunk lighting units, and removal of anti-lock brake system units containing mercury switches;

(4) Use of dry-absorbents or other cleanup practices to collect and to ~~dispose/recycle spilled/leaking~~ dispose of or recycle spilled or leaking fluids, or use of mercury spill kits for spills from storage of mercury switches;

(5) Installation of low-level alarms or other equivalent protection devices on unattended hydraulic reservoirs over 150 gallons in capacity. Alternatively, provide secondary containment with sufficient volume to contain the entire volume of the reservoir.

(6) Containment or diversion structures such as dikes, berms, culverts, trenches, elevated concrete pads, and grading to minimize contact of storm water runoff with outdoor processing equipment or stored materials;

(7) Oil/water separators or sumps;

(8) Permanent or semipermanent covers in processing areas where there are residual fluids and grease;

(9) Retention and detention basins or ponds, sediment traps, vegetated swales or strips, to facilitate pollutant ~~settling/ filtration~~ settling and filtration;

(10) Catch basin filters or sand filters.

f. Scrap lead-acid battery program. The plan shall address measures and controls for the proper handling, storage and disposal of scrap lead-acid batteries. [~~BMP~~ Control measure] options:

(1) Segregate scrap lead-acid batteries from other scrap materials;

(2) A description of procedures ~~and/or~~ and measures for the proper handling, storage and disposal of cracked or broken batteries;

(3) A description of measures to collect and dispose of leaking lead-acid battery fluid;

(4) A description of measures to minimize and, whenever possible, eliminate exposure of scrap lead-acid batteries to precipitation or runoff;

(5) A description of employee training for the management of scrap batteries.

g. Spill prevention and response procedures. The SWPPP shall include measures to minimize storm water

contamination at ~~loading/unloading~~ loading and unloading areas, and from equipment or container failures. [~~BMP~~ Control measure] options:

(1) Description of spill prevention and response measures to address areas that are potential sources of fluid leaks or spills;

(2) Immediate containment and clean up of ~~spills/leaks~~ spills and leaks. If malfunctioning equipment is responsible for the ~~spill/leak~~ spill or leak, repairs shall also be conducted as soon as possible;

(3) Cleanup procedures shall be identified in the plan, including the use of dry absorbents. Where dry absorbent cleanup methods are used, an adequate supply of dry absorbent material shall be maintained on-site. Used absorbent material shall be disposed of properly;

(4) Drums containing liquids, especially oil and lubricants, shall be stored: indoors; in a bermed area; in overpack containers or spill pallets; or in similar containment devices;

(5) Overfill prevention devices shall be installed on all fuel pumps or tanks;

(6) Drip pans or equivalent measures shall be placed under any leaking piece of stationary equipment until the leak is repaired. The drip pans shall be inspected for leaks and potential overflow and all liquids properly disposed of in accordance with RCRA requirements;

(7) An alarm ~~and/or~~ or pump shut off system shall be installed on outdoor equipment with hydraulic reservoirs exceeding 150 gallons in order to prevent draining the tank contents in the event of a line break. Alternatively, the equipment may have a secondary containment system capable of containing the contents of the hydraulic reservoir plus adequate freeboard for precipitation. A mercury spill kit shall be used for any release of mercury from switches, anti-lock brake systems, and switch storage areas.

h. Inspection program. All designated areas of the facility and equipment identified in the plan shall be inspected at least ~~monthly~~ quarterly. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

i. Supplier notification program. The plan shall include a program to notify major suppliers which scrap materials will not be accepted at the facility or are only accepted under certain conditions.

3. Waste recycling facilities (liquid recyclable materials).

a. Waste material storage (indoor). The plan shall include measures and controls to ~~minimize/eliminate~~ minimize or eliminate contact between residual liquids from waste materials stored indoors and surface runoff. The plan may refer to applicable portions of other existing plans such as SPCC plans required under 40 CFR Part 112 ~~(2007)~~. [~~BMP~~ Control measure] options:

(1) Procedures for material handling (including labeling and marking);

(2) A sufficient supply of dry-absorbent materials or a wet vacuum system to collect spilled or leaked materials (note: spilled or leaking mercury should never be vacuumed);

(3) An appropriate containment structure, such as trenches, curbing, gutters or other equivalent measures;

(4) A drainage system, including appurtenances (e.g., pumps or ejectors, or manually operated valves), to handle discharges from diked or bermed areas. Drainage shall be discharged to an appropriate treatment facility, sanitary sewer system, or otherwise disposed of properly. Discharges from these areas may require coverage under a separate VPDES permit or industrial user permit under the pretreatment program.

b. Waste material storage (outdoor). The plan shall describe measures and controls to minimize contact between stored residual liquids and precipitation or runoff. The plan may refer to applicable portions of other existing plans such as SPCC plans required under 40 CFR Part 112 ~~(2007)~~. Discharges of precipitation from containment areas containing used oil shall also be in accordance with applicable sections of 40 CFR Part 112 ~~(2007)~~. [~~BMP~~ Control measure] options:

(1) Appropriate containment structures (e.g., dikes, berms, curbing, pits) to store the volume of the largest single tank, with sufficient extra capacity for precipitation;

(2) Drainage control and other diversionary structures;

(3) For storage tanks, provide corrosion protection ~~and/or~~ or leak detection systems;

(4) Dry-absorbent materials or a wet vacuum system to collect spills.

c. Truck and rail car waste transfer areas. The plan shall describe measures and controls to minimize pollutants in discharges from truck and rail car ~~loading/unloading~~ loading and unloading areas. The plan shall also address measures to clean up minor ~~spills/leaks~~ spills and leaks resulting from the transfer of liquid wastes. [~~BMP~~ Control measure] options:

(1) Containment and diversionary structures to minimize contact with precipitation or runoff;

(2) Use of dry cleanup methods, wet vacuuming, roof coverings, or runoff controls.

d. Inspections. Inspections shall be made ~~monthly~~ quarterly and shall also include all areas where waste is generated, received, stored, treated or disposed that are exposed to either precipitation or storm water runoff. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

4. Recycling facilities (source separated materials). The following SWPPP special conditions have been established for facilities that receive only source-separated recyclable materials primarily from nonindustrial and residential sources.

a. Inbound recyclable material control. The plan shall include an inbound materials inspection program to minimize the likelihood of receiving nonrecyclable materials (e.g., hazardous materials) that may be a significant source of pollutants in surface runoff. [~~BMP~~ Control measure] options:

(1) Provide information and education measures to inform suppliers of recyclable materials on the types of materials that are acceptable and those that are not acceptable;

(2) A description of training measures for drivers responsible for pickup of recyclable materials;

(3) Clearly mark public drop-off containers regarding which materials can be accepted;

(4) Rejecting nonrecyclable wastes or household hazardous wastes at the source;

(5) Establish procedures for the handling and disposal of nonrecyclable materials.

b. Outdoor storage. The plan shall include procedures to minimize the exposure of recyclable materials to surface runoff and precipitation. The plan shall include good housekeeping measures to prevent the accumulation of particulate matter and fluids, particularly in high traffic areas. [~~BMP~~ Control measure] options:

(1) Provide totally-enclosed drop-off containers for the public;

(2) Install a ~~sump/pump~~ sump and pump with each containment pit, and treat or discharge collected fluids to a sanitary sewer system;

(3) Provide dikes and curbs for secondary containment (e.g., around bales of recyclable waste paper);

(4) Divert surface runoff away from outside material storage areas;

(5) Provide covers over containment bins, dumpsters, roll-off boxes;

(6) Store the equivalent one day's volume of recyclable materials indoors.

c. Indoor storage and material processing. The plan shall include measures to minimize the release of pollutants from indoor storage and processing areas. [~~BMP~~ Control measure] options:

(1) Schedule routine good housekeeping measures for all storage and processing areas;

(2) Prohibit a practice of allowing tipping floor washwaters from draining to any portion of the storm sewer system; and

(3) Provide employee training on pollution prevention practices.

d. Vehicle and equipment maintenance. The plan shall also provide for [~~BMPs~~ control measures] in those areas where vehicle and equipment maintenance is occurring outdoors. [~~BMP~~ Control measure] options:

(1) Prohibit vehicle and equipment washwater from discharging to the storm sewer system;

(2) Minimize or eliminate outdoor maintenance areas, wherever possible;

(3) Establish spill prevention and clean-up procedures in fueling areas;

(4) Avoid topping off fuel tanks;

(5) Divert runoff from fueling areas;

(6) Store lubricants and hydraulic fluids indoors;

(7) Provide employee training on proper, handling, storage of hydraulic fluids and lubricants.

5. Facilities engaged in dismantling ships, marine salvaging, and marine wrecking—ships for scrap. The following SWPPP special conditions have been established for facilities that are engaged in dismantling ships, marine salvaging, and marine wrecking—ships for scrap.

Vessel ~~Breaking/Scrapping Activities~~ breaking and scrapping activities. Scrapping of vessels shall be accomplished ashore beyond the range of mean high tide, whenever practicable. If this activity must be conducted while a vessel is afloat or grounded in state waters, then the permittee shall employ [~~BMPs~~ control measures] to reduce the amount of pollutants released. The following [~~BMPs~~ control measures] shall be implemented during those periods when vessels (ships, barges, yachts, etc.) are brought to the facility's site for recycling, scrapping and storage prior to scrapping.

a. Fixed or floating platforms sufficiently sized and constructed to catch and prevent scrap materials and pollutants from entering ~~state~~ surface waters (or equivalent measures approved by the ~~department)~~ board) shall be used as work surfaces when working on or near the water surface. These platforms shall be cleaned as required to prevent pollutants from entering ~~state~~ surface waters and at the end of each work shift. All scrap metals and pollutants shall be collected in a manner to prevent releases (containerization is recommended).

b. There shall be no discharge of oil or oily wastewater at the facility. Drip pans and other protective devices shall be required for all oil and oily waste transfer operations to catch incidental spillage and drips from hose nozzles, hose racks, drums or barrels. Drip pans and other protective devices shall be inspected and maintained to prevent releases. Oil and oily waste shall be disposed at a permitted facility and adequate documentation of off-site

disposition shall be retained for review by the board upon request.

c. During the ~~storage/breaking/scrapping~~ storage, breaking, and scrapping period, oil containment boom(s) shall be deployed either around the vessel being scrapped, or across the mouth of the facility's wetslip, to contain pollutants in the event of a spill. Booms shall be inspected, maintained, and repaired as needed. Oil, grease and fuel spills shall be prevented from reaching ~~state~~ surface waters. Cleanup shall be carried out promptly after an oil, grease, ~~and/or~~ or fuel spill is detected.

d. Paint and solvent spills shall be immediately cleaned up to prevent pollutants from reaching storm drains, deck drains, and ~~state~~ surface waters.

e. Contaminated bilge and ballast water shall not be discharged to ~~state~~ surface waters. If it becomes necessary to dispose of contaminated bilge and ballast waters during a vessel breaking activity, the wastewater shall be disposed at a permitted facility and adequate documentation of off-site disposition shall be retained for review by the board upon request.

D. Benchmark monitoring and reporting requirements. Scrap recycling and waste recycling facilities ~~(nonsource-separated facilities only)~~ (both source-separated and nonsource-separated facilities), and facilities engaged in dismantling ships, marine salvaging, and marine wrecking—ships for scrap are required to monitor their storm water discharges for the pollutants of concern listed in Table 210.

Table 210~~.~~
Sector N – Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Scrap Recycling and Waste Recycling Facilities (nonsource-separated facilities only) (SIC 5093)	
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Aluminum	750 µg/L
Total Recoverable Cadmium	2.1 µg/L
Total Recoverable Chromium	16 µg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Zinc	120 µg/L
Scrap Recycling and Waste Recycling Facilities (source-separated facilities) (SIC 5093)	
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Aluminum[1]	750 µg/L
Total Recoverable Cadmium[1]	2.1 µg/L
Total Recoverable Chromium[1]	16 µg/L
Total Recoverable Copper[1]	18 µg/L
Total Recoverable Iron[1]	1.0 mg/L
Total Recoverable Lead[1]	120 µg/L
Total Recoverable Zinc[1]	120 µg/L
[1]Metals monitoring is only required at source-separated facilities [~~if~~ for the specific] metals [listed above that] are received at the facility.	
Facilities Engaged in Dismantling Ships, Marine Salvaging, and Marine Wrecking - Ships ~~For~~ for Scrap (SIC 4499, limited to list)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Cadmium	2.1 µg/L
Total Recoverable Chromium	16 µg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Zinc	120 µg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-220. Sector O - Steam electric generating facilities.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from steam electric power generating facilities using coal, natural gas, oil, nuclear energy, etc. to produce a steam source, including coal handling areas (Industrial Activity Code "SE").

Storm water discharges from coal pile runoff subject to numeric effluent limitations are eligible for coverage under this permit, but are subject to the limitations established by Part I A 1 c (2).

Storm water discharges from ancillary facilities (e.g., fleet centers, gas turbine stations, and substations) that are not contiguous to a steam electric power generating facility are not covered by this permit. ~~Heat capture/heat recovery~~ Heat capture and heat recovery combined cycle generation facilities are also not covered by this permit; however, dual fuel co-generation facilities that generate electric power are included.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, nonstorm water discharges subject

to effluent limitation guidelines are also not covered by this permit.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.

1. Site description. Site map. The site map shall identify the locations of any of the following activities or sources that may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: storage tanks, scrap yards, general refuse areas; short and long term storage of general materials (including, but not limited to: supplies, construction materials, paint equipment, oils, fuels, used and unused solvents, cleaning materials, paint, water treatment chemicals, fertilizer, and pesticides); landfills; construction sites; and stock pile areas (such as coal or limestone piles).

2. Storm water controls.

a. Good housekeeping measures.

(1) Fugitive dust emissions. The permittee shall describe and implement measures that prevent or minimize fugitive dust emissions from coal and ash handling areas. The permittee shall [~~consider establishing procedures to~~] minimize off-site tracking of coal dust and ash [~~such as~~. Control measures to consider include] installing specially designed tires, or washing vehicles in a designated area before they leave the site, and controlling the wash water.

(2) Delivery vehicles. The plan shall describe measures that prevent or minimize contamination of storm water runoff from delivery vehicles arriving on the plant site. At a minimum the permittee shall consider the following:

(a) Develop procedures for the inspection of delivery vehicles arriving on the plant site, and ensure overall integrity of the body or container; and

(b) Develop procedures to deal with ~~leakage/spillage~~ leakage and spillage from vehicles or containers.

(3) Fuel oil unloading areas. The plan shall describe measures that prevent or minimize contamination of ~~precipitation/surface~~ precipitation or surface runoff from fuel oil unloading areas. At a minimum the permittee shall consider using the following measures, or an equivalent:

(a) Use of containment curbs in unloading areas;

(b) During deliveries, having station personnel familiar with spill prevention and response procedures present to ensure that any ~~leaks/spills~~ leaks and spills are immediately contained and cleaned up; and

(c) Use of spill and overflow protection (e.g., drip pans, drip diapers, ~~and/or~~ or other containment devices placed beneath fuel oil connectors to contain potential spillage during deliveries or from leaks at the connectors).

(4) Chemical ~~loading/unloading~~ loading and unloading areas. The permittee shall describe and implement measures that prevent or minimize the contamination of ~~precipitation/surface~~ precipitation or surface runoff from chemical ~~loading/unloading~~ loading and unloading areas. At a minimum the permittee shall consider using the following measures (or their equivalents):

(a) Use of containment curbs at chemical ~~loading/unloading~~ loading and unloading areas to contain spills;

(b) During deliveries, having station personnel familiar with spill prevention and response procedures present to ensure that any ~~leaks/spills~~ leaks or spills are immediately contained and cleaned up; and

(c) Covering chemical ~~loading/unloading~~ loading and unloading areas, and storing chemicals indoors.

(5) Miscellaneous ~~loading/unloading~~ loading and unloading areas. The permittee shall describe and implement measures that prevent or minimize the contamination of storm water runoff from loading and unloading areas. The permittee shall consider the following, at a minimum (or their equivalents):

(a) Covering the loading area;

(b) Grading, berming, or curbing around the loading area to divert runon; or

(c) Locating the ~~loading/unloading~~ loading and unloading equipment and vehicles so that leaks are contained in existing containment and flow diversion systems.

(6) Liquid storage tanks. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from aboveground liquid storage tanks. At a minimum the permittee shall consider employing the following measures (or their equivalents):

(a) Use of protective guards around tanks;

(b) Use of containment curbs;

(c) Use of spill and overflow protection; and

(d) Use of dry cleanup methods.

(7) Large bulk fuel storage tanks. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from large bulk fuel storage tanks. At a minimum the permittee shall consider employing containment berms (or its equivalent). The permittee shall also comply with applicable state and federal laws, including Spill Prevention Control and Countermeasures (SPCC).

(8) Spill reduction measures. The permittee shall describe and implement measures to reduce the potential for an ~~oil/chemical~~ oil or chemical spill, or reference the appropriate section of their SPCC plan. [~~At a minimum the~~ The] structural integrity of all aboveground tanks, pipelines, pumps and other related equipment shall be visually inspected ~~on a weekly basis~~ [~~regularly~~ as part of the routine facility inspection]. All repairs deemed

necessary based on the findings of the inspections shall be completed immediately to reduce the incidence of spills and leaks occurring from such faulty equipment.

(9) Oil bearing equipment in switchyards. The permittee shall describe and implement measures to prevent or minimize contamination of surface runoff from oil bearing equipment in switchyard areas. The permittee shall consider the use of level grades and gravel surfaces to retard flows and limit the spread of spills, and the collection of storm water runoff in perimeter ditches.

(10) Residue hauling vehicles. All residue hauling vehicles shall be inspected for proper covering over the load, adequate gate sealing and overall integrity of the container body. Vehicles without load coverings or adequate gate sealing, or with leaking containers or beds shall be repaired as soon as practicable.

(11) Ash loading areas. The permittee shall describe and implement procedures to reduce or control the tracking of ~~ash/residue~~ ash and residue from ash loading areas ~~where~~. Where practicable, clear the ash building floor and immediately adjacent roadways of spillage, debris and excess water before departure of each loaded vehicle.

(12) Areas adjacent to disposal ponds or landfills. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from areas adjacent to disposal ponds or landfills. The permittee shall develop procedures to:

(a) Reduce ash residue which may be tracked on to access roads traveled by residue trucks or residue handling vehicles; and

(b) Reduce ash residue on exit roads leading into and out of residue handling areas.

(13) Landfills, scrapyards, surface impoundments, open dumps, general refuse sites. The plan shall address and include appropriate [~~BMPs~~ control measures] ~~for~~ to minimize the potential for contamination of runoff from landfills, scrapyards, surface impoundments, open dumps and general refuse sites.

~~(14) Vehicle maintenance activities. For vehicle maintenance activities performed on the plant site, the permittee shall use the applicable BMPs outlined in Sector P (9VAC25-151-230).~~

~~(15) Material storage areas. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from material storage areas (including areas used for temporary storage of miscellaneous products, and construction materials stored in lay down areas). The permittee shall consider the use of the following measures (or their equivalents): flat yard grades; runoff collection in graded swales or ditches; erosion protection measures at steep outfall sites (e.g., concrete chutes, riprap, stilling basins); covering lay down areas; storing materials indoors; and covering materials temporarily with polyethylene, polyurethane, polypropylene, or hypalon. Storm water runon may be minimized by constructing an enclosure or building a berm around the area.~~

b. Comprehensive site compliance evaluation. As part of the evaluation, qualified facility personnel shall inspect the following areas on a monthly basis: coal handling areas, ~~loading/unloading~~ loading and unloading areas, switchyards, fueling areas, bulk storage areas, ash handling areas, areas adjacent to disposal ponds and landfills, maintenance areas, liquid storage tanks, and long term and short term material storage areas.

D. Numeric effluent limitations. Permittees with point sources of coal pile runoff associated with steam electric power generation shall monitor these storm water discharges for the presence of TSS and for pH at least annually (one time per year) in accordance with ~~PART~~ Part I A 1 c (2).

E. Benchmark monitoring and reporting requirements. Steam electric power generating facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 220.

Table 220~~.~~
Sector O – Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Steam Electric Generating Facilities (Industrial Activity Code "SE")	
Total Recoverable Iron	1.0 mg/L

9VAC25-151-230. Sector P - Land transportation and warehousing.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from ground transportation facilities and rail transportation facilities (generally identified by SIC Codes 40, 41, 42, 43, and 5171), that have vehicle and equipment maintenance shops (vehicle and equipment rehabilitation, mechanical repairs, painting, fueling and lubrication) ~~and/or~~ or equipment cleaning operations. Also covered under this section are facilities found under SIC Codes 4221 through 4225 (public warehousing and storage) that do not have vehicle and equipment maintenance shops ~~and/or~~ or equipment cleaning operations.

B. Special conditions. Prohibition of nonstorm water discharges. This permit does not authorize the discharge of ~~vehicle/equipment/surface~~ vehicle, equipment, or surface washwater, including tank-cleaning operations. Such discharges must be authorized under a separate VPDES permit, discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements, or recycled on-site.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description. Site ~~Map~~ map. The site map shall identify the locations of any of the following activities and indicate whether the activities may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: fueling stations; ~~vehicle/equipment~~ vehicle and equipment maintenance or cleaning areas; storage areas for ~~vehicle/equipment~~ vehicle and equipment with actual or potential fluid leaks; ~~loading/unloading~~ loading and unloading areas; areas where treatment, storage or disposal of wastes occur; liquid storage tanks; processing areas; and storage areas.

2. Summary of potential pollutant sources. The plan shall describe and assess the potential for the following to contribute pollutants to storm water discharges: on-site waste storage or disposal; ~~dirt/gravel~~ dirt or gravel parking areas for vehicles awaiting maintenance; plumbing connections between shop floor drains and the stormwater conveyance system; and fueling areas.

3. Storm water controls.

a. Good housekeeping.

(1) Vehicle and equipment storage areas. The storage of vehicles and equipment awaiting maintenance with actual or potential fluid leaks shall be confined to designated areas (delineated on the site map). The permittee shall consider the following measures (or their equivalents): the use of drip pans under vehicles and equipment; indoor storage of vehicles and equipment; installation of berms or dikes; use of absorbents; roofing or covering storage areas; and cleaning pavement surface to remove oil and grease.

(2) Fueling areas. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from fueling areas. The permittee shall consider the following measures (or their equivalents): covering the fueling area; using ~~spill/overflow~~ spill and overflow protection and cleanup equipment; minimizing storm water ~~runon/runoff~~ runon and runoff to the fueling area; using dry cleanup methods; and treating ~~and/or~~ or recycling collected storm water runoff.

(3) Material storage areas. Storage vessels of all materials (e.g., for used ~~oil/oil~~ oil or oil filters, spent solvents, paint wastes, hydraulic fluids) shall be maintained in good condition, so as to prevent contamination of storm water, and plainly labeled (e.g., "used oil," "spent solvents," etc.). The permittee shall consider the following measures (or their equivalents): indoor storage of the materials; installation of ~~berms/dikes~~ berms and dikes around the areas, minimizing runoff of storm water to the areas; using dry cleanup methods; and treating ~~and/or~~ or recycling the collected storm water runoff.

(4) Vehicle and equipment cleaning areas. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from all areas used for ~~vehicle/equipment~~ vehicle and equipment cleaning. The permittee shall consider the following measures (or their equivalents): performing all cleaning operations indoors; covering the cleaning operation; ensuring that all washwaters drain to a proper collection system (i.e., not the storm water drainage system unless VPDES permitted); and treating ~~and/or~~ or recycling the collected storm water runoff.

(5) Vehicle and equipment maintenance areas. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from all areas used for ~~vehicle/equipment~~ vehicle and equipment maintenance. The permittee shall consider the following measures (or their equivalents): performing maintenance activities indoors; using drip pans; keeping an organized inventory of materials used in the shop; draining all parts of fluids prior to disposal; prohibiting wet clean up practices where the practices would result in the discharge of pollutants to storm water drainage systems; using dry cleanup methods; treating ~~and/or~~ or recycling collected storm water runoff; and minimizing ~~runon/runoff~~ runon and runoff of storm water to maintenance areas.

(6) Locomotive sanding (loading sand for traction) areas. The plan shall describe measures that prevent or minimize contamination of the storm water runoff from areas used for locomotive sanding. The permittee shall consider the following measures (or their equivalents): covering sanding areas; minimizing storm water ~~runon/runoff~~ runon and runoff; or appropriate sediment removal practices to minimize the off-site transport of sanding material by storm water.

b. Routine facility inspections. The following ~~areas/activities~~ areas and activities shall be included in all inspections: storage area for ~~vehicles/equipment~~ vehicles and equipment awaiting maintenance; fueling areas; indoor and outdoor ~~vehicle/equipment~~ vehicle and equipment maintenance areas; material storage areas; ~~vehicle/equipment~~ vehicle and equipment cleaning areas; and ~~loading/unloading~~ loading and unloading areas.

c. Employee training. Employee training shall take place, at a minimum, annually (once per calendar year). Employee training shall address the following as applicable: used oil and spent solvent management; fueling procedures; general good housekeeping practices; proper painting procedures; and used battery management.

D. Benchmark monitoring and reporting requirements. Land transportation and warehousing facilities are required to

monitor their storm water discharges for the pollutants of concern listed in Table 230.

Table 230.
Sector P - Benchmark Monitoring Requirements.

Pollutants of Concern	Benchmark Concentration
Land Transportation and Warehousing Facilities (SIC 4011, 4013, 4111-4173, 4212-4231, 4311, and 5171)	
Total Petroleum Hydrocarbons (TPH) *	15.0 mg/L
Total Suspended Solids (TSS)	100 mg/L

*Total Petroleum Hydrocarbons ~~shall be analyzed using the Wisconsin Department of Natural Resources Modified Diesel Range Organics Method as specified in Wisconsin publication SW-141 (1995), or by EPA SW-846 Method 8015C for diesel range organics, or by EPA SW-846 Method 8270D. If Method 8270D is used, the lab must report the combination of diesel range organics and polynuclear aromatic hydrocarbons~~ (TPH) is the sum of individual gasoline range organics and diesel range organics (TPH-GRO and TPH-DRO) to be measured by EPA SW 846 Method 8015 for gasoline and diesel range organics, or by EPA SW 846 Methods 8260 Extended and 8270 Extended.

9VAC25-151-240. Sector Q - Water transportation.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from water transportation facilities (generally identified by SIC Major Group 44), that have vehicle (vessel) maintenance shops ~~and/or~~ or equipment cleaning operations. The water transportation industry includes facilities engaged in foreign or domestic transport of freight or passengers in deep sea or inland waters; marine cargo handling operations; ferry operations; towing and tugboat services; and marinas.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: bilge and ballast water, sanitary wastes, pressure wash water, and cooling water originating from vessels.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify the locations where any of the following activities may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: fueling; engine ~~maintenance/repair~~ maintenance or repair; vessel ~~maintenance/repair,~~ maintenance or repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; ~~loading/unloading~~ loading and unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron).

b. Summary of potential pollutant sources. The plan shall describe the following additional sources and activities that have potential pollutants associated with them: outdoor manufacturing or processing activities (i.e., welding, metal fabricating); and significant dust or particulate generating processes (e.g., abrasive blasting, sanding, painting).

2. Storm water controls.

a. Good housekeeping.

(1) Pressure washing area. ~~If pressure washing is used to remove marine growth from vessels, the discharge water must be permitted by a separate VPDES permit. The SWPPP shall describe: the measures to collect or contain the discharge from the pressure washing area; the method for the removal of the visible solids; the methods of disposal of the collected solids; and where the discharge will be released.~~ As defined by this permit, process wastewater related to hull work at water transportation facilities shall be any water used on a vessel's hull for any purpose, regardless of application pressure, including but not limited to the activities of removing marine salts, sediments, marine growth and paint, or other hull, weather deck, or superstructure cleaning activities using water, such as preparing those areas for inspection or work (cutting, welding, grinding, coating, etc.). The discharge water shall be permitted as a process wastewater by a separate VPDES permit.

(2) Blasting and painting areas. The permittee shall describe and implement measures to prevent spent abrasives, paint chips, and overspray from discharging into the receiving water or the storm sewer system. The permittee may consider containing all ~~blasting/painting~~ blasting or painting activities, or the use of other measures to prevent or minimize the discharge of contaminants (e.g., hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris). Storm water conveyances shall be regularly cleaned to remove deposits of abrasive blasting debris and paint chips. The plan shall include any standard operating practices with regard to blasting and painting activities, such as the prohibition of uncontained ~~blasting/painting~~ blasting or painting over open water, or the prohibition of ~~blasting/painting~~ blasting or painting during windy conditions which can render containment ineffective.

(3) Material storage areas. All containerized materials (e.g., fuels, paints, solvents, waste oil, antifreeze, batteries) shall be plainly labeled and stored in a protected, secure location away from drains. The

permittee shall describe and implement measures to prevent or minimize the contamination of ~~precipitation/surface~~ precipitation or surface runoff from the storage areas. The plan shall specify which materials are stored indoors and consider containment or enclosure for materials that are stored outdoors. The permittee shall consider implementing an inventory control plan to limit the presence of potentially hazardous materials on-site. Where abrasive blasting is performed, the plan shall specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility.

(4) Engine maintenance and repair areas. The permittee shall describe and implement measures to prevent or minimize contamination of ~~precipitation/surface~~ precipitation or surface runoff from all areas used for engine maintenance and repair. The permittee shall consider the following measures (or their equivalent): performing all maintenance activities indoors; maintaining an organized inventory of materials used in the shop; draining all parts of fluids prior to disposal; prohibiting the practice of hosing down the shop floor using dry cleanup methods; and treating ~~and/or~~ or recycling storm water runoff collected from the maintenance area.

(5) Material handling areas. The permittee shall describe and implement measures to prevent or minimize contamination of ~~precipitation/surface~~ precipitation or surface runoff from material handling operations and areas (e.g., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). The permittee shall consider the following measures (or their equivalents): covering fueling areas; using ~~spill/overflow~~ spill and overflow protection; mixing paints and solvents in a designated area (preferably indoors or under a shed); and minimizing runon of storm water to material handling areas.

(6) Drydock activities. The plan shall address the routine maintenance and cleaning of the drydock to minimize the potential for pollutants in the storm water runoff. The plan shall describe the procedures for cleaning the accessible areas of the drydock prior to flooding and final cleanup after the vessel is removed and the dock is raised. Cleanup procedures for oil, grease, or fuel spills occurring on the drydock shall also be included within the plan. The permittee shall consider the following measures (or their equivalents): sweeping rather than hosing off ~~debris/spent~~ debris and spent blasting material from the accessible areas of the drydock prior to flooding; and having absorbent materials and oil containment booms readily available to ~~contain/cleanup~~ contain or cleanup any spills.

(7) General yard area. The plan shall include a schedule for routine yard maintenance and cleanup. Scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc., shall be routinely removed from the general yard area.

b. Preventative Maintenance. As part of the facility's preventive maintenance program, storm water management devices shall be inspected and maintained in a timely manner (e.g., oil/water separators and sediment traps cleaned to ensure that spent abrasives, paint chips and solids are intercepted and retained prior to entering the storm drainage system). Facility equipment and systems shall also be inspected and tested to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

c. Routine facility inspections. The following areas shall be included in all ~~monthly~~ quarterly inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; drydock area; and general yard area. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

d. Employee training. Training shall address, at a minimum, the following activities (as applicable): used oil management; spent solvent management; disposal of spent abrasives; disposal of vessel wastewaters; spill prevention and control; fueling procedures; general good housekeeping practices; painting and blasting procedures; and used battery management.

~~e. Comprehensive site compliance evaluation. The permittee shall conduct regularly scheduled evaluations at least once a year and address those areas contributing to a storm water discharge associated with industrial activity (e.g., pressure washing area, blasting/sanding areas, painting areas, material storage areas, engine maintenance/repair areas, material handling areas, and drydock area). These sources shall be inspected for evidence of, or the potential for, pollutants entering the drainage system.~~

D. Benchmark monitoring and reporting requirements. Water transportation facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 240.

Table 240~~.~~
Sector Q – Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Water Transportation Facilities (SIC 4412-4499)	
~~Total Recoverable Aluminum~~	~~750 µg/L~~
~~Total Recoverable Iron~~	~~1.0 mg/L~~

Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Zinc	120 µg/L

9VAC25-151-250. Sector R - Ship and boat building or repair yards.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities engaged in ship building and repairing and boat building and repairing (SIC Code 373). (According to the U.S. Coast Guard, a vessel 65 feet or greater in length is referred to as a ship and a vessel smaller than 65 feet is a boat.)

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: bilge and ballast water, pressure wash water, sanitary wastes, and cooling water originating from vessels.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify the locations where any of the following activities may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: fueling; engine ~~maintenance/repair~~ maintenance or repair; vessel ~~maintenance/repair~~ maintenance or repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; ~~loading/unloading~~ loading and unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron).

b. Potential pollutant sources. The plan shall include a description of the following additional sources and activities that have potential pollutants associated with them (if applicable): outdoor ~~manufacturing/processing~~ manufacturing and processing activities (e.g., welding, metal fabricating); and significant ~~dust/particulate~~ dust and particulate generating processes (e.g., abrasive blasting, sanding, painting).

2. Storm water controls.

a. Good housekeeping measures.

(1) Pressure washing area. ~~If pressure washing is used to remove marine growth from vessels, the discharge water must be permitted as a process wastewater by a separate VPDES permit.~~ As defined by this permit, process wastewater related to hull work at ship and boat building or repair yard facilities shall be any water used on a vessel's hull for any purpose, regardless of application pressure, including but not limited to the activities of removing marine salts, sediments, marine growth and paint, or other hull, weather deck, or superstructure cleaning activities using water, such as preparing those areas for inspection or work (cutting, welding, grinding, coating, etc.). The discharge water shall be permitted as a process wastewater by a separate VPDES permit.

(2) Blasting and painting areas. The permittee shall describe and implement measures to prevent spent abrasives, paint chips and overspray from discharging into the receiving waterbody or the storm sewer system. To prevent the discharge of contaminants, the permittee shall consider containing all ~~blasting/painting~~ blasting and painting activities or using other methods, such as hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris. The plan shall include a schedule for regularly cleaning storm systems to remove deposits of abrasive blasting debris and paint chips. The plan shall include any standard operating practices with regard to blasting and painting activities, such as the prohibition of uncontained ~~blasting/painting~~ blasting or painting over open water or the prohibition of ~~blasting/painting~~ blasting or painting during windy conditions that can render containment ineffective.

(3) Material storage areas. All containerized materials (fuels, paints, solvents, waste oil, antifreeze, batteries) shall be plainly labeled and stored in a protected, secure location away from drains. The permittee shall describe and implement measures to prevent or minimize contamination of ~~precipitation/surface~~ precipitation or surface runoff from the storage areas. [~~The plan shall specify which materials are stored indoors and consider containment or enclosure for materials that are stored outdoors.~~] The permittee shall consider implementing an inventory control plan to limit the presence of potentially hazardous materials on-site. Where abrasive blasting is performed, the plan shall specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility.

(4) Engine maintenance and repair areas. The permittee shall describe and implement measures to prevent or minimize contamination of ~~precipitation/surface~~ precipitation or surface runoff from all areas used for engine maintenance and repair. The permittee shall consider the following measures (or their equivalent): performing all maintenance activities indoors; maintaining an organized inventory of materials used in the shop; draining all parts of fluids prior to disposal; prohibiting the practice of hosing down the shop floor; using dry cleanup methods; and treating ~~and/or~~ or recycling storm water runoff collected from the maintenance area.

(5) Material handling areas. The permittee shall describe and implement measures to prevent or minimize contamination of ~~precipitation/surface~~ precipitation or

surface runoff from material handling operations and areas (e.g., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). The permittee shall consider the following methods (or their equivalents): covering fueling areas; using ~~spill/overflow~~ spill and overflow protection; mixing paints and solvents in a designated area (preferably indoors or under a shed); and minimizing runon of storm water to material handling areas.

(6) Drydock activities. The plan shall address the routine maintenance and cleaning of the drydock to minimize the potential for pollutants in the storm water runoff. The plan shall describe the procedures for cleaning the accessible areas of the drydock prior to flooding and final cleanup after the vessel is removed and the dock is raised. Cleanup procedures for oil, grease, or fuel spills occurring on the drydock shall also be included within the plan. The permittee shall consider the following measures (or their equivalents): sweeping rather than hosing off ~~debris/spent~~ debris and spent blasting material from the accessible areas of the drydock prior to flooding and having absorbent materials and oil containment booms readily available to ~~contain/cleanup~~ contain or cleanup any spills.

(7) General yard area. The plan shall include a schedule for routine yard maintenance and cleanup. Scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc., shall be routinely removed from the general yard area.

b. Preventative maintenance. As part of the facility's preventive maintenance program, storm water management devices shall be inspected and maintained in a timely manner (e.g., oil/water separators and sediment traps cleaned to ensure that spent abrasives, paint chips and solids are intercepted and retained prior to entering the storm drainage system). Facility equipment and systems shall also be inspected and tested to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

c. Routine facility inspections. The following areas shall be included in all ~~monthly~~ quarterly routine [facility] inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine ~~maintenance/repair~~ maintenance or repair areas; material handling areas; drydock area; and general yard area. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

d. Employee training. Training shall address, at a minimum, the following activities (as applicable): used oil management; spent solvent management; proper disposal of spent abrasives; proper disposal of vessel wastewaters, spill prevention and control; fueling procedures; general good housekeeping practices; painting and blasting procedures; and used battery management.

~~e. Comprehensive site compliance evaluation. The permittee shall conduct regularly scheduled evaluations at least once a year and address those areas contributing to a storm water discharge associated with industrial activity (e.g., pressure washing area, blasting/sanding areas, painting areas, material storage areas, engine maintenance/repair areas, material handling areas, and drydock area). These areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system.~~

D. Benchmark monitoring and reporting requirements. Ship and boat building or repairing yards are required to monitor their storm water discharges for the pollutants of concern listed in Table 250.

Table 250~~.~~
Sector R - Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Ship and Boat Building or Repairing Yards (SIC 3731, 3732)	
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Zinc	120 µg/L

9VAC25-151-260. Sector S - Air transportation.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from air transportation facilities including airports, airport terminal services, air transportation (scheduled and nonscheduled), flying fields, air courier services, and establishments engaged in operating and maintaining airports, and servicing, repairing or maintaining aircraft (generally classified under SIC Code 45), which have vehicle maintenance shops, material handling facilities, equipment cleaning operations, or airport ~~and/or~~ or aircraft ~~deicing/anti-icing~~ deicing or anti-icing operations. For the purpose of this section, the term "deicing" is defined as the process to remove frost, snow, or ice and "anti-icing" is the process which prevents the accumulation of frost, snow, or ice. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or ~~deicing/anti-icing~~ deicing or anti-icing operations are addressed under this section.

B. Special definitions. The following definitions are only for this section of the general permit:

"Aircraft deicing fluid" or "ADF" means a fluid (other than hot water) applied to aircraft to remove or prevent any accumulation of snow or ice on the aircraft. This includes deicing and anti-icing fluids.

"Airfield pavement" means all paved surfaces on the airside of an airport.

"Airside" means the part of an airport directly involved in the arrival and departure of aircraft, including runways, taxiways, aprons, and ramps.

"Annual non-propeller aircraft departures" means the average number of commercial turbine-engine aircraft that are propelled by jet (i.e., turbojet or turbofan) that take off from an airport on an annual basis, as tabulated by the Federal Aviation Administration (FAA).

"Available ADF" means 75% of the normalized Type I aircraft deicing fluid and 10% of the normalized Type IV aircraft deicing fluid, excluding aircraft deicing fluids used for defrosting or deicing for safe taxiing.

"Collection requirement" means, for new sources, the requirement for permittee to collect available ADF.

"Defrosting" means the removal of frost contamination from an aircraft when there has been no active precipitation.

"Deicing" mean procedures and practices to remove or prevent any accumulation of snow or ice on:

[~~(1)~~ 1.] An aircraft; or

[~~(2)~~ 2.] Airfield pavement.

"Normalized Type I or Type IV aircraft deicing fluid" means ADF less any water added by the manufacturer or customer before ADF application.

"Primary airport" means an airport defined at 49 USC § 47102 (15).

C. Special conditions. ~~1.~~ Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: aircraft, ground vehicle, runway and equipment washwaters, and dry weather discharges of ~~deicing/anti-icing~~ deicing or anti-icing chemicals. These discharges must be covered by a separate VPDES permit. Note: Discharge resulting from snowmelt is not a dry weather discharge.

~~2. Releases of reportable quantities of hazardous substances and oil. Each individual permittee is required to report spills as described at Part I B 3. If an airport authority is the sole permittee, then the sum total of all spills at the airport shall be assessed against the reportable quantity. If the airport authority is a copermittee with other deicing/anti-icing operators at the airport, such as numerous different airlines, the assessed amount shall be the summation of spills by each copermittee. If separate, distinct individual permittees exist at the airport, then the amount spilled by each separate permittee shall be the assessed amount for the reportable quantity determination.~~

~~C.~~ D. Storm water pollution prevention plan requirements. SWPPPs developed for areas of the facility occupied by tenants of the airport shall be integrated with the plan for the entire airport. For the purposes of this permit, tenants of the airport facility include .airline passenger or cargo companies, fixed based operators and other parties who have contracts with the airport authority to conduct business operations on airport property and whose operations result in storm water discharges associated with industrial activity. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify the location of the following activities and indicate any of the activities that may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: aircraft and runway ~~deicing/anti-icing~~ deicing or anti-icing operations; fueling stations; aircraft, ground vehicle and equipment ~~maintenance/cleaning~~ maintenance and cleaning areas; and storage areas for aircraft, ground vehicles and equipment awaiting maintenance.

b. Summary of potential pollutant sources. The plan shall include a narrative description of the potential pollutant sources from the following activities: aircraft, runway, ground vehicle and equipment maintenance and cleaning; aircraft and runway ~~deicing/anti-icing~~ deicing or anti-icing operations (including apron and centralized aircraft ~~deicing/anti-icing~~ deicing or anti-icing stations, runways, taxiways, and ramps). Facilities which conduct ~~deicing/anti-icing~~ deicing or anti-icing operations shall maintain a record of the types (including the ~~Material Safety Data Sheets (MSDS))~~ safety data sheets (SDS)) and monthly quantities of ~~deicing/anti-icing~~ deicing or anti-icing chemicals used, either as measured amounts, or in the absence of metering, as estimated amounts. This includes all ~~deicing/anti-icing~~ deicing or anti-icing chemicals, not just glycols and urea (e.g., potassium acetate). Tenants and fixed-base operators who conduct ~~deicing/anti-icing~~ deicing or anti-icing operations shall provide the above information to the airport authority for inclusion in the storm water pollution prevention plan for the entire facility.

c. Deicing season. The SWPPP shall define the average seasonal timeframe (e.g., December-February, October-March, etc.) during which deicing activities typically occur at the facility. Implementation of [control measures, including any] BMPs, facility inspections, and effluent limitation monitoring shall be conducted with particular emphasis throughout the defined deicing season.

2. Storm water controls.

a. Good housekeeping.

(1) Aircraft, ground vehicle and equipment maintenance areas. The permittee shall describe and implement

measures that prevent or minimize the contamination of storm water runoff from all areas used for aircraft, ground vehicle and equipment maintenance (including the maintenance conducted on the terminal apron and in dedicated hangars). [~~The following practices~~ Appropriate control measures] (or their equivalents) shall be [~~considered~~ implemented, such as the following practices]: performing maintenance activities indoors; maintaining an organized inventory of materials used in the maintenance areas; draining all parts of fluids prior to disposal; preventing the practice of hosing down the apron or hangar floor; using dry cleanup methods; and collecting the storm water runoff from the maintenance area and providing treatment or recycling.

(2) Aircraft, ground vehicle and equipment cleaning areas. Permittees shall ensure that cleaning of equipment is conducted in designated areas only and clearly identify these areas on the ground and delineate them on the site map. The permittee shall describe and implement measures that prevent or minimize the contamination of the storm water runoff from cleaning areas.

(3) Aircraft, ground vehicle and equipment storage areas. The storage of aircraft, ground vehicles and equipment awaiting maintenance shall be confined to designated areas (delineated on the site map). [~~The following~~ Appropriate control measures, including any] BMPs (or their equivalents) shall be [~~considered~~ implemented, such as the following practices]: indoor storage of aircraft and ground vehicles; the use of drip pans for the collection of fluid leaks; and perimeter drains, dikes or berms surrounding storage areas.

(4) Material storage areas. Storage vessels of all materials (e.g., used oils, hydraulic fluids, spent solvents, and waste aircraft fuel) shall be maintained in good condition, so as to prevent or minimize contamination of storm water, and plainly labeled (e.g., "used oil," "Contaminated Jet A," etc.). The permittee shall describe and implement measures that prevent or minimize contamination of ~~precipitation/runoff~~ precipitation or runoff from storage areas. [~~The following BMPs or~~ Appropriate control measures (or] their equivalents [ )] shall be [~~considered~~ implemented, such as the following practices]: indoor storage of materials; centralized storage areas for waste materials; and installation of ~~berms/dikes~~ berms and dikes around storage areas.

(5) Airport fuel system and fueling areas. The permittee shall describe and implement measures that prevent or minimize the discharge of fuels to the storm ~~sewer/surface~~ sewer or surface waters resulting from fuel servicing activities or other operations conducted in support of the airport fuel system. [~~The following BMPs~~ Appropriate control measures] (or their equivalents) shall be [~~considered~~ implemented, such as the following practices]: implementing spill and overflow practices (e.g., placing absorptive materials beneath aircraft during fueling operations); using dry cleanup methods; and collecting the storm water runoff.

b. Source reduction. [~~Owners who conduct deicing/anti-icing~~ deicing or anti-icing operations The permittee] shall [~~consider alternatives to~~ minimize, and where practicable eliminate,] the use of urea and glycol-based ~~deicing/anti-icing~~ deicing or anti-icing chemicals [in order] to reduce the aggregate amount of ~~deicing/anti-icing~~ deicing or anti-icing chemicals used ~~and/or~~ and lessen the environmental impact. Chemical options to replace ethylene glycol, propylene glycol and urea include: potassium acetate; magnesium acetate; calcium acetate; anhydrous sodium acetate.

(1) Runway deicing operations. [~~Owners~~ The permittee shall minimize contamination of stormwater runoff from runways as a result of deicing operations. The permittee] shall evaluate present application rates to ensure against excessive over application by analyzing application rates and adjusting as necessary, consistent with considerations of flight safety. [~~Also the following BMP options~~ Appropriate control measures, (or their equivalents)] shall be [~~considered (or their equivalents)~~ implemented, such as the following practices]: metered application of chemicals; prewetting dry chemical constituents prior to application; installation of runway ice detection systems; implementing anti-icing operations as a preventive measure against ice buildup.

(2) Aircraft ~~deicing/anti-icing~~ deicing operations. [~~Owners~~ The permittee shall minimize contamination of stormwater runoff from aircraft deicing operations. The permittee] shall determine whether excessive application of ~~deicing/anti-icing~~ deicing chemicals occurs, and adjust as necessary, consistent with considerations of flight safety. This evaluation shall be carried out by the personnel most familiar with the particular aircraft and flight operations in question (versus an outside entity such as the airport authority). The use of alternative ~~deicing/anti-icing~~ deicing or anti-icing agents as well as containment measures for all applied chemicals shall be considered. [~~Also, the following BMP options~~ Appropriate control measures] (or their equivalents) shall be [~~considered~~ implemented] for reducing deicing fluid use [, such as the following practices]: forced-air deicing systems; computer-controlled fixed-gantry systems; infrared technology; hot water; varying glycol content to air temperature; enclosed-basket deicing trucks; mechanical methods; solar radiation; hangar storage; aircraft covers; and thermal blankets for MD-80s and DC-9s. The use of ice-detection systems and airport traffic flow strategies and departure slot allocation systems shall also be considered [where practicable].

c. Management of runoff. Where ~~deicing/anti-icing~~ deicing operations occur, [~~owners shall describe and~~ the

permittee shall] implement a program to control or manage contaminated runoff to [~~reduce~~ minimize] the amount of pollutants being discharged from the site. The plan shall describe the controls used for collecting or containing contaminated melt water from collection areas used for disposal of contaminated snow. The following [~~BMPs~~ control measure options] (or their equivalents) shall be considered: establishing a dedicated deicing facility with a runoff ~~collection/recovery~~ collection and recovery system; using ~~vacuum/collection~~ vacuum or collection trucks; storing contaminated storm ~~water/deicing~~ water or deicing fluids in tanks and releasing controlled amounts to a publicly owned treatment works; collecting contaminated runoff in a wet pond for biochemical decomposition (be aware of attracting wildlife that may prove hazardous to flight operations); and directing runoff into vegetative swales or other infiltration measures. The plan shall consider the recovery of ~~deicing/anti-icing~~ deicing and anti-icing materials when these materials are applied during nonprecipitation events (e.g., covering storm sewer inlets, using booms, installing absorptive interceptors in the drains, etc.) to prevent these materials from later becoming a source of storm water contamination. Used deicing fluid shall be recycled whenever possible.

d. Routine facility inspections. The inspection frequency shall be specified in the plan. At a minimum, inspections shall be conducted once per month during ~~deicing/anti-icing~~ deicing and anti-icing season (e.g., October through April for most airports). If deicing occurs before or after this period, the inspections shall be expanded to include all months during which deicing chemicals may be used. ~~Also, if significantly or deleteriously large quantities of deicing chemicals are being spilled or discharged, or if water quality impacts have been reported, the inspection frequency shall be increased to weekly until such time as the chemical spills/discharges or impacts are reduced to acceptable levels. The director may specifically require increased inspections and the SWPPP to be reevaluated as necessary.~~

[e. Comprehensive site compliance evaluation. The annual site compliance evaluations shall be conducted by qualified facility personnel during periods of actual deicing operations, if possible. If not practicable during active deicing or if the weather is too inclement, the evaluations shall be conducted when deicing operations are likely to occur and the materials and equipment for deicing are in place.]

~~D. Benchmark monitoring and reporting requirements. Airports that use more than 100,000 gallons of glycol based deicing/anti-icing chemicals and/or 100 tons or more of urea on an average annual basis shall sample their storm water discharges for the parameters listed in Table 260. Only those outfalls from the airport facility that collect runoff from areas where deicing/anti-icing activities occur shall be monitored.~~

~~Table 260.~~
~~Sector S – Benchmark Monitoring Requirements.~~

~~Pollutants of Concern~~	~~Benchmark Concentration~~
~~Facilities at airports that use more than 100,000 gallons of glycol based deicing/anti-icing chemicals and/or 100 tons or more of urea on an average annual basis: monitor ONLY those outfalls from the airport facility that collect runoff from areas where deicing/anti-icing activities occur (SIC 45).~~	
~~Biochemical Oxygen Demand (BOD_5)~~	~~30 mg/L~~
~~Chemical Oxygen Demand (COD)~~	~~120 mg/L~~
~~Total Kjeldahl Nitrogen (TKN)~~	~~1.5 mg/L~~
~~pH~~	~~within the range 6.0 to 9 s.u.~~
~~Total Suspended Solids (TSS)~~	~~100 mg/L~~

E. Numeric effluent limitations. The average deicing season identified in the SWPPP is the time frame during which any effluent limitation monitoring samples shall be obtained.

1. Airfield pavement deicing. Existing [primary airports] and [~~new~~ primary airports meeting the definition of a new source (new] primary airports [ )] with at least 1,000 annual jet departures (non-propeller aircraft) that [~~have discharges~~ discharge wastewater] associated with airport pavement deicing comingled with storm water shall either use [~~airfield~~] deicing products that do not contain urea or alternatively, airfield pavement discharges at every discharge point shall achieve the numeric limitations for ammonia in Table 260-1, prior to any dilution or commingling with any non-deicing discharge. [Primary airports that only use deicing products that do not contain urea shall certify this fact annually to the board. The certification shall be signed in accordance with Part II K, and a copy of the certification shall be kept with the SWPPP.]

Table 260-1
Sector S – Numeric Effluent Limitations, Existing and New Primary Airports

Airfield Pavement Deicing	
Parameter	Effluent Limitations - Daily Maximum
Ammonia as Nitrogen	14.7 mg/L

2. Aircraft deicing. Airports [~~in cold climate zones~~] meeting the definition of a new source (new airports) with 10,000 annual departures, [and located in cold climate zones,] shall collect at least 60% of available ADF after

deicing. New airports shall achieve the performance standards in Table 260-2 for available ADF collected. The limitation shall be met at the location where the effluent leaves the on-site treatment system utilized for meeting these requirements and before commingling with any non-deicing discharge.

Table 260-2
Sector S – Numeric Effluent Limitations, New Primary Airports

Aircraft Deicing		
Parameter	Effluent Limitations	
	Daily Maximum	Weekly Average
Chemical Oxygen Demand (COD)	271 mg/L	154 mg/L

3. Monitoring, reporting, and recordkeeping requirements. [~~New airports subject to the effluent limitations in subdivision 2 of this subsection shall comply with the monitoring, reporting, and recordkeeping requirements outlined in 40 CFR 449.20(a)(1) and 40 CFR449.20 (a) (2).~~

a. Demonstrating compliance with the ADF collection requirement for dischargers subject to the requirements in subdivision 2 of this subsection.

(1) The permittee shall maintain records with the SWPPP to demonstrate that the airport is operating and maintaining one or more centralized deicing pads and shall certify this annually to the board. The certification shall be signed in accordance with Part II K, and a copy of the certification shall be kept with the SWPPP.

The centralized deicing pad technology shall be operated and maintained according to the technical specifications set forth in subdivisions 3 a (1) (a) through (d) of this subsection. The demonstration and valid certification are sufficient to meet the applicable collection requirement without the permittee having to determine the numeric percentage of available ADF collected.

(a) Each centralized deicing pad shall be sized and sited in accordance with all applicable Federal Aviation Administration advisory circulars.

(b) Drainage valves associated with the centralized deicing pad shall be activated before deicing activities commence to collect available ADF.

(c) The centralized deicing pad and associated collection equipment shall be installed and maintained per any applicable manufacturers' instructions and shall be inspected, at a minimum, at the beginning of each deicing season to ensure that the pad and associated equipment are in working condition.

(d) All aircraft deicing shall take place on a centralized deicing pad, with the exception of defrosting and deicing for safe taxiing.

(2) The permittee shall maintain records with the SWPPP on the volume of ADF sprayed and the amount of available ADF collected in order to determine compliance with the collection requirement and shall report this information annually to the department.

b. Monitoring requirements.

(1) COD limitation. Permittees subject to the ADF collection and discharge requirements specified in subdivision 2 of this subsection shall conduct effluent monitoring to demonstrate compliance with the COD limitation for all ADF that is collected.

Compliance shall be demonstrated at the location where the effluent leaves the on-site treatment system utilized for meeting these requirements and before commingling with any non-deicing discharge. Effluent samples shall be collected following the grab sample protocol in 40 CFR 449, Appendix A.

(2) Ammonia limitation. If a permittee chooses to comply with the compliance alternative specified in subdivision 1 of this subsection, the permittee shall conduct effluent monitoring at all locations where pavement deicing with a product that contains urea is occurring, prior to any dilution or commingling with any non-deicing discharge.

c. Recordkeeping.

(1) The permittee shall maintain records with the SWPPP documenting compliance with subdivisions 3 a and 3 b of this subsection. These records include, but are not limited to, documentation of wastewater samples collected and analyzed, certifications, and equipment maintenance schedules and agreements.

(2) The permittee shall collect and maintain data with the SWPPP on the annual volume of ADF used.]

F. Benchmark monitoring and reporting requirements. Storm water discharges from those portions of air transportation facilities where vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) [,] and equipment cleaning is performed shall be sampled for the parameters listed in Table 260-3. Note: The benchmark monitoring requirements apply year round and are not limited to the deicing season.

Table 260-3
Sector S – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Air Transportation Facilities (SIC 45).	
Total Suspended Solids (TSS)	100 mg/L

Total Petroleum Hydrocarbons (TPH)*	15.0 mg/L
*Total Petroleum Hydrocarbons (TPH) is the sum of individual gasoline range organics and diesel range organics (TPH-GRO and TPH-DRO) to be measured by EPA SW 846 Method 8015 for gasoline and diesel range organics, or by EPA SW 846 Methods 8260 Extended and 8270 Extended.	

9VAC25-151-270. Sector T - Treatment works.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 9VAC25-31-730 (Industrial Activity Code "TW"). Farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and that are not physically located within the facility, or areas that are in compliance with § 405 of the CWA are not required to have permit coverage.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: sanitary and industrial wastewater; and ~~equipment/vehicle~~ equipment and vehicle washwaters.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and storage areas for process chemicals, petroleum products, solvents, fertilizers, herbicides, and pesticides.

b. Summary of potential pollutant sources. The plan shall include a description of the potential pollutant sources from the following activities, as applicable: grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and access ~~roads/rail~~ roads and rail lines.

2. Storm water controls.

a. ~~Best Management Practices (BMPs)~~ Control measures. In addition to the other ~~BMPs~~ control measures [~~considered~~ required by Part III B 4], the following ~~BMPs~~ measures shall be considered: routing storm water to the treatment works; or covering exposed materials (i.e., from the following areas: grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station).

b. Inspections. The following areas shall be included in all inspections: access ~~roads/rail~~ roads and rail lines, grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station areas.

c. Employee training. Employee training shall, at a minimum, address the following areas when applicable to a facility: petroleum product management; process chemical management; spill prevention and control; fueling procedures; general good housekeeping practices; proper procedures for using fertilizers, herbicides and pesticides.

9VAC25-151-280. Sector U - Food and kindred products.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from food and kindred products processing facilities (commonly identified by SIC Code 20), including: meat products; dairy products; canned, frozen and preserved fruits, vegetables, and food specialties; grain mill products; bakery products; sugar and confectionery products; fats and oils; beverages; and miscellaneous food preparations and kindred products and tobacco products manufacturing (SIC Code 21).

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: boiler blowdown, cooling tower overflow and blowdown, ammonia refrigeration purging, and vehicle ~~washing/clean-out~~ washing and clean-out operations.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify the locations of the following activities if they are exposed to ~~precipitation/surface~~ precipitation or surface runoff: ~~vents/stacks~~ vents and stacks from cooking, drying, and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage areas.

b. Summary of potential pollutant sources. In addition to food and kindred products processing-related industrial activities, the plan shall also describe application and storage of pest control chemicals (e.g., rodenticides, insecticides, fungicides, etc.) used on plant grounds.

2. Storm water controls.

a. Routine facility inspections. At a minimum, the following areas, where the potential for exposure to storm water exists, shall be inspected on a ~~monthly~~ quarterly basis: loading and unloading areas for all significant materials; storage areas, including associated containment areas; waste management units; vents and stacks emanating from industrial activities; spoiled product and broken product container holding areas; animal holding pens; staging areas; and air pollution control equipment. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

b. Employee training. The employee training program shall also address pest control.

D. Benchmark monitoring and reporting requirements. Dairy products, grain mills and fats and oils products facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 280.

Table 280~~.~~
Sector U – Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Dairy Products (SIC 2021-2026)	
Biochemical Oxygen Demand (BOD_5)	30 mg/L
Total Suspended Solids (TSS)	100 mg/L
Grain Mill Products (SIC 2041-2048)	
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
Total Suspended Solids (TSS)	100 mg/L
Fats and Oils Products (SIC 2074-2079)	
Biochemical Oxygen Demand (BOD_5)	30 mg/L
Total Nitrogen	2.2 mg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-290. Sector V - Textile mills, apparel, and other fabric products.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from textile mills, apparel and other fabric product manufacturing, generally described by SIC 22 and 23. This section also covers facilities engaged in manufacturing finished leather and artificial leather products (SIC 31, except 3111). Facilities in this sector are primarily engaged in the following activities: textile mill products, of and regarding facilities and establishments engaged in the preparation of fiber and subsequent manufacturing of yarn, thread, braids, twine, and cordage, the manufacturing of broad woven fabrics, narrow woven fabrics, knit fabrics, and carpets and rugs from yarn; processes involved in the dyeing and finishing of fibers, yarn fabrics, and knit apparel; the integrated manufacturing of knit apparel and other finished articles of yarn; the manufacturing of felt goods (wool), lace goods, nonwoven fabrics, miscellaneous textiles, and other apparel products.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: discharges of wastewater (e.g., wastewater as a result of wet processing or from any processes relating to the production process); ~~reused/recycled~~ reused or recycled water; and waters used in cooling towers. These discharges must be covered under a separate VPDES permit.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description. Summary of potential pollutant sources. The plan shall include a description of the potential pollutant sources from the following activities: industry-specific significant materials and industrial activities (e.g., backwinding, beaming, bleaching, backing, bonding carbonizing, carding, cut and sew operations, desizing, drawing, dyeing, flocking, fulling, knitting, mercerizing, opening, packing, plying, scouring, slashing, spinning, synthetic-felt processing, textile waste processing, tufting, turning, weaving, web forming, winging, yarn spinning, and yarn texturing).

2. Storm water controls.

a. Good housekeeping measures.

(1) Material storage areas. All containerized materials (e.g., fuels, petroleum products, solvents, dyes, etc.) shall be clearly labeled and stored in a protected area, away from drains. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from such storage areas, and shall include a description of the containment area or enclosure for those materials that are stored outdoors. The permittee may consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances. The permittee shall ensure that empty chemical ~~drums/containers~~ drums and containers are clean (triple-rinsing shall be considered) and residuals are not subject to contact with ~~precipitation/runoff~~ precipitation or runoff. Washwater from these cleanings shall be collected and disposed of properly.

(2) Material handling area. The permittee shall describe and implement measures that prevent or minimize

contamination of the storm water runoff from materials handling operations and areas. The permittee shall consider the following measures (or their equivalents): use of ~~spill/overflow~~ spill and overflow protection; covering fueling areas; and covering and enclosing areas where the transfer of materials may occur. Where applicable, the plan shall address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals, dyes, or wastewater.

(3) Fueling areas. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from fueling areas. The permittee shall consider the following measures (or their equivalents): covering the fueling area; using spill and overflow protection; minimizing runon of storm water to the fueling areas; using dry cleanup methods; and treating ~~and/or~~ or recycling storm water runoff collected from the fueling area.

(4) Aboveground storage tank areas. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from aboveground storage tank areas, including the associated piping and valves. The permittee shall consider the following measures (or their equivalents): regular cleanup of these areas; preparation of a spill prevention control and countermeasure program (SPCC) to provide spill and overflow protection; minimizing runon of storm water from adjacent areas; restricting access to the area; insertion of filters in adjacent catch basins; absorbent booms in unbermed fueling areas; use of dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.

b. Routine facility inspections. Inspections shall be conducted at least monthly, and shall include the following activities and areas (at a minimum): transfer and transmission lines; spill prevention; good housekeeping practices; management of process waste products; all structural and nonstructural management practices. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

c. Employee training. Employee training shall, at a minimum address, the following areas when applicable to a facility: use of ~~reused/recycled~~ reused or recycled waters; solvents management; proper disposal of dyes; proper disposal of petroleum products and spent lubricants; spill prevention and control; fueling procedures; and general good housekeeping practices.

~~d. Comprehensive Site Compliance Evaluation. Regularly scheduled evaluations shall be conducted at least once a year and address those areas contributing to a storm water discharge associated with industrial activity. Inspections shall look for evidence of, or the potential for, pollutants entering the drainage system from the following areas, as appropriate: storage tank areas; waste disposal and storage areas; dumpsters and open containers stored outside; materials storage areas; engine maintenance and repair areas; material handling areas and loading dock areas.~~

9VAC25-151-300. Sector W - Furniture and fixtures.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities involved in the manufacturing of wood kitchen cabinets (generally described by SIC Code 2434), and furniture and fixtures (generally classified under SIC Major Group 25), including: household furniture (SIC 251); office furniture (SIC 252); public buildings and related furniture (SIC 253); partitions, shelving, lockers, and office and store fixtures (SIC 254); and miscellaneous furniture and fixtures (SIC 259).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following item:

Site Map. The site map shall identify where any of the following may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: material storage areas (including tanks or other vessels used for liquid or waste storage); outdoor material processing areas; areas where wastes are treated, stored or disposed; access roads; and rail spurs.

9VAC25-151-310. Sector X - Printing and publishing.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from printing and publishing facilities (generally classified under SIC Major Group 27), and include the following types of facilities: newspaper, periodical, and book publishing ~~and/or~~ and printing (SIC Codes 271 through 273); miscellaneous publishing (SIC Code 274); commercial printing (SIC Code 275); manifold business forms, greeting cards, bankbooks, looseleaf binders and book binding and related work (SIC Codes 276 through 278); and service industries for the printing trade (SIC 279).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

1. Site description. ~~a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: aboveground storage tanks, drums and barrels permanently stored outside. b.~~ Summary of potential pollutant sources. The plan shall include a description of the following additional sources and activities that have potential pollutants associated with them, as applicable: loading and unloading operations; outdoor storage activities; significant dust or particulate generating processes; and on-site waste disposal practices (e.g., blanket wash). Also, the pollutant or pollutant

parameter (e.g., oil and grease, scrap metal, etc.) associated with each pollutant source shall be identified.

2. Storm water controls.

a. Good housekeeping measures.

(1) Material storage areas. All containerized materials (skids, pallets, solvents, bulk inks, and hazardous waste, empty drums, ~~portable/mobile~~ portable or mobile containers of plant debris, wood crates, steel racks, fuel oil, etc.) shall be properly labeled and stored in a protected area, away from drains. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from such storage areas and shall include a description of the containment area or enclosure for those materials which are stored outdoors. The permittee may consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances.

(2) Material handling areas. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from material handling operations and areas (e.g., blanket wash, mixing solvents, ~~loading/unloading~~ loading and unloading materials). The permittee shall consider the following measures (or their equivalents): the use of ~~spill/overflow~~ spill and overflow protection; covering fuel areas; and ~~covering/enclosing~~ covering or enclosing areas where the transfer of materials may occur. When applicable, the plan shall address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals, or wastewater.

(3) Fueling areas. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from fueling areas. The permittee shall consider the following measures (or their equivalents): covering the fueling area; using spill and overflow protection; minimizing runon of storm water to the fueling area; using dry cleanup methods; and treating ~~and/or~~ or recycling storm water runoff collected from the fueling areas.

(4) Aboveground storage tank areas. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from aboveground storage tank areas, including the associated piping and valves. The permittee shall consider the following measures (or their equivalents): regular cleanup of these areas; preparation of a spill prevention control and countermeasure program (SPCC) to provide spill and overflow protection; minimizing runon of storm water from adjacent facilities and properties; restricting access to the area; insertion of filters in adjacent catch basins; absorbent booms in unbermed fueling areas; use of dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.

b. Employee training. Employee training shall, at a minimum, address the following areas when applicable to a facility: spent solvent management; spill prevention and control; used oil management; fueling procedures; and general good housekeeping practices.

9VAC25-151-320. Sector Y - Rubber, miscellaneous plastic products, and miscellaneous manufacturing industries.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from rubber and miscellaneous plastic products manufacturing facilities (SIC Major Group 30) and miscellaneous manufacturing industries, except jewelry, silverware, and plated ware (SIC Major Group 39, except 391).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

1. Site description. Summary of potential pollutant sources. Rubber manufacturing facilities shall review the use of zinc at the facility and the possible pathways through which zinc may be discharged in storm water runoff.

2. Storm water controls.

a. Controls for rubber manufacturers. Rubber manufacturing facilities shall describe and implement specific controls to minimize the discharge of zinc in storm water discharges from the facility. Listed below are possible sources of zinc. These shall be reviewed and the accompanying [~~BMPs~~ control measures] (or their equivalents) shall be considered in the SWPPP. Also, some general [~~BMP~~ control measure] options to consider include: using chemicals that are purchased in pre-weighed, sealed polyethylene bags; storing materials that are in use in sealable containers; ensuring an airspace between the container and the cover to minimize "puffing" losses when the container is opened; and using automatic dispensing and weighing equipment.

(1) ~~Inadequate housekeeping~~ Zinc bags. All permittees shall review the handling and storage of zinc bags at their facilities [~~and consider the following BMP~~. Following are some control measure] options: employee training regarding the ~~handling/storage~~ handling and storage of zinc bags; indoor storage of zinc bags; cleanup of zinc spills without washing the zinc into the storm drain; and the use of 2,500-pound sacks of zinc rather than 50- to 100-pound sacks.

(2) Dumpsters. The [~~following BMPs shall be considered to reduce~~ permittee shall minimize] discharges of zinc from dumpsters [. Following are some control measure options]: [~~providing~~ provide] a cover for the dumpster; move the dumpster to an indoor location; or provide a lining for the dumpster.

(3) ~~Malfunctioning dust~~ Dust collectors or baghouses. Permittees shall [~~review~~ minimize contributions of zinc to stormwater from] dust ~~collectors/baghouses~~ collectors and baghouses [~~as possible sources in of zinc in storm water runoff~~]. Improperly operating dust ~~collectors/baghouses~~ collectors and baghouses shall be replaced or repaired as appropriate.

(4) Grinding operations. Permittees shall [~~review dust generation from rubber grinding operations at their facility and, as appropriate, install~~ minimize contamination of stormwater as a result of dust generation from rubber grinding operations. One control measure option is to install] a dust collection system.

(5) Zinc stearate coating operations. Permittees shall [~~include in the SWPPP appropriate measures to prevent or clean up~~ minimize the potential for stormwater contamination from] ~~drips/spills~~ drips and spills of zinc stearate slurry that may be released to the storm drain. [~~Alternate~~ One control measure option is to use alternative] compounds to zinc stearate [~~shall also be considered~~].

b. Controls for plastic products manufacturers. Plastic products manufacturing facilities shall describe and implement specific controls to minimize the discharge of plastic resin pellets in stormwater discharges from the facility. The following [~~BMPs~~ control measures] (or their equivalents) shall be considered in the SWPPP: minimizing spills; cleaning up of spills promptly and thoroughly; sweeping thoroughly; pellet capturing; employee education; and disposal precautions.

C. Benchmark monitoring and reporting requirements. Rubber product manufacturing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 320.

Table 320~~.~~
Sector Y – Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Tires and Inner Tubes; Rubber Footwear; Gaskets, Packing and Sealing Devices; Rubber Hose and Belting; and Fabricated Rubber Products, Not Elsewhere Classified (SIC 3011-3069).	
Total Recoverable Zinc	120 µg/L

9VAC25-151-330. Sector Z - Leather tanning and finishing.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from leather tanning, currying and finishing (commonly identified by SIC Code 3111).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: processing and storage areas of the beamhouse, tanyard, retan-wet finishing and dry finishing operations~~; and haul roads, access roads and rail spurs~~.

b. Summary of potential pollutant sources. A description of potential pollutant sources including (as appropriate): temporary or permanent storage of fresh and brine cured hides; ~~chemical drums, bags, containers and aboveground tanks;~~ leather dust, scraps, trimmings and shavings; ~~spent solvents;~~ and extraneous hide substances and hair~~; empty chemical containers and bags; floor sweepings/washings; refuse, waste piles and sludge; and significant dust/particulate generating processes (e.g., buffing)~~.

2. Storm water controls.

a. Good housekeeping.

(1) Storage areas for raw, semiprocessed, or finished tannery by-products. ~~Pallets/bales~~ Pallets and bales of raw, semiprocessed or finished tannery by-products (e.g., splits, trimmings, shavings, etc.) shall be stored indoors or protected by polyethylene wrapping, tarpaulins, roofed storage area or other suitable means. Materials shall be placed on an impermeable surface, the area shall be enclosed or bermed, or other equivalent measures shall be employed to prevent ~~runon/runoff~~ runon or runoff of storm water.

(2) Material storage areas. Storage units of all materials should be labeled (e.g., specific chemicals, hazardous materials, spent solvents, waste materials). The permittee shall describe and implement measures that prevent or minimize contact with storm water.

(3) Buffing and shaving areas. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff with leather dust from ~~buffing/shaving~~ buffing and shaving areas. The permittee may consider dust collection enclosures, preventive ~~inspection/maintenance~~ inspection and maintenance programs or other appropriate preventive measures.

(4) Receiving, unloading, and storage areas. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from receiving, unloading, and storage areas. The following measures (or their equivalents) shall be considered for exposed receiving, unloading and storage areas: hides and chemical supplies protected by a suitable cover; diversion of drainage to the process sewer; and

grade ~~berming/curbing~~ berming or curbing area to prevent runoff of storm water.

(5) Outdoor storage of contaminated equipment. The permittee shall describe and implement measures that prevent or minimize contact of storm water with contaminated equipment. The following measures (or their equivalents) shall be considered: equipment protected by suitable cover; diversion of drainage to the process sewer; thorough cleaning prior to storage.

(6) Waste management. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from waste storage areas. The permittee shall consider the following measures (or their equivalents): ~~inspection/maintenance~~ inspection and maintenance programs for leaking containers or spills; covering dumpsters; moving waste management activities indoors; covering waste piles with temporary covering material such as tarpaulins or polyethylene; and minimizing storm water runoff by enclosing the area or building berms around the area.

C. Benchmark monitoring and reporting requirements. Leather tanning and finishing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 330.

Table 330~~.~~
Sector Z – Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Leather Tanning and Finishing (SIC 3111)	
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L

9VAC25-151-340. Sector AA - Fabricated metal products.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from the fabricated metals industry listed below, except for electrical related industries: fabricated metal products, except machinery and transportation equipment (SIC Code 34); and jewelry, silverware, and plated ware (SIC Code 391).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site Map. The site map shall identify where any of the following may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: raw metal storage areas; finished metal storage areas; scrap disposal collection sites; equipment storage areas; retention and detention basins; ~~temporary/permanent~~ temporary or permanent diversion dikes or berms; right-of-way or perimeter diversion devices; sediment ~~traps/barriers~~ traps or barriers; processing areas including outside painting areas; wood preparation; recycling; and raw material storage.

b. Spills and Leaks. When listing significant ~~spills/leaks~~ spills and leaks, the permittee shall pay attention to the following materials, at a minimum: chromium, toluene, pickle liquor, sulfuric acid, zinc and other water priority chemicals and hazardous chemicals and wastes.

c. Summary of potential pollutant sources. The plan shall include a description of the potential pollutant sources from the following activities: loading and unloading operations for paints, chemicals and raw materials; outdoor storage activities for raw materials, paints, empty containers, corn cob, chemicals, scrap metals; outdoor manufacturing or processing activities such as grinding, cutting, degreasing, buffing, brazing, etc.; and on-site waste disposal practices for spent solvents, sludge, pickling baths, shavings, ingots pieces, refuse and waste piles.

2. Storm water controls.

a. Good housekeeping.

(1) Raw steel handling storage. The permittee shall describe and implement measures ~~controlling~~ for managing or recovering scrap metals, fines, and iron dust, including measures for containing materials within storage handling areas.

(2) Paints and painting equipment. The permittee shall describe and implement measures to prevent or minimize exposure of paint and painting equipment from exposure to storm water.

b. Spill prevention and response procedures. The permittee shall ensure that the necessary equipment to implement a ~~clean up~~ cleanup is available to personnel. The following areas shall be addressed:

(1) Metal fabricating areas. The permittee shall describe and implement measures for maintaining clean, dry, orderly conditions in these areas. Use of dry clean-up techniques shall be considered in the plan.

(2) Storage areas for raw metal. The permittee shall describe and implement measures to keep these areas free of conditions that could cause, or impede appropriate timely response to, spills or leakage of materials. The following measures (or their equivalents) shall be considered: storage areas maintained such that there is easy access in the event of a spill; stored materials labeled to aid in identifying spill contents.

~~(3) Receiving, unloading, and storage areas. The permittee shall describe and implement measures to prevent spills and leaks; plan for quick remedial clean up and instruct employees on clean-up techniques and procedures.~~

~~(4) Storage of equipment. The permittee shall describe and implement measures for preparing equipment for storage and the proper method to store equipment. The~~

~~following measures (or their equivalents) shall be considered: protecting with covers; storing indoors; and cleaning potential pollutants from equipment to be stored outdoors.~~

~~(5)~~ (3) Metal working fluid storage areas. The permittee shall describe and implement measures for storage of metal working fluids.

~~(6)~~ (4) Cleaners and rinse water. The permittee shall describe and implement measures to ~~control/cleanup~~ control and clean up spills of solvents and other liquid cleaners; control sand buildup and disbursement from sand-blasting operations; and prevent exposure of recyclable wastes. Environmentally benign cleaners shall be substituted when possible.

~~(7)~~ (5) Lubricating oil and hydraulic fluid operations. The permittee shall describe and implement measures to minimize the potential for storm water contamination from lubricating oil and hydraulic fluid operations. The permittee shall consider using devices or monitoring equipment or other devices to detect and control ~~leaks/overflows~~ leaks and overflows. The installation of perimeter controls such as dikes, curbs, grass filter strips, or other equivalent measures shall also be considered.

~~(8)~~ (6) Chemical storage areas. The permittee shall describe and implement proper storage methods that prevent storm water contamination and accidental spillage. The plan shall include a program to inspect containers, and identify proper disposal methods.

c. Inspections. Metal fabricators shall at a minimum include the following areas for inspection: raw metal storage areas; finished product storage areas; material and chemical storage areas; recycling areas; loading and unloading areas; equipment storage areas; paint areas; and vehicle fueling and maintenance areas.

d. Comprehensive site compliance evaluation. The site compliance evaluation shall also include inspections of: areas associated with the storage of raw metals; storage of spent solvents and chemicals; outdoor paint areas; and roof drainage. Potential pollutants include chromium, zinc, lubricating oil, solvents, aluminum, oil and grease, methyl ethyl ketone, steel and other related materials.

C. Benchmark monitoring and reporting requirements. Metal fabricating facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 340.

Table 340~~.~~
Sector AA – Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Fabricated Metal Products Except Coating (SIC 3411-3471, 3482-3499, 3911-3915)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Zinc	120 µg/L
Total Recoverable Copper	18 µg/L
Fabricated Metal Coating and Engraving (SIC 3479)	
Total Recoverable Zinc	120 µg/L

9VAC25-151-350. Sector AB - Transportation equipment, industrial, or commercial machinery.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from transportation equipment, industrial or commercial machinery manufacturing facilities (commonly described by SIC Major Group 35 (except SIC Code 357), and SIC Major Group 37 (except SIC Code 373)).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following ~~items~~ item:

~~1.~~ Site description. Site map. The site map shall identify where any of the following may be exposed to ~~precipitation/surface~~ precipitation or surface runoff: vents and stacks from metal processing and similar operations.

~~2. Storm water controls. Nonstorm water discharges. For facilities that discharge wastewater, other than solely domestic wastewater, to the sanitary sewer system, the permittee shall notify the operator of the sanitary sewer and associated treatment works of its discharge. In such cases, a copy of a notification letter shall be attached to the plan. Any specific permit conditions shall be considered in the plan.~~

C. Benchmark monitoring and reporting requirements. Transportation equipment manufacturing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 350.

Table 350
Sector AB – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Transportation equipment manufacturing facilities (SIC 35, except 357, and SIC 37, except 373)	
Total Petroleum Hydrocarbons (TPH)*	15.0 mg/L
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Zinc	120 µg/L
*Total Petroleum Hydrocarbons (TPH) is the sum of individual gasoline range organics and diesel range organics	

(TPH-GRO and TPH-DRO) to be measured by EPA SW 846 Method 8015 for gasoline and diesel range organics, or by EPA SW 846 Methods 8260 Extended and 8270 Extended.

9VAC25-151-370. Sector AD - Nonclassified facilities/storm water discharges designated by the board as requiring permits.

A. Discharges covered under this section. Sector AD is used to provide permit coverage for facilities designated by the board as needing a storm water permit~~, or any discharges of industrial activity that do not meet the description of an industrial activity covered by Sectors A-AC~~ under the provisions of 9VAC25-31-120 A 1 c or under 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation. Therefore, almost any type of storm water discharge could be covered under this sector. Permittees shall be assigned to Sector AD by the ~~director~~ board and may not choose Sector AD as the sector describing the facility's activities.

B. Additional requirements. No additional sector-specific requirements apply to this sector.

C. Benchmark monitoring and reporting requirements. Nonclassified facilities/storm water discharges designated by the board as requiring permits are required to monitor their storm water discharges for the pollutants of concern listed in Table 370.

Table 370~~.~~
Sector AD - Benchmark Monitoring Requirements~~.~~

Pollutants of Concern	Benchmark Concentration
Nonclassified Facilities/Storm Water Discharges Designated By the Board As Requiring Permits	
Total Suspended Solids (TSS)	100 mg/L

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

FORMS (9VAC25-151)

~~Department of Environmental Quality Water Quality Division Permit Application Fee Form (rev. 1/08).~~

~~VPDES General Permit Registration Statement - Industrial Activity Storm Water Discharges, SWGP VAR05 RS (eff. 7/09).~~

~~VPDES General Permit Notice of Termination - Industrial Activity Storm Water Discharges, SWGP VAR05 NOT (eff. 7/09).~~

~~Virginia Pollutant Discharge Elimination System (VPDES) Discharge Monitoring Report (DMR) - Industrial Activity Storm Water Discharges (eff. 7/09).~~

~~VPDES Change of Ownership Agreement Form.~~

Department of Environmental Quality Water Quality Division Permit Application Fee Form (rev. 5/13)

VPDES General Permit for Industrial Activity Storm Water Discharges (VAR05) Registration Statement, SWGP VAR05-RS (eff. 7/14)

VPDES General Permit for Industrial Activity Storm Water Discharges (VAR05) Notice of Termination, SWGP VAR05-NOT (eff. 7/14)

Virginia Pollutant Discharge Elimination System (VPDES) Discharge Monitoring Report (DMR) (eff. 7/14)

Virginia Pollutant Discharge Elimination System Change of Ownership Form (undated)

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-151)

Standard Industrialization Classification (SIC) Manual, 1987, Office of Management and Budget

~~Modified DRO Method for Determining Diesel Range Organics, PUBL-SW-141, September 1995, Wisconsin Department of Natural Resources.~~

Method 8015C, Nonhalogenated Organics Using GC/FID, Revision 3, November 2000, U.S. Government Printing Office

Method 8015C, Nonhalogenated Organics Using GC/FID, Revision 3, February 2007, U.S. Government Printing Office

Method 8260B, Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 2, December 1996, U.S. Government Printing Office

Method 8260C, Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 3, August 2006, U.S. Government Printing Office

Method 8270C, Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 3, December 1996, U.S. Government Printing Office

Method 8270D, Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 4, February 2007, U.S. Government Printing Office

VA.R. Doc. No. R13-3382; Filed December 30, 2013, 10:59 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii)

following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-190. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining (amending 9VAC25-190-10 through 9VAC25-190-70; adding 9VAC25-190-15; repealing 9VAC25-190-65).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

Effective Date: July 1, 2014.

Agency Contact: Elleanore M. Daub, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4032, TTY (804) 698-4021, or email elleanore.daub@deq.virginia.gov.

Summary:

The amendments reissue the existing VPDES general permit, which expires on June 30, 2014. The general permit contains limitations and monitoring requirements for point source discharge of treated wastewaters from nonmetallic mineral mining to surface waters. The general permit regulation is being reissued in order to continue making it available for these facilities to continue to discharge. Changes since publication of the proposed stage of the regulation are found in 9VAC25-190-10, 9VAC25-190-50 D, 9VAC25-190-60 B and C, and 9VAC25-190-70 Part I B, Part II C, and Part II H. The most significant change since the proposed stage of the regulation is the addition of the new special condition that eliminates the need for discharge monitoring reports for process water systems that are designed to operate as a no discharge system except during a 25-year, 24-hour storm event.

9VAC25-190-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation [~~(9VAC25-31-10 et seq.)~~ (9VAC25-31)] unless the context clearly indicates otherwise. Additionally, for the purposes of this chapter:

"Best management practices" or "BMPs" means schedules of activities, practices (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Colocated facility" means an industrial activity other than mineral mining operating on a site where the primary industrial activity is mineral mining. Such an activity must have wastewater characteristics similar to those of the mineral mine and be located within the permitted mining area. The term refers to activities that are commonly found at mining sites such as manufacturing of ready-mix concrete (SIC Code 3273), concrete products (SIC Codes 3271 and 3272), and asphalt paving materials (SIC Code 2951) except asphalt emulsion manufacturing. It does not mean industrial activity that is specifically excluded from this permit.

"Department" or "DEQ" means the Virginia Department of Environmental Quality.

"Industrial activity" means activity associated with mineral mining facilities generally identified by SIC Major Group 14 including active or inactive mining operations that discharge storm water that has come into contact with any overburden, raw material, intermediate products, finished products, by-products or waste products located on the site of such operations. (Inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.) Industrial activity also includes facilities classified under other SIC codes that may be colocated within the mineral mine permit area, unless they are expressly excluded by this general permit.

"Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains (i) owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the Clean Water Act that discharges to surface waters of the state; (ii) designed or used for collecting or conveying storm water; (iii) that is not a combined sewer; and (iv) that is not part of a publicly owned treatment works (POTW).

"Permittee" means the owner of a nonmetallic mineral mine covered under this general permit.

"Process wastewater" means any wastewater used in the slurry transport of mined material, air emissions control, or processing exclusive of mining, and any other water that

becomes commingled with such wastewater in a pit, pond, lagoon, mine, or other facility used for treatment of such wastewater. It includes mine pit dewatering, water used in the process of washing stone, noncontact cooling water, wastewater from ~~vehicle/equipment washing~~ vehicle or equipment degreasing activities, vehicle washing and return water from operations where mined material is dredged and miscellaneous plant cleanup wastewaters.

"Run-off coefficient" means the fraction of total rainfall that will appear at the conveyance as run-off.

"SIC" means the Standard Industrial Classification Code or Industrial Grouping from the U.S. Office of Management and Budget Standard Industrial Classification Manual, 1987 Edition.

"Significant materials" includes, 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 Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.); any chemical the owner is required to report pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 USC § 11001 et seq.); fertilizers; pesticides; and waste products such as ashes, slag and sludge (including pond sediments) that have the potential to be released with storm water discharges.

"Significant spills" includes, but is not limited to, releases of oil or hazardous substances in excess of reportable quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or § 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.) (see 40 CFR 302.4).

"Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance [~~which~~ that] is used for collecting and conveying storm water and [~~which~~ that] is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the mineral mine; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background or both, and must include a margin of safety (MOS) and account for seasonal variations.

["Twenty-five-year, 24-hour storm event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years as established by the National Weather Service or appropriate regional or state rainfall probability information.]

~~"Vehicle/equipment washing"~~ "Vehicle or equipment degreasing" means the washing ~~with detergents~~ or steam cleaning of engines of a vehicle or piece of equipment and other drive components in which the purpose is to clean and degrease and clean petroleum products from the equipment for maintenance ~~and other purposes~~. ~~The application of water without detergent to a~~ Washing the vehicle exterior for the purpose of removing sediment is ~~excluded~~ not considered vehicle or equipment degreasing.

9VAC25-190-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted herein and incorporated by reference that regulation shall be as it exists and has been published as of July 1, 2013.

9VAC25-190-20. Purpose; delegation of authority; effective date of permit.

A. The purpose of this chapter is to establish General Permit Number VAG84 to regulate wastewater discharge from nonmetallic mineral mines as follows:

1. For active and inactive nonmetallic mineral mining facilities in SIC Major Group 14, this general permit covers discharges composed entirely of storm water associated with industrial activity.

2. This general permit authorizes the discharge of process wastewater as well as storm water associated with industrial activity from active and inactive mineral mines classified under ~~Standard Industrial Classification~~ SIC

Codes 1411, 1422, 1423, 1429, 1442, 1455, 1459 excluding bentonite and magnesite mines, 1475, and 1499 excluding gypsum, graphite, asbestos, diatomite, jade, novaculite, wollastonite, tripoli or asphaltic mineral mines.

3. Coal mining, metal mining, and oil and gas extraction are not covered by this general permit.

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

C. This general permit will become effective on July 1, ~~2009~~ 2014, and will expire ~~five years after the effective date~~ June 30, 2019. For any covered owner, this general permit is effective upon compliance with all the provisions of 9VAC25-190-50 and the receipt of this general permit.

9VAC25-190-50. Authorization to discharge.

A. Any owner governed by this general permit is authorized ~~by this~~ to discharge process wastewater and storm water as described in 9VAC25-190-20 A 1 and 2 to surface waters of the Commonwealth of Virginia ~~provided that the owner files a registration statement as described in 9VAC25-190-60 that is accepted by the board, files the required permit fee, complies with the effluent limitations and other requirements of 9VAC25-190-70, and~~ provided that:

1. The owner submits a registration statement in accordance with 9VAC25-190-60, and that registration statement is accepted by the board;

2. The owner submits the required permit fee;

3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-190-70;

4. The owner has a mineral mining permit for the operation to be covered by this general permit that has been approved by the Virginia Department of Mines, Minerals and Energy, Division of Mineral Mining (or an associated waivered program, locality, or state agency) under provisions and requirements of Title 45.1 of the Code of Virginia. Mineral mines located in bordering states with discharges in Virginia shall provide documentation that they have a mining permit from the appropriate state authority. Mineral mines owned and operated by governmental bodies not subject to the provisions and requirements of Title 45.1 of the Code of Virginia are exempt from this requirement; and

5. The board has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

B. The board will notify an owner that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The owner ~~shall not have been~~ is required to obtain an individual permit ~~as may be required in the VPDES permit regulation (9VAC25-31).~~ in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;

2. The owner ~~shall not be authorized by this general permit~~ is proposing to discharge to state waters specifically named in other board regulations ~~or policies which~~ that prohibit such discharges~~.~~;

~~3. The owner shall have a mineral mining permit for the operation to be covered by this general permit which has been approved by the Virginia Department of Mines, Minerals and Energy, Division of Mineral Mining (or associated waivered program, locality or state agency) under provisions and requirements of Title 45.1 of the Code of Virginia. Mineral mines located in bordering states with discharges in Virginia shall provide documentation that they have a mining permit from the appropriate state authority. Mineral mines owned and operated by governmental bodies not subject to the provisions and requirements of Title 45.1 of the Code of Virginia are exempt from this requirement.~~

~~4. The owner shall implement pollution control measures necessary to comply with the conditions and limitations of this general permit including, but not limited to, the installation, operation and maintenance of sediment control structures.~~

~~5. The owner shall not be authorized by this general permit to discharge to waters for which a "total maximum daily load" (TMDL) allocation has been established by the board and approved by EPA prior to the term of this permit, unless the owner develops, implements and maintains a storm water pollution prevention plan (SWPPP) that is consistent with the assumptions and requirements of the TMDL. This only applies where the facility is a source of the TMDL pollutant of concern.~~

3. The discharge violates or would violate the antidegradation policy in the water quality standards at 9VAC25-260-30; or

4. The discharge is not consistent with the assumptions and requirements of an approved TMDL.

~~B. The board shall deny coverage under this general permit to any owner with discharge or storm water discharge related activities which the board determines cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge related activities that are likely to adversely affect aquatic life.~~

C. ~~Receipt of~~ Compliance with this general permit constitutes compliance with the federal Clean Water Act and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

D. Continuation of permit coverage.

1. Any owner that was authorized to discharge under the nonmetallic mineral mining general permit issued in 2009 and that submits a complete registration statement [~~on or~~] before July 1, 2014, is authorized to continue to discharge under the terms of the 2009 general permit until such time as the board either:

a. Issues coverage to the owner under this general permit; or

b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon coverage under the 2009 general permit that has been continued;

b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by coverage under the 2009 continued general permit or be subject to enforcement action for discharging without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-190-60. Registration statement.

~~The owner shall file a complete general VPDES permit registration statement, which will serve as a notice of intent for coverage under the general permit for nonmetallic mineral mining. Any owner proposing a new discharge shall file the registration statement at least 30 days prior to the date planned for operation of the mineral mine. Any owner of an existing mineral mine covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing mineral mine covered by the general VPDES permit for nonmetallic mineral mining that became effective on June 30, 1999, who wishes to remain covered by this general permit shall file a new registration statement in accordance with the general permit requirements in order to avoid a lapse in coverage. Any owner of an existing mineral mine not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file the registration statement. The required registration statement shall contain the following information:~~ A. The owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for nonmetallic mineral mining facilities.

1. New facilities. Any owner proposing a discharge shall submit a complete registration statement at least 45 days prior to the date planned for commencement of the discharge.

2. Existing facilities.

a. Any owner covered by an individual VPDES permit that is proposing to be covered by this general permit shall submit a complete registration statement at least 210 days prior to the expiration date of the individual VPDES permit.

b. Any owner that was authorized to discharge under the VPDES general permit for nonmetallic mineral mining that became effective on July 1, 2009, and that intends to continue coverage under this general permit shall submit a complete registration statement to the board on or before April 1, 2014.

B. Late registration statements. Registration statements for existing facilities covered under subdivision A 2 b of this section will be accepted after [~~July 1~~ June 30], 2014, but authorization to discharge will not be retroactive. Owners described in subdivision A 2 b of this section that submit registration statements after April 1, 2014, are authorized to discharge under the provisions of 9VAC25-190-50 D if a complete registration statement is submitted [~~on or~~] before July 1, 2014.

C. The required registration statement shall contain the following information:

1. Facility ~~name,~~ owner and operator or other contact name, ~~mailing~~ address, email address, and telephone number;

2. ~~Project~~ Facility name, county, location, latitude, and longitude;

3. Description of mining activity;

4. Primary and secondary SIC codes;

5. Discharge information including:

a. A list of outfalls identified by outfall numbers;

b. Characterization of the type of each listed outfall's discharge as either process wastewater, storm water, or process wastewater commingled with storm water;

c. Characterization of the source of each listed outfall's discharge as either mine pit dewatering, storm water associated with industrial activity (see definition in ~~9VAC25-115-10)~~ 9VAC25-190-10), storm water not associated with industrial activity, ground water infiltration, wastewater from ~~vehicle and/or equipment washing activities~~ vehicle or equipment degreasing activities, vehicle washing and return water from operations where mined material is dredged, mined material washing, noncontact cooling water, miscellaneous plant cleanup wastewater, colocated facility discharges (identify the colocated facility), other

discharges not listed here (describe), or any combination of the above;

d. The receiving stream, including wetlands for each outfall listed;

e. The latitude and longitude for each outfall listed; and

f. Indicate which storm water outfalls will be representative outfalls that require a single discharge monitoring report (DMR). For storm water outfalls that are to be represented by other outfall discharges, provide a description of the activities associated with those outfalls and explain why they are substantially the same as the representative outfall to be sampled;

6. Indicate if the facility has a current VPDES permit and the permit number if it does;

7. Description of wastewater treatment or reuse/recycle systems or both;

8. List of any chemicals added to water that could be discharged;

9. List of colocated facilities;

10. Indicate if the facility is a hazardous waste treatment, storage or disposal facility;

11. Schematic drawing showing water flow from source to water-using industrial operations to waste treatment and disposal, and disposal of any solids removed from wastewater;

12. Aerial photo or scale map that clearly shows the property boundaries, plant site, drainage areas associated with each outfall, locations of all mine pit dewatering, existing, significant sources of materials exposed to precipitation, storm water or process wastewater outfalls and the receiving streams;

13. Evidence that the operation to be covered by this general permit has a mining permit that has been approved by the Virginia Department of Mines, Minerals and Energy, Division of Mineral Mining (or associated waivered program) under the provisions and requirements of Title 45.1 of the Code of Virginia (or appropriate bordering state authorization). Mineral mines owned and operated by governmental bodies not subject to the provisions and requirements of Title 45.1 of the Code of Virginia are exempt from this requirement;

14. Mining permit number;

15. ~~Indicate if the facility discharge storm water into a Municipal Separate Storm Sewer System (MS4). If yes, state the name of the MS4 operator.~~ Whether the permitted outfall will discharge to a municipal separate storm sewer system (MS4). If so, provide the name of the MS4 owner. The owner of the facility shall notify the MS4 owner in writing of the existence of the discharge within 30 days of coverage under the general permit and shall copy the DEQ regional office with the notification. The notification shall include the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number [;]

16. Indicate if there are vehicle or equipment degreasing activities performed on site. If yes, indicate if there is any process wastewater generated from these activities [~~.~~ ;]

~~16. The owner shall not be authorized by this general permit unless the discharge complies with Virginia's antidegradation policy in the Water Quality Standards at 9VAC25-260-30. The department will notify the applicant if authorization to discharge under this general permit will not comply with the antidegradation requirements set forth in 9VAC25-260-30.~~

17. Monitoring data to determine compliance with 9VAC25-260-310 m (Chickahominy special standards) as per Part I B 14 of this permit [~~.~~ ;]

[18. Provide certification that the process water system is designed to operate as "no discharge" if special condition Part I B 17 is to apply to the facility. Identify the emergency outfall number; and]

~~17.~~ [~~18.~~ 19.] 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."

D. The registration statement shall be signed in accordance with 9VAC25-31-110.

E. Where to submit. The registration statement may be delivered to the department by either postal or electronic mail and shall be submitted to the DEQ regional office serving the area where the industrial facility is located.

9VAC25-190-65. ~~Termination of permit coverage.~~ (Repealed.)

~~A. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination may be filed after one or more of the following conditions have been met:~~

~~1. Operations have ceased at the facility and there are no longer discharges of storm water associated with industrial activity from the facility;~~

~~2. A new owner has assumed responsibility for the facility (NOTE: A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement form has been submitted); or~~

~~3. All storm water discharges associated with industrial activity have been covered by an individual VPDES permit.~~

~~B. The notice of termination shall contain the following information:~~

~~1. Owner's name, mailing address and telephone number;~~

~~2. Facility name and location;~~

~~3. VPDES industrial storm water general permit number;~~

~~4. The basis for submitting the notice of termination, including:~~

~~a. A statement indicating that a new owner has assumed responsibility for the facility;~~

~~b. A statement indicating that operations have ceased at the facility and there are no longer discharges of storm water associated with industrial activity from the facility;~~

~~c. A statement indicating that all storm water discharges associated with industrial activity have been covered by an individual VPDES permit; or~~

~~d. A statement indicating that termination of coverage is being requested for another reason (state the reason); and~~

~~5. The following certification: "I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual permit, or that I am no longer the owner of the industrial activity, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity in accordance with the general permit, and that discharging pollutants in storm water associated with industrial activity to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."~~

~~C. The notice of termination shall be signed in accordance with 9VAC25-190-70, Part III K.~~

~~D. The notice of termination shall be submitted to the DEQ regional office serving the area where the industrial facility is located.~~

9VAC25-190-70. General permit.

Any owner whose registration statement is accepted by the board will receive coverage under the following permit and shall comply with the requirements in it and be subject to all requirements of the VPDES permit regulation, 9VAC25-31.

General Permit No.: VAG84
Effective date: ~~July 1, 2009~~ July 1, 2014
Expiration date: ~~June 30, 2014~~ June 30, 2019

GENERAL PERMIT FOR NONMETALLIC MINERAL MINING

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, owners of nonmetallic mineral mines are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations ~~or policies which~~ that prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations ~~and~~, Monitoring Requirements, and Special Conditions, Part II - Storm Water Management, and Part III - Conditions Applicable to All VPDES Permits, as set forth herein.

Part I
Effluent Limitations [~~and,~~] Monitoring Requirements [, and Special Conditions]

A. Effluent limitations and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge process wastewater and commingled storm water associated with industrial activity from outfall(s).

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Monthly Average	Daily Minimum	Daily Maximum	Frequency~~(3)~~ (1)	Sample Type
Flow (MGD)	NL	NA	NL	1/3 Months	Estimate
Total Suspended Solids (mg/l)	30	NA	60	1/3 Months	Grab
pH (standard units)(2)	NA	6.0~~(1)~~	9.0~~(1)~~	1/3 Months	Grab

Total Petroleum Hydrocarbons (mg/l)~~(2)~~ ~~(3)~~	NA	NA	NL	1/3 Months	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

~~(1) Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH, pH effluent limits may be adjusted within the 6 to 9 S.U. range.~~

~~(2) Monitoring for Total Petroleum Hydrocarbons is only required for outfalls from vehicle/equipment washing facilities or from discharges that pass through oil/water separators.~~

~~(3) Discharge Monitoring Reports (DMRs) of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January.~~

(1) Discharge Monitoring Reports (DMRs) of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January.

(2) Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH, those standards shall be the minimum and maximum pH effluent limits.

(3) Monitoring for total petroleum hydrocarbons is only required for outfalls that contain process wastewater from vehicle or equipment degreasing activities. Total petroleum hydrocarbons shall be analyzed using EPA SW-846 Method 8015 B (1996), 8015C (2000), 8015C (2007), 8015 D (2003) for diesel range organics, or EPA 40 CFR 136.

~~2. There shall be no discharge of floating solids or visible foam in other than trace amounts.~~

~~3.~~ 2. During the period beginning with the permittee's coverage under the general permit and lasting until the permit's expiration date, the permittee is authorized to discharge storm water associated with industrial activity [~~which~~ that] does not combine with other wastewaters prior to discharge from outfall(s).

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Monthly Average	Daily Minimum	Daily Maximum	Frequency~~(2)~~ (1)	Sample Type
Flow (MG)	NA	NA	NL	1/Year	Estimate~~(1)~~(2)
Total Suspended Solids (mg/l)	NA	NA	NL(3)	1/Year	Grab
pH (standard units)	NA	NL	NL	1/Year	Grab

NL = No Limitation, monitoring required

NA = Not applicable

(1) Discharge Monitoring Reports (DMRs) of yearly monitoring (January 1 to December 31) shall be submitted to the DEQ regional office no later than the 10th day of January.

~~(1)~~(2) Estimate of the total volume of the discharge during the storm event.

~~(2) Discharge Monitoring Reports (DMRs) of yearly monitoring (January 1 to December 31) shall be submitted to the DEQ regional office no later than the 10th day of January.~~

(3) Refer to Part I B ~~13~~ 12 should the TSS evaluation monitoring exceed 100 mg/l daily maximum.

~~4. All samples taken to meet the monitoring requirements specified above in Part I A 3 shall be collected on a storm event that results in an actual discharge (defined as a "measurable storm event") that follows the preceding measurable storm event by at least 72 hours (three days). The 72 hour (three day) storm interval does not apply if the permittee is able to document that less than a 72 hour (three day) interval is representative for local storm events during the sampling period. The grab sample shall be taken during the first 30 minutes of the storm water discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the permittee shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. In the case of snowmelt or a discharge from a storm water~~

~~settling lagoon, a representative sample shall be taken at the time the discharge occurs.~~

B. Special conditions.

1. Vehicles and equipment utilized during the industrial activity on a site must be operated and maintained in such a manner as to prevent the potential or actual point source pollution of the surface or groundwaters of the state. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products, shall not be disposed of by discharging on the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or groundwaters of the state and in accordance with the applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up ~~to the maximum extent practicable~~ and disposed of in a manner so as not to allow their entry into the surface or groundwaters of the state.

2. No sewage shall be discharged from this mineral mining activity except under the provisions of another VPDES permit specifically issued for that purpose.

3. There shall be no chemicals added to the discharge, other than those listed on the owner's approved registration statement.

4. The permittee shall submit a new registration statement if the mining permit approved by the Division of Mineral Mining (or associated waivered program, or bordering state mine authority) is modified or reissued in any way that would affect the outfall location or the characteristics of a discharge covered by this general permit. Government owned and operated mines without mining permits shall submit the registration statement whenever outfall location or characteristics are altered. The new registration statement shall be filed within 30 days of the outfall relocation or change in the characteristics of the discharge.

5. The permittee shall notify the department as soon as they know or have reason to believe:

a. That any activity has occurred or will occur [~~which~~ that] would result in the discharge, on a routine or frequent basis, of any toxic pollutant [~~which~~ that] is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

(1) One hundred micrograms per liter (100 µg/l);

(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board.

b. That any activity has occurred or will occur [~~which~~ that] would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant [~~which~~ that] is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

(1) Five hundred micrograms per liter (500 µg/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board.

~~6. This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation or prohibition for a pollutant which is promulgated or approved under § 307(a)(2) of the federal Clean Water Act, if the effluent standard or limitation so issued or approved:~~

~~a. Is more stringent than any effluent limitation on the pollutant already in the permit; or~~

~~b. Controls any pollutant not limited in the permit.~~

~~7.~~ 6. Except as expressly authorized by this permit, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.

~~8.~~ 7. There shall be no discharge of process wastewater pollutants from colocated asphalt paving materials operations. For the purposes of this special condition, process wastewater pollutants are any pollutants present in water used in asphalt paving materials manufacturing [~~which~~ that] come into direct contact with any raw materials, intermediate product, by-product or product related to the asphalt paving materials manufacturing process.

~~9.~~ 8. Process water may be used on site for the purpose of dust suppression. Dust suppression shall be carried out as a best management practice but not as a wastewater disposal method provided that ponding or direct ~~runoff~~ run-off from the site does not occur during or immediately following its application.

~~10.~~ 9. Process water from mine dewatering may be provided to local property owners for beneficial agricultural use.

~~11. Vehicle/equipment washing shall include washing with detergents or steam cleaning of engines and other drive components in which the purpose is to clean and decrease the equipment for maintenance and other purposes. The application of water without detergent to a vehicle exterior for the purpose of removing is excluded.~~

10. There shall be no discharge of floating solids or visible foam in other than trace amounts [from process water discharges]. There shall be no solids deposition or oil

sheen from petroleum products [~~in~~ discharged to] surface water as a result of the industrial activity [~~in the vicinity of the outfall~~].

~~12.~~ 11. The permittee shall report at least two significant digits for a given parameter. Regardless of the rounding convention used (i.e., [~~5~~ five] always rounding up or to the nearest even number) by the permittee, the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

~~13.~~ 12. Storm water monitoring total suspended solids (TSS) Evaluation. Permittees that monitor storm water associated with industrial activity [~~which~~ that] does not combine with other wastewaters prior to discharge shall review the results of the TSS monitoring required by Part I A ~~3~~ 2 to determine if changes to the storm water pollution prevention plan (SWPPP) may be necessary. If the TSS monitoring results are greater than the evaluation value of 100 mg/l, then the permittee shall perform the inspection and maintain documentation as described in Part II H 3 d for that outfall. Any deficiencies noted during the inspection shall be corrected in a timely manner.

~~14.~~ 13. Discharges to waters subject to TMDL waste load allocations. ~~Facilities~~ Owners of facilities that are a source of the specified pollutant of concern to waters for which a total maximum daily load (TMDL) waste load allocation has been ~~established by the board and~~ approved ~~by EPA~~ prior to the term of this permit shall incorporate measures and controls into the SWPPP required by Part II that are consistent with the assumptions and requirements of the TMDL. The department will provide written notification to the owner that a facility is subject to the TMDL requirements. If the TMDL establishes a numeric wasteload allocation that applies to discharges from the facility, the owner shall perform any required monitoring in accordance with Part I A and implement measures necessary to meet that allocation.

14. Discharges in the entire Chickahominy watershed above Walker's Dam (excluding discharges consisting solely of storm water) shall also meet the effluent limitations in 9VAC25-260-310 m (special standards and requirements) of the January 6, 2011, water quality standards regulation. These limitations are BOD_5 (6.0 mg/l average and 8.0 mg/l maximum), total suspended solids (TSS) (5.0 mg/l average and 7.5 mg/l maximum), total phosphorus (0.10 mg/l average), ammonia as nitrogen (2.0 mg/l average), and settleable solids (0.1 mg/l average). These parameters, except for TSS, shall be monitored once per calendar year and the data submitted with the next registration statement (for the 2019 reissuance). TSS data shall be monitored and submitted with the Part I A DMR.

15. ~~There shall be no discharge or storm water discharge related activities that cause or contribute to a violation of water quality standards or that adversely affect aquatic life.~~ The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards.

16. Inactive and unstaffed facilities (including temporarily inactive sites).

a. A waiver of the process and storm water monitoring and routine inspections may be exercised by the board at a facility that is both inactive and unstaffed as long as the facility remains inactive and unstaffed. Such a facility is required to conduct an annual comprehensive site inspection in accordance with the requirements in Part II H 4. No DMR reports will be required to be submitted when a facility is approved as inactive and unstaffed.

b. An inactive and unstaffed sites waiver request shall be submitted to the board for approval and shall include the name of the facility; the facility's VPDES general permit registration number; a contact person, phone number, and email address (if available); the reason for the request; and the date the facility became or will become inactive and unstaffed. The waiver request shall be signed and certified in accordance with Part III K. If this waiver is granted, a copy of the request and the board's written approval of the waiver shall be maintained with the SWPPP.

c. To reactivate the site the permittee shall notify the department within 30 days [or an alternate timeframe if written approval is received in advance from the board], and all process and storm water monitoring and routine inspections shall be resumed immediately. This notification must be submitted to the department, signed in accordance with Part III K, and retained on site at the facility covered by this permit in accordance with Part III B.

d. The board retains the authority to revoke this waiver when it is determined that the discharge causes, has a reasonable potential to cause, or contributes to a water quality standards violation.

[17. Process water systems designed to operate as "no discharge" shall have no discharge of wastewater or pollutants, except in storm events greater than a 25-year, 24-hour storm event. In the event of such a discharge, the permittee shall report an unusual or extraordinary discharge per Part III H of this permit. No sampling or DMR is required for these discharges as they are considered to be discharging in emergency discharge conditions. These discharges shall not contravene the Water Quality Standards (9VAC25-260), as adopted and amended by the board, or any provision of the State Water Control Law. Any other discharge from this type of system is prohibited, and shall be reported as an unauthorized discharge per Part III G of this permit.]

[~~17.~~ 18.] Notice of termination.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer discharges of process wastewater or storm water associated with the industrial activity;

(2) A new owner has assumed responsibility for the facility (NOTE: A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement Form has been submitted);

(3) All discharges associated with this facility have been covered by an individual VPDES permit or an alternative VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES general permit registration number for the facility; and

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility, a closure plan has been implemented according to the O & M Manual, and there are no longer discharges from the facility;

(c) A statement indicating that all discharges have been covered by an individual VPDES permit; or

(d) A statement indicating that termination of coverage is being requested for another reason (state the reason).

c. The following certification:

"I certify under penalty of law that all wastewater and storm water discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge nonmetallic mineral mining wastewater or storm water in accordance with the general permit, and that discharging pollutants to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

d. The notice of termination shall be submitted to the department and signed in accordance with Part III K.

Part II
Storm Water Management

~~A. Recording of results.~~

~~1. Additional information. In addition to any reporting requirements of Part III, for each measurement or sample taken pursuant to the storm event monitoring requirements of this permit, the permittee shall record and report with the discharge monitoring report the following information:~~

~~a. The date and duration (in hours) of the storm events sampled; and~~

~~b. The rainfall measurements or estimates (in inches) of the storm event which generated the sampled discharge.~~

~~2. Additional reporting. In addition to filing copies of discharge monitoring reports in accordance with Part III, permittees with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) or a municipal system designated by the board must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system at the same time.~~

A. Monitoring instructions.

1. Collection and analysis of samples. Sampling requirements shall be assessed on an outfall-by-outfall basis. Samples shall be collected and analyzed in accordance with the requirements of Part III A.

2. When and how to sample.

a. In the case of snowmelt or a discharge from a storm water management structure (a series of settling lagoons), a representative sample shall be taken at the time the discharge occurs.

b. For all other types of storm water discharges, a minimum of one grab sample shall be taken resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event"), providing the interval from the preceding measurable storm event is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document with the discharge monitoring report (DMR) that less than a 72-hour interval is representative for local storm events during the sampling period. The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first three hours of discharge provided that the permittee explains with the DMR why a grab sample during the first 30 minutes was impracticable.

B. Representative discharge. When a facility has two or more exclusively storm water outfalls that the permittee reasonably believes discharge substantially identical effluents, based on a consideration of similarity of industrial activity, significant materials, and management practices and activities within the area drained by the outfalls, then the permittee may submit information with the registration statement substantiating the request for only one DMR to be issued for the outfall to be sampled that represents one or more substantially identical outfalls. Also the permittee ~~may~~ must list on the ~~discharge monitoring report~~ DMR of the outfall to be sampled all outfall locations that are represented by the discharge.

C. Sampling ~~waiver~~ waivers. ~~1. Adverse conditions. When a permittee is unable to collect samples within a specified sampling period due to adverse climatic conditions, the permittee shall collect a substitute sample from a separate qualifying event in the next period and submit these data along with the data for the routine sampling in that period.~~ When a permittee is unable to conduct storm water monitoring within the specified sampling period due to no measurable storm event or adverse weather conditions, documentation shall be submitted explaining the permittee's inability to conduct the storm water monitoring. The documentation must include [~~at least four~~ the] dates and [~~the~~] times [that] the outfalls were viewed and sampling was attempted. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) ~~or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.)~~. Acceptable documentation includes but is not limited to National Climatic Data Center [~~Weather~~ weather] station data, local weather station data, facility rainfall logs, and other appropriate supporting data. All documentation shall also be maintained with the SWPPP.

~~2. Inactive and unstaffed facilities. When a permittee is unable to conduct the storm water sampling required at an inactive and unstaffed facility, the permittee may exercise a waiver of the monitoring requirements as long as the facility remains inactive and unstaffed. The permittee must submit to the department, in lieu of monitoring data, a certification statement on the discharge monitoring report stating that the facility is inactive and unstaffed so that collecting a sample during a qualifying event is not possible. The requirement for a quarterly visual assessment does not apply at a facility that is inactive and unstaffed, as long as there are no industrial materials or activities exposed to stormwater.~~

D. Storm water pollution prevention plans (SWPPP). ~~A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.~~ An SWPPP shall be developed and implemented for the facility. The plan shall include best management practices (BMPs) that are reasonable, economically practicable, and appropriate in light of current industry practices. The BMPs shall be selected, designed, installed, implemented, and maintained in accordance with good engineering practices to eliminate or reduce the pollutants in all storm water discharges from the facility. The SWPPP shall also include all control measures necessary for the storm water discharges to meet applicable water quality standards.

The ~~storm water pollution prevention plan~~ [~~(~~] SWPPP [~~)~~] requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents such as an erosion and sediment control plan, a mine drainage plan as required by the Virginia Division of Mineral Mining, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the federal Clean Water Act or ~~best management practices (BMP)~~ BMP programs otherwise required for the facility provided that the incorporated plan meets or exceeds the plan requirements of Part II H (contents of plan). ~~If an erosion and sediment control plan is being incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate plan approving authority authorized under the Virginia Erosion and Sediment Control Regulations, 4VAC50-30.~~ All plans incorporated by reference into the ~~storm water pollution prevention plan~~ SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements ~~of the storm water pollution prevention plan~~ of Part II H, the permittee must develop the missing ~~plan~~ SWPPP elements and include them in the required ~~storm water pollution prevention~~ plan.

E. Deadlines for plan preparation and compliance.

~~1. Existing facilities and new facilities that begin operation on or before July 1, 2009, shall prepare and implement a plan incorporating the storm water pollution prevention plan requirements of this permit, if not included in an existing plan, as expeditiously as practicable, but not later than July 1, 2010. Existing storm water pollution prevention plans being implemented as of July 1, 2009 shall continue to be implemented until a new plan is developed and implemented.~~

~~2. Facilities that begin operation after July 1, 2009, shall prepare and implement a plan incorporating the requirements of this permit prior to submitting the registration statement.~~

1. Owners of existing facilities that were covered under the 2009 Nonmetallic Mineral Mining General Permit that are continuing coverage under this general permit shall update and implement any revisions to the SWPPP within 90 days of the board granting coverage under this permit.

2. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit that elect to be covered under this general permit shall prepare and implement the SWPPP prior to submitting the registration statement.

3. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility shall update and implement any revisions to the SWPPP within 60 days of ownership change.

4. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.

F. Signature and plan review.

1. The ~~plan~~ SWPPP shall be signed in accordance with Part III K (signatory requirements), and be retained ~~on site~~ on site at the facility covered by this permit in accordance with Part III B (records) of this permit. When there are no on-site buildings or offices in which to store the plan, it shall be kept at the nearest company office.

2. The permittee shall make the ~~storm water pollution prevention plan~~ SWPPP, annual site compliance inspection report, or other information available to the department upon request.

3. The director, or an authorized representative, may notify the permittee at any time that the ~~plan does~~ SWPPP, BMPs, or other components of the facility's storm water program do not meet one or more of the ~~minimum~~ requirements of this part. Such notification shall identify ~~those~~ specific provisions of the permit ~~which~~ that are not being met ~~by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this part~~ and may include required modifications to the storm water program, additional monitoring requirements, and special reporting requirements. Within 60 days of such notification from the director, or as otherwise provided by the director, or an authorized representative, the permittee shall make the required changes to the plan and shall submit to the department a written certification that the requested changes have been made.

G. ~~Keeping plans current. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the state or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part II H 2 (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. New owners shall review the existing plan and make appropriate changes. Amendments to the plan may be reviewed by the department in the same manner as described in Part II F.~~ Maintaining an updated SWPPP. The permittee shall review and amend the SWPPP as appropriate whenever:

1. There is construction or a change in design, operation, or maintenance that has a significant effect on the discharge or the potential for the discharge of pollutants to surface waters;

2. Routine inspections or compliance evaluations determine that there are deficiencies in the BMPs;

3. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;

4. There is a spill, leak, or other release at the facility; or

5. There is an unauthorized discharge from the facility.

SWPPP modifications shall be made within 30 calendar days after discovery, observation, or an event requiring an SWPPP modification. Implementation of new or modified BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II H 3 b (preventative maintenance) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a BMP or implement additional BMPs shall be documented in the SWPPP.

If the SWPPP modification is based on a release or unauthorized discharge, include a description and date of the release, the circumstances leading to the release, actions taken in response to the release, and measures to prevent the recurrence of such releases. Unauthorized releases and discharges are subject to the reporting requirements of Part III G of this permit.

H. Contents of plan. The plan shall include, at a minimum, the following items:

1. Pollution prevention team. ~~Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.~~ Each plan shall identify the staff individuals by name or title who comprise the facility's storm water pollution

prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising, and ensuring compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.

2. ~~Description of potential pollutant sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:~~ Summary of potential pollutant sources. The plan shall identify where industrial materials or activities at the facility are exposed to storm water. The description shall include:

a. ~~Drainage.~~ Site map. The site map shall document:

(1) ~~A site map indicating an~~ An outline of the ~~portions of the~~ drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water run-off, surface water bodies, locations where ~~significant~~ materials are exposed to precipitation, locations where major spills or leaks identified under Part II H 2 c (spills and leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle ~~and equipment maintenance and/or~~ or equipment degreasing, cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes and wastewaters, liquid storage tanks, processing areas and storage areas. The map must indicate all outfall locations. The types of discharges contained in the drainage areas of the outfalls must be indicated either on the map or in an attached narrative.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a ~~reasonable~~ potential for containing significant amounts of pollutants, ~~a prediction of the direction of flow,~~ locations of storm water conveyances, including ditches, pipes, swales, and inlets, and the directions of storm water flow and an identification of the types of pollutants ~~which~~ that are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant ~~leaks or~~ spills or leaks of toxic or hazardous pollutants. Flows with a ~~significant~~ potential for causing erosion shall be identified.

b. Inventory of exposed materials. ~~An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of coverage under this general permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water run-off between the time of three years prior to the date of coverage under this general permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water run-off; and a description of any treatment the storm water receives.~~ A list of the industrial materials or activities, including but not limited to material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, by-products, final products, and waste products. Material handling activities include but are not limited to the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product, or waste product.

c. Spills and leaks. A list of significant spills and ~~significant~~ leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the date of coverage under this general permit. Such list shall be updated as appropriate during the term of the permit.

d. Sampling data. A summary of existing ~~discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.~~ storm water sampling data taken at the facility. The summary shall include, at a minimum, any data collected during the previous three years.

~~e. Risk identification and summary of potential pollutant sources. A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.~~

3. ~~Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility.~~ Storm water

controls. BMPs shall be implemented for all areas identified in Part II H 2 b (inventory of exposed materials) to prevent or control pollutants in storm water discharges from the facility. All reasonable steps shall be taken to control or address the quality of discharges from the site that may not originate at the facility. The SWPPP shall describe the type, location, and implementation of all BMPs for each area where industrial materials or activities are exposed to storm water. The ~~description of storm water management controls~~ BMPs shall also address the following minimum components, including a schedule for implementing such controls:

a. Good housekeeping. Good housekeeping requires the maintenance of areas [~~which~~ that] may contribute pollutants to storm water discharges in a clean, orderly manner. The plan shall describe procedures performed to minimize contact of materials with storm water run-off. Particular attention should be paid to areas where raw materials are stockpiled, material handling areas, storage areas, liquid storage tanks, vehicle fueling and maintenance areas, and loading/unloading areas.

b. Preventive maintenance. A preventive maintenance program shall involve ~~timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility~~ regular inspection, testing, maintenance, and repairing of all industrial equipment and systems to ~~uncover conditions that could cause~~ avoid breakdowns or failures ~~resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.~~ that could result in leaks, spills, and other releases. All BMPs identified in the SWPPP shall be maintained in effective operating condition. The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance and observation of all BMPs and shall include a description of the back-up practices that are in place should a run-off event occur while a BMP is off line or not operating effectively. The effectiveness of nonstructural BMPs shall also be maintained by appropriate means (e.g., spill response supplies available and personnel trained). If site inspections required by Part II H 3 d (routine facility inspections) or Part II H 4 (comprehensive site compliance evaluation) identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. If maintenance prior to the next anticipated storm event is not possible, maintenance shall be scheduled and accomplished as soon as practicable. Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the date(s) of regular maintenance, date(s) of discovery of areas in need of repair or replacement, date(s) for repairs, date(s) that the BMP(s) returned to full function, and the justification for an extended maintenance or repair schedules. The maintenance program shall require periodic removal of debris from discharge diversions and conveyance systems. Permittees using settling basins to control their effluents must provide maintenance schedules for such basins in the pollution prevention plan.

c. Spill prevention and response procedures. ~~Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.~~ The plan shall describe the procedures that will be followed for preventing and responding to spills and leaks, including barriers between material storage and traffic areas, secondary containment provisions, procedures for material storage and handling, response procedures for notification of appropriate facility personnel, emergency agencies, and regulatory agencies and procedures for stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable RCRA regulations at 40 CFR Part 264 and 40 CFR Part 265. Employees who may cause, detect, or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals shall be a member of the pollution prevention team. Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP and in other locations where it will be readily available.

d. ~~Inspections.~~ Routine facility inspections.

(1) Facility personnel who are familiar with the mining activity, the best management practices and the storm water pollution prevention plan shall be identified to inspect material storage and handling areas, including but not limited to areas where aggregate is stockpiled outdoors, liquid storage tanks, hoppers or silos, ~~vehicle and equipment maintenance areas, cleaning and fueling areas, material handling vehicles and designated~~ material handling vehicles, equipment, and processing areas ~~of the facility~~; to inspect vehicle and equipment maintenance areas and cleaning and fueling areas; to inspect best management practices; and to conduct visual examinations of storm water associated with industrial activity.

(2) The inspection frequency shall be specified in the plan based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of

quarterly. Inspections of best management practices shall include inspection of storm water discharge diversions, conveyance systems, sediment control and collection systems, containment structures, vegetation, serrated slopes, and benched slopes to determine their effectiveness, the integrity of control structures, if soil erosion has occurred, or if there is evidence of actual or potential discharge of contaminated storm water.

(3) [~~Visual~~ Quarterly visual] examinations of storm water discharges associated with industrial activity shall include examination of storm water samples representative of storm event discharges from the facility and observation of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution.

(4) Site inspection, best management practices inspection and visual examination results must be documented and maintained on-site with the ~~facility pollution prevention plan~~ SWPPP. Documentation for visual examinations of storm water shall include the examination date and time, examination personnel, outfall location, the nature of the discharge, visual quality of the storm water discharge and probable sources of any observed storm water contamination. [Part II A regarding monitoring instructions,] Part II B regarding representative discharges [,] and Part II C regarding sampling waivers shall apply to the taking of samples for visual examination except that (i) the documentation required by these sections shall be retained with the ~~storm water pollution prevention plan~~ SWPPP visual examination records rather than submitted to the department, and (ii) substitute sampling for waivered sampling is not required if the proper documentation is maintained.

(5) A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections.

e. Employee training. Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

f. Recordkeeping and internal reporting procedures. A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan. Ineffective best management practices must be recorded and the date of their corrective action noted.

g. Sediment and erosion control. The plan shall identify areas ~~which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, or stabilization measures to be used to limit erosion. Permittees must indicate the location and design for proposed best management practices to be implemented prior to land disturbance activities. For sites already disturbed but without best management practices, the permittee must indicate the location and design of best management practices that will be implemented. The permittee is required to indicate plans for grading, contouring, stabilization, and establishment of vegetative cover for all disturbed areas, including road banks.~~ that, due to topography, land disturbance (e.g., construction, landscaping, site grading), or other factors, have a potential for soil erosion. The permittee shall identify and implement structural, vegetative, or stabilization BMPs to prevent or control on-site and off-site erosion and sedimentation.

h. Management of run-off. The plan shall ~~contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or sources of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water run-off in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see Part II H 2 (description of potential pollutant sources) of this permit) shall be considered when determining reasonable and appropriate measures.~~ describe the storm water run-off management practices (i.e., permanent structural BMPs) for the facility. These types of BMPs are typically used to divert, infiltrate, reuse, or otherwise reduce pollutants in storm water discharges from the site. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

4. Comprehensive site compliance evaluation. Facility personnel who are familiar with the mining activity, the ~~best management practices and the storm water pollution prevention plan~~ BMPs, and the SWPPP shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less frequently than once a year ~~for active sites~~. ~~When annual compliance evaluations are shown in the plan to be impractical for inactive mining sites due to remote location and inaccessibility, site~~

~~evaluations must be conducted at least once every three years.~~ Evaluations shall include all areas where industrial materials or activities are exposed to storm water as identified in Part II H 2 b (inventory exposed materials). Such evaluations shall include the following:

a. Areas contributing to a storm water discharge associated with industrial activity, including material storage and handling areas~~; liquid storage tanks; hoppers or silos; vehicle and equipment maintenance, cleaning, and fueling areas; material handling vehicles; equipment and processing areas; and areas where aggregate is stockpiled outdoors~~ (e.g., areas where aggregate is stockpiled outdoors, liquid storage tanks, hoppers or silos, material handling vehicles, equipment, and processing areas); vehicle and equipment maintenance areas and cleaning and fueling areas; off-site tracking of industrial or waste materials or sediment where vehicles enter or exit the site; tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas; and residue or trash shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made. A review of training performed, routine inspections completed, visual examinations completed, maintenance performed, and effective operation of BMPs, shall be made.

b. Based on the results of the evaluation, the ~~description~~ summary of potential pollutant sources identified in the plan in accordance with Part II H 2 ~~(description~~ (summary of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with Part II H 3 ~~(measures and controls)~~ (storm water controls) of this permit shall be revised as appropriate within 14 days of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 90 days after the inspection.

c. A report summarizing the scope of the inspection, personnel making the inspection, the dates of the inspection, ~~major~~ observations relating to the implementation of the ~~storm water pollution prevention plan~~ SWPPP, including the elements stipulated in Part II H 4 a, and actions taken in accordance with Part II H 4 b of this permit shall be made and retained as required in Part III B (records). The report 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 ~~storm water pollution prevention plan~~ SWPPP and this permit. The report shall be signed in accordance with Part III K (signatory requirements) of this permit and retained as required in Part III B.

d. Where compliance evaluation schedules overlap with inspections required under Part II H 3 d (inspections), the compliance evaluation may be conducted in place of one such inspection.

Part III

Conditions Applicable [~~To~~ to] All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

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

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

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

B. Records.

1. Records of monitoring information shall include:

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

b. The 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. ~~Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the~~ The 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 this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated

activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations [~~which~~ that] require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information [~~which~~ that] the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from ~~his~~ its discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

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

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F (unauthorized discharges); or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify (see NOTE in Part III I), in no case later than 24 hours, the department ~~by telephone~~ after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse [~~affects~~ effects] on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance [~~which~~ that] may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information [~~which~~ that] shall be reported within 24 hours under this subdivision:

a. Any unanticipated bypass; and

b. Any upset [~~which~~ that] causes a discharge to surface waters.

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

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

NOTE: The immediate (within 24 hours) reports required in Parts III G, H and I may be made to the department's regional office. Reports may be made by telephone ~~or by fax~~, FAX, or online at http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

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

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

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

(2) After proposal of standards of performance in accordance with § 306 of the federal Clean Water Act [~~which~~ 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 alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants [~~which~~ that] are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity [~~which~~ that] may result in noncompliance with permit requirements.

K. Signatory requirements.

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

a. For a corporation: by a responsible corporate officer. For the purposes 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 capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board, shall be signed by a

person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

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

4. Certification. Any person signing a document under [~~Parts~~ Part] III K 1 or 2 shall make the following certification:

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

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

~~The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the federal Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the federal Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.~~

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least ~~180~~ 210 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

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

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

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

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

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

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit [~~which~~ 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 a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur [~~which~~ 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 Parts III U 2 and U 3.

2. Notice.

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

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I (reports of noncompliance).

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

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

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

(3) The permittee submitted notices as required under Part III U 2.

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

V. Upset.

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

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

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

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

c. The permittee submitted notice of the upset as required in Part III I; and

d. The permittee complied with any remedial measures required under Part III S.

3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

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

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

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

4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the federal Clean Water Act and the State Water Control Law, any substances or parameters at any location.

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

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

Y. Transfer of permits. ~~1.~~ Permits are not transferable to any person except after notice to the department. ~~Except as provided in Part III Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the federal Clean Water Act. 2. As an alternative to transfers under Part III Y 1,~~

Coverage under this permit may be automatically transferred to a new permittee if:

~~a.~~ 1. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property unless permission for a later date has been granted by the department;

~~b.~~ 2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

~~c.~~ 3. The board does not notify the existing permittee and the proposed new permittee of its intent to ~~modify or revoke and reissue~~ deny the permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 ~~b~~.

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

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 (9VAC25-190)

~~Department of Environmental Quality Water Division Permit Application Fee (rev. 1/08)~~

~~Local Government Ordinance Form (eff. 8/93).~~

Department of Environmental Quality Water Division Permit Application Fee (rev. 5/13)

Virginia Pollutant Discharge Elimination System Change of Ownership Agreement Form (undated)

Virginia Pollutant Discharge Elimination System General Permit Registration Statement - Nonmetallic Mineral Mining

[~~Virginia Pollutant Discharge Elimination System General Permit Notice of Termination for Nonmetallic Mineral Mining.~~]

VA.R. Doc. No. R13-3381; Filed December 30, 2013, 10:05 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to enactment clause 8 of Chapters 756 and 793 of the 2013 Acts of Assembly, except that the Department of Environmental Quality must provide an opportunity for public comment.

Title of Regulation: **9VAC25-870. Virginia Stormwater Management Program (VSMP) Regulation (amending 9VAC25-870-47, 9VAC25-870-48, 9VAC25-870-55, 9VAC25-870-760, 9VAC25-870-820, 9VAC25-870-825).**

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

Effective Date: February 26, 2014.

Agency Contact: Drew Hammond, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4037, or email andrew.hammond@deq.virginia.gov.

Summary:

The amendments include (i) clarification of existing requirements regarding time limits on applicability of approved design criteria and grandfathering; (ii) addition of provisions for a stormwater management plan for a land-disturbing activity to apply the stormwater management technical criteria to the entire residential, commercial, or industrial development; (iii) addition of provisions that allow the department to enter into agreements with a VSMP authority to collect the total fee to be paid by an applicant and transmit the department's portion of the fee to the department; (iv) clarification of the fee language, including that the total fee to be paid by an applicant applies to an operator seeking new or continued coverage under the 2014 Construction General Permit; and (vii) clarification that the fees for modification or transfer of construction general permit coverage do not apply until assessed by a VSMP authority.

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 § 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.

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 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.~~ Land-disturbing activities that obtain an initial state permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the Part II C (9VAC25-870-93 et seq.) technical criteria of this chapter. Such projects shall remain subject to the Part II C technical criteria for two additional state permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

C. Land-disturbing activities that obtain an initial state permit on or after July 1, 2014, shall be conducted in accordance with the Part II B (9VAC25-870-62 et seq.) technical criteria of this chapter, except as provided for in 9VAC25-870-48. Land-disturbing activities conducted in accordance with the Part II B technical criteria shall remain subject to the Part II B technical criteria for two additional state permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

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

9VAC25-870-48. Grandfathering.

A. ~~Until June 30, 2019, any~~ 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.~~ shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C (9VAC25-870-93 et seq.) technical criteria of this chapter provided:

1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part II C technical criteria of this chapter, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;

2. A state permit has not been issued prior to July 1, 2014; and

3. Land disturbance did not commence prior to July 1, 2014.

B. ~~Until June 30, 2019, for locality~~ Locality, state, and federal projects ~~for which there~~ shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of this chapter provided:

1. 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.~~;

2. A state permit has not been issued prior to July 1, 2014; and

3. Land disturbance did not commence prior to July 1, 2014.

C. ~~For land-disturbing~~ Land disturbing activities grandfathered under subsections A and B of this section~~, construction must be completed by June 30, 2019, or~~ shall remain subject to the Part II C technical criteria of this chapter for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to ~~the~~ any new technical criteria ~~of Part II B~~ adopted by the board.

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.

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. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities.

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, 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 9VAC25-870-63 or 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 (9VAC25-870-700 et seq.) 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 (§ 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 9VAC25-870-108 and 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.

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 Environmental Quality may provide a means to pay fees electronically. Fees not submitted electronically shall be sent to the Virginia Department of Environmental Quality.

2. The VSMP authority, for VSMP operational costs of the VSMP authority under the General Permit for Discharges of Stormwater ~~From~~ 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. Nothing in this part shall prohibit the department and a VSMP authority from entering into an agreement whereby the total fee to be paid by the applicant for coverage under the General Permit for Discharges of Stormwater from Construction Activities is payable to the VSMP authority, and the VSMP authority transmits the department's portion set forth in 9VAC25-870-820 to the department on a schedule established by the department.

D. 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 Permit Application Fee Form:

1. Applicant name, address and daytime phone number.

~~2. Applicant Federal Identification Number (FIN), if applicable.~~

~~3.~~ 2. The name of the facility/activity, and the facility/activity location.

~~4.~~ 3. The type of state permit applied for.

~~5.~~ 4. Whether the application is for a new state permit issuance, state permit reissuance, state permit maintenance, or state permit modification.

~~6.~~ 5. The amount of fee submitted.

~~7.~~ 6. The existing state permit number, if applicable.

~~8.~~ 7. Other information as required by the VSMP authority.

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, until June 30, 2014, 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"~~ (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"~~ (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
Individual Permit for Discharges of Stormwater from Construction Activities	$15,000

The following total fees to be paid by an applicant apply to (i) any operator seeking coverage under ~~the~~ a July 1, 2014, General Permit for Discharges of Stormwater from Construction Activities ~~for~~ or (ii) on or after July 1, 2014, to any operator seeking coverage under a General Permit for Discharges of Stormwater from Construction Activities, 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~~ On and after approval by the board of a VSMP authority for coverage under the General Permit for Discharges of Stormwater from Construction Activities, no more than 50% of the ~~base~~ total fee to be paid by an applicant 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 9VAC25-870-108. The remaining ~~base~~ total fee balance to be paid by an applicant 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~~ one acre)	$290	$0
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre)	$290	$81
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 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)	$6,100	$1,708
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.

The following fees apply, on or after July 1, 2014, to coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the board for a state or federal agency that has annual standards and specifications approved by the board.

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

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 9VAC25-870-820. No modification or transfer fee shall be required until such board-approved programs exist. These fees 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 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

VA.R. Doc. No. R14-3931; Filed January 8, 2014, 11:51 a.m.

◆

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Emergency Regulation

Title of Regulation: **12VAC5-610. Sewage Handling and Disposal Regulations (amending 12VAC5-610-30, 12VAC5-610-920 through 12VAC5-610-950; adding 12VAC5-610-955).**

Statutory Authority: §§ 32.1-12 and 32.1-164 of the Code of Virginia.

Effective Dates: March 14, 2014, through September 13, 2015.

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.

Preamble:

Chapter 202 of the 2013 Acts of Assembly requires the State Board of Health to promulgate regulations for chamber and bundled expanded polystyrene effluent systems. The board may promulgate regulations for other

distribution technologies. Chapter 202 specifies that regulations must be effective within 280 days of enactment. The board is using the emergency rulemaking process authorized by the Administrative Process Act to promulgate regulations within 280 days.

The Sewage Handling and Disposal Regulations (12VAC5-610) contain construction, design, and installation requirements for gravel and pipe effluent absorption trench, low pressure distribution, elevated sand mound, and sand-on-sand systems. The amendments establish construction, design, and installation requirements for gravelless material and drip dispersal systems, as follows:

1. Specifications for the physical construction of gravelless material including minimum exterior width, height, effluent storage capacity, and structural capacity;

2. Requirements for a permeable interface between gravelless material and trench sidewall soil surfaces for the absorption of wastewater;

3. Criteria for the allowable slope, maximum length, minimum sidewall depth, and minimum lateral separation of gravelless material absorption trenches;

4. Criteria for determining the minimum absorption area required when utilizing gravelless material;

5. Criteria for the substitution of gravelless material in place of gravel for gravity percolation lines and low pressure distribution systems;

6. Specifications for the physical construction of drip dispersal system components;

7. Minimum requirements for the design of drip dispersal systems; and

8. Minimum installation requirements for drip dispersal systems.

Since 2002, the Virginia Department of Health (VDH) has recognized through policies that gravelless material is an acceptable means of dispersing wastewater. Since 1995, VDH has also recognized through policies that drip dispersal is an acceptable means of transmitting wastewater. The goal of the amendments is to move the construction, design, and installation standards for gravelless material and drip dispersal from VDH policies into regulation.

No substantive changes were made to existing requirements of 12VAC5-610. However, the term "soil gravel or sand interface" used in 12VAC5-610-920 and 12VAC5-610-950 A was modified to ensure inclusion of gravelless material and drip dispersal within these sections.

12VAC5-610-30. Relationship to ~~Virginia Joint Sewerage Regulations~~ other regulations.

~~This chapter is supplemental to the current Virginia Sewerage Regulations, or their successor, which were adopted jointly by the State Board of Health and the Department of Environmental Quality pursuant to § 62.1-44.19 of the Code of Virginia. This chapter addresses the handling and disposal of sewage not regulated by a Virginia Pollutant Discharge Elimination System (VPDES) Permit.~~

A. This chapter addresses the handling and disposal of those portions of sewage flows not regulated by a Virginia Pollutant Discharge Elimination System (VPDES) Permit or a Virginia Pollutant Abatement (VPA) Permit issued in accordance with 9VAC25-31 or 9VAC25-32, respectively.

B. Reclamation and reuse of sewage may be subject to permitting by the Department of Environmental Quality under 9VAC25-740.

12VAC5-610-920. Distribution methods.

The term distribution methods refers to the piping, flow splitting devices, gravel, and other appurtenances beginning at the point of flow splitting and ending at the ~~soil-gravel or sand interface~~ point of effluent application to the soil absorption area. Two basic methods are considered:

A. Gravity; and

B. Pressure.

12VAC5-610-930. Gravity distribution.

Gravity distribution is the conveyance of effluent from a distribution box through the percolation lines at less than full flow conditions. Flow to the initial distribution box may be initiated by pump, siphon or gravity.

A. Enhanced flow distribution. Enhanced flow distribution is the initiation of the effluent flow to the distribution box by pump or siphon for the purpose of assuring more uniform flow splitting to the percolation lines. Enhanced flow distribution shall be provided on systems where the flow is split more than 12 times or the system contains more than 1200 linear feet of percolation lines. For the purpose of this chapter, enhanced flow distribution is considered to produce unsaturated soil conditions.

B. System size. Distribution systems containing 1800 or more linear feet of percolation piping shall be split into multiple systems containing a maximum of 1200 linear feet of percolation piping per system.

C. Distribution boxes. The distribution box is a device for splitting flow equally by gravity to points in the system. Improperly installed distribution boxes are a cause for absorption field malfunction.

1. Materials. The preferred material for use in constructing distribution boxes is concrete (3000 psi). Other materials may be considered on a case-by-case basis. All materials must be resistant to both chemical and electrolytic corrosion and must have sufficient structural strength to contain sewage and resist lateral compressive and bearing loads.

2. Design. Each distribution box shall be designed to split the influent flow equally among the multiple effluent ports. All effluent ports shall be at the same elevation and be of

the same diameter. The elevation of the effluent ports shall be at a lower elevation than the influent port. The placement of the influent ports shall be such as to prevent short circuiting unless baffling is provided to prevent short circuiting. The minimum inside width of a gravity flow distribution box shall be equal to or greater than 12 inches. The inside bottom shall be at least four inches below the invert of the effluent ports and at least five inches below the invert of the influent port. A minimum of eight inches freeboard above the invert of the effluent piping shall be provided. The distribution box shall be fitted with a watertight, removable lid for access.

3. Installation. The hole for placement of the distribution box shall be excavated to undisturbed soil. The distribution box shall be placed in the excavation and stabilized. The preferred method of stabilizing the distribution box is to bond the distribution box to a four inch poured in place Portland cement concrete pad with dimensions six inches greater than the length and width dimensions of the distribution box. The box shall be permanently leveled and checked by water testing. Conduits passing through the walls of a distribution box shall be provided with a water stop.

D. Lead or header lines. Header or lead lines are watertight, semirigid or rigid lines that convey effluent from a distribution box to another box or to the percolation piping.

1. Size. The lead or header lines shall have an internal diameter of four inches.

2. Slope. Minimum slope shall be two inches per 100 feet.

3. Materials. The lead or header lines shall have a minimum crush strength of 1500 pounds per foot and may be constructed of cast iron, plastic, vitrified clay or other material resistant to the corrosive action of sewage.

4. Appurtenances.

a. Joints. Lead or header lines shall have joints of the compressions type with the exception of plastic lead or header lines which may be welded sleeve, chemically fused or clamped (noncorrosive) flexible sleeve.

b. Adapters. Joining of lead or header lines of different size and/or material shall be accomplished by use of a manufactured adapter specifically designed for the purpose.

c. Valves. Valves shall be constructed of materials resistant to the corrosive action of sewage. Valves placed below ground level shall be provided with a valve box and a suitable valve stem so that it may be operated from the ground surface.

5. Construction.

a. Bedding. All lead or header lines shall be bedded to supply uniform support and maintain grade and alignment along the length of the lead or header lines. Special care shall be taken when using semirigid pipe.

b. Backfilling and tamping. Lead and header lines shall be backfilled and tamped as soon as possible after the installation of the lead or header lines has been approved. Material for backfilling shall be free of large stones and debris.

6. Termination. Header or lead lines shall extend for a minimum distance of two feet into the absorption trenches.

E. Gravity percolation lines. Gravity percolation lines are perforated or open joint pipes that are utilized to distribute the effluent along the length of the absorption trenches.

1. Size. All gravity percolation lines shall have an internal diameter of four inches.

2. Slope. The slope of the lines shall be uniform and shall not be less than two inches or more than four inches per 100 feet.

3. Design. Effluent shall be split by the distribution system so that all gravity percolation lines installed shall receive an equal volume of the total design effluent load per square foot of trench, i.e., the fraction of the flow received by each percolation line divided by the length of the gravity percolation lines shall be equal for all gravity percolation lines in a system.

4. Length. No individual gravity percolation line shall exceed 100 feet in length.

5. Materials.

a. Clay. Clay tile shall be extra-strength and meet current ASTM standards for clay tile.

b. Perforated plastic drainage tubing. Perforated plastic drainage tubing shall meet ASTM standards. At not greater than 10 feet intervals the pipe shall be plainly marked, embossed or engraved thereby showing the manufacturer's name or hallmark and showing that the product meets a bearing load of 1,000 lb. per foot. In addition, a painted or other clearly marked line or spot shall be marked at not greater than 10 feet intervals to denote the top of the pipe.

The tubing shall have three holes, 1/2 to 3/4 inch in diameter evenly spaced and placed within an arc of 130 degrees, the center hole being directly opposite the top marking.

Spacing of each set of three holes shall be at four inch intervals along the tube. If there is any break in the continuity of the tubing, an appropriate connection shall be used to join the tubing.

6. Installation

a. Crushed stone or gravel. Clean gravel or crushed stone having a size range from 1/2 inch to 1-1/2 inches shall be utilized to bed the gravity percolation lines.

Minimum depth of gravel or crushed stone beneath the percolation lines shall be six inches. Clean course silica sand (does not effervesce in presence of dilute hydrochloric acid) may be substituted for the first two

inches (soil interface) of the ~~require~~ required six inches of gravel beneath the percolation lines. The absorption trench shall be backfilled to a depth of two inches over the gravity percolation lines with the same gravel or crushed stone. Clean sand, gravel or crushed stone shall be free of fines, clay and organic materials.

b. Grade boards and/or stakes. Grade boards and/or stakes placed in the bottom or sidewalls of the absorption trench shall be utilized to maintain the grade on the gravel for placement of the gravity percolation lines. Grade stakes shall not be placed on centers greater than 10 feet.

c. Placement and alignment. Perforated gravity percolation piping shall be placed so that the center hole is in the horizontal plane and interfaces with the minimum six inches of graded gravel. When open joint piping is utilized the upper half of the top of the 1/4-inch open space shall be covered with tar paper or building paper to block the entrance of fines into the pipe during the backfilling operation. All gravity percolating piping shall be placed in the horizontal center of the absorption trench and shall maintain a straight alignment and uniform grade.

d. Backfilling. After the placement of the gravity percolation piping the absorption trench shall be backfilled evenly with crushed stone or gravel to a depth of two inches over the piping. Untreated building paper~~,~~ or other suitable material shall be placed at the interface of the gravel and soil to prevent migration of fines to the trench bottom. The remainder of the trench shall be backfilled with soil to the ground surface.

F. Gravelless material is a proprietary product specifically manufactured to disperse effluent within the absorption trench of an onsite sewage system without the use of gravel. Gravelless material may include chamber, bundled expanded polystyrene, and multi-pipe systems. The division shall maintain a list of all generally approved gravelless material. Gravelless material on the generally approved list may be used in accordance with Table 5.4 of 12VAC5-610-950.

1. Gravelless material that received general approval as of December 12, 2013, shall retain such status when used in accordance with the requirements of this chapter. After December 12, 2013, the division shall review and evaluate new applications for general approval pursuant to the requirements of this chapter.

a. Any manufacturer of gravelless material may submit an application for general approval to the division using the form provided by the division. A complete application shall include the manufacturer's contact information, product specifications, product approvals in other states or territories, installation manual, and other information deemed necessary by the division to determine compliance with this chapter.

b. The manufacturer of gravelless material shall identify in the application for general approval any recommendation that deviates from the requirements of this chapter. If the recommendation is approved by the division, then the manufacturer shall include the deviation in the gravelless material's installation manual.

2. Gravelless material shall have the following minimum characteristics for general approval:

a. The minimum exterior width shall be at least 90% of the total width of the absorption trench. The exterior width of a chamber system shall be measured at the edge or outer limit of the product's contact with the trench bottom unless the division determines a different measurement is required based on the gravelless material's design. The exterior width of bundled expanded polystyrene and multi-pipe systems shall be measured using the outside diameter of the bundled gravelless material unless the division determines a different measurement is required based on the gravelless material's design. The division shall establish the exterior width of any gravelless material that is not considered a chamber, bundled expanded polystyrene, or multi-pipe system.

b. Gravelless material shall have a minimum height of eight inches to provide a continuous exchange of air through a permeable interface.

c. Gravelless material shall have a permeable interface that shall be located along the trench bottom and trench sidewalls within the absorption trench.

d. Gravelless material shall provide a minimum storage capacity of 1.3 gallons per square foot of trench bottom area.

e. Gravelless material shall pose no greater risk to surface water and groundwater quality than gravel in absorption trenches. Gravelless material shall be constructed to maintain structural integrity such that it does not decay or corrode when exposed to sewage.

f. Gravelless material shall have a minimum load rating of H-10 or H-20 from the American Association of State Highway and Transportation Officials or equivalent when installed in accordance with the manufacturer's minimum specified depth of compacted cover in nontraffic or traffic areas, respectively.

3. For designs using gravelless material, the absorption trenches shall receive an equal volume of effluent per square foot of trench. Trench bottom area shall be equal to or greater than the minimum area requirements contained in Table 5.4 of 12VAC5-610-950. Trench sidewall shall not be included when determining minimum area requirements. When open-bottom gravelless material is utilized, it shall provide a splash plate at the inlet of the trench or other suitable method approved by the manufacturer to reduce effluent velocity.

4. Installation of gravelless material shall comply with this chapter unless the department grants a deviation pursuant to 12VAC5-610-660 or the division has granted a deviation identified in the installation manual.

5. Gravelless material shall contain a pressure percolation line along the entire length of the trench when low pressure distribution is utilized pursuant to 12VAC5-610-940 D.

6. When pumping effluent to overcome gravity, any open-bottom gravelless material shall provide a high-flow splash plate at the inlet of the trench or other suitable method approved by the manufacturer to reduce effluent velocity.

7. When enhanced flow distribution is required by this chapter, open-bottom gravelless material shall contain a percolation pipe that extends a minimum of 10 feet from the trench's intersection with the header line. The percolation pipe shall be installed in accordance with the manufacturer's approved installation manual. The dosing volume shall be a minimum 39 gallons per 100 linear feet of absorption trench.

8. Gravelless material may be substituted for gravel in accordance with this chapter, provided that the certifying licensed professional engineer or onsite soil evaluator approves the substitution. The certifying licensed professional engineer or onsite soil evaluator shall identify the substitution on the inspection report submitted in accordance with 12VAC5-610-330. A new construction permit pursuant to 12VAC5-610-310 is not required for the substitution.

12VAC5-610-940. Low pressure distribution.

Low pressure distribution is the conveyance of effluent through the pressure percolation lines at full flow conditions into the absorption area with the prime motive force being a pump or siphon. Low pressure systems are limited to a working pressure of from one to four feet of head at the distal end of the pressure percolation lines. For the purpose of this chapter low pressure distribution is considered to provide unsaturated soil conditions.

A. Dosing cycle. Systems shall be designed so that the effluent volume applied to the absorption area per dosing cycle is from seven to 10 times the volume of the distribution piping, however, the volume per dosing cycle should not result in a liquid depth in the absorption trench greater than two inches.

B. Manifold lines. Manifold lines are watertight lines that convey effluent from the initial point of flow splitting to the pressure percolation lines.

1. Size. The manifold line shall be sized to provide a minimum velocity of two feet per second and a maximum velocity of eight feet per second.

2. Materials. All pipe used for manifolds shall be of the pressure type with pressure type joints.

3. Bedding. All manifolds shall be bedded to supply uniform support along its length.

4. Backfilling and tamping. Manifold trenches shall be backfilled and tamped as soon as possible after the installation of the manifold has been approved. Material for backfilling shall be free of large stones and debris.

5. Valves. Valves for throttling and check valves to prevent backflow are required wherever necessary. Each valve shall be supplied with a valve box terminating at the surface.

C. Pressure percolation lines. Pressure percolation lines are perforated pipes utilized to distribute the flow evenly along the length of the absorption trench.

1. Size. Pressure percolation lines should normally have a 1-1/4 inch inside diameter.

2. Hole size. Normal hole size shall be 3/16 inch to 1/4 inch.

3. Hole placement. Center to center hole separation shall be between three and five feet.

4. Line length. Maximum line length from manifold should not exceed 50 feet.

5. Percent flow variation. Actual line size, hole size and hole separation shall be determined on a case-by-case basis based on a maximum flow variation of 10% along the length of the pressure percolation lines.

6. Materials and construction. The preferred material is plastic, either PVC or ABS, designed for pressure service. The lines shall have burr free and counter sunk holes (where possible) placed in a straight line along the longitudinal axis of the pipe. Joining of pipes shall be accomplished with manufactured pressure type joints.

7. Installation.

a. Crushed stone or gravel. Clean gravel or crushed stone having a size range from 1/2 inch to 3/4 inch shall be utilized to bed the pressure percolation lines. Minimum depth of gravel or crushed stone beneath the percolation lines shall be 8-1/2 inches. Clean course silica sand (does not effervesce in the presence of dilute hydrochloric acid) may be substituted for the first two inches (soil interface) of the required 8-1/2 inches of gravel beneath the pressure percolation lines. The absorption trench shall be backfilled to a depth of two inches over the pressure percolation lines with the same gravel or crushed stone. Clean sand, gravel or crushed stone shall be free of fines, clay and organic materials.

b. Grade boards and/or stakes. Grade boards and/or stakes placed in the bottom or sidewalls of the absorption trench shall be utilized to maintain the gravel level for placement of the pressure percolation lines. Grade stakes shall not be placed on centers greater than 10 feet.

c. Placement and alignment. Pressure percolation lines shall be placed so that the holes face vertically downward. All pressure percolation piping shall be placed at the same elevation, unless throttling valves are

utilized, and shall be level. The piping shall be placed in the horizontal center of the trench and shall maintain a straight alignment. Normally the invert of the pressure percolation lines shall be placed 8-1/2 inches above the trench bottom. However, under no circumstance shall the invert of the pressure percolation lines be placed closer than 16-1/2 inches to the seasonal water table ~~as defined in 12VAC5-610-950 A 3~~. When the invert of the pressure percolation lines must be placed at an elevation greater than 8-1/2 inches above the trench bottom, landscaping over the absorption area may be required to provide the two inches of gravel and six inches of fill over the pressure percolation lines required in subdivision 7 a of this subsection.

d. Backfilling. After the placement of the pressure percolation piping the absorption trench shall be backfilled evenly with crushed stone or gravel to a depth of two inches over the opening. Untreated building paper or other suitable material shall be placed at the interface of the gravel and soil to prevent migration of fines to the trench bottom. The remainder of the trench shall be backfilled with soil to the ground surface.

8. Appurtenances. The distal (terminal) end of each pressure percolation lines shall be fitted with a vertical riser and threaded cap extending to the ground surface. Systems requiring throttling valves will be supplied with couplings and threaded riser extensions at least four feet long so that the flow may be adjusted in each line.

D. Gravelless material with general approval may be used for low pressure distribution in accordance with the manufacturer's approved installation manual, Table 5.4 of 12VAC5-610-950, and the applicable requirements of this chapter.

12VAC5-610-950. Absorption area design.

A. The absorption area is the undisturbed soil medium ~~beginning at the soil-gravel or sand interface which is~~ utilized for absorption of the effluent. The absorption area includes the infiltrative surface in the absorption trench and the soil between and around the trenches when trenches are used.

B. Suitability of soil horizon. The absorption trench bottom shall be placed in the soil horizon or horizons with an average estimated or measured percolation rate less than 120 minutes per inch. Soil horizons are to be identified in accordance with 12VAC5-610-480. The soil horizon must meet the following minimum conditions:

1. It shall have an estimated or measured percolation rate equal to or less than 120 minutes per inch.

2. The soil horizon or horizons shall be of sufficient thickness so that at least 12 inches of absorption trench sidewall is exposed to act as an infiltrative surface; and

3. If no single horizon meets the conditions in subdivision 2 of this subsection, a combination of adjacent horizons may be utilized to provide the required 12-inch sidewall infiltrative surface. However, no horizon utilized shall have an estimated or measured percolation rate greater than 120 minutes/inch.

C. Placement of absorption trenches below soil restrictions. Placement of the soil absorption trench bottom below soil restrictions as defined in 12VAC5-610-490 D, whether or not there is evidence of a perched water table as indicated by free standing water or gray mottlings or coloration, requires a special design based on the following criteria:

1. The soil horizon into which the absorption trench bottom is placed shall be a Texture Group I, II or III soil or have an estimated or measured percolation rate of less than 91 minutes per inch.

2. The soil horizon shall be a minimum of three feet thick and shall exhibit no characteristics that indicate wetness on restriction of water movement. The absorption trench bottom shall be placed so that at least two feet of the soil horizon separates the trench bottom from the water table and/or rock. At least one foot of the absorption trench side wall shall penetrate the soil horizon.

3. A lateral ground water movement interceptor (LGMI) shall be placed upslope of the absorption area. The LGMI shall be placed perpendicular to the general slope of the land. The invert of the LGMI shall extend into, but not through, the restriction and shall extend for a distance of 10 feet on either side of the absorption area (See 12VAC5-610-700 D 3).

4. Pits shall be constructed to facilitate soil evaluations as necessary.

D. Sizing of absorption trench area.

1. Required area. The total absorption trench bottom area required shall be based on the average estimated or measured percolation rate for the soil horizon or horizons into which the absorption trench is to be placed. If more than one soil horizon is utilized to meet the sidewall infiltrative surface required in subsection B of this section, the absorption trench bottom area shall be based on the average estimated or measured percolation rate of the "slowest" horizon. The trench bottom area required in square feet per 100 gallons (Ft^2/100 Gals) of sewage applied for various soil percolation rates is tabulated in Table 5.4. The area requirements are based on the equation:

$\log y = 2.00 + 0.008 (x)$

where $y = Ft^2$/100 Gals

x = Percolation rate in minutes/inch

Notwithstanding the above, the minimum absorption area for single family residential dwellings shall be 400 square feet.

2. Area reduction. See Table 5.4 of this section for ~~percent~~ area reduction when gravelless material or low pressure distribution is utilized. A reduction in area shall not be

permitted when flow diversion is utilized with low pressure distribution. When gravelless material is utilized, the width of the trench excavation shall be used to calculate minimum area requirements for absorption trenches.

E. Minimum cross section dimensions for absorption trenches.

1. Depth. The minimum trench sidewall depth as measured from the surface of the mineral soil shall be 12 inches when placed in a landscape with a slope less than 10%. The installation depth shall be measured on the downhill side of the absorption trench. When the installation depth is less than 18 inches, the depth shall be measured from the lowest elevation in the microtopography. All systems shall be provided with at least 12 inches of cover to prevent frost penetration and provide physical protection to the absorption trench; however, this requirement for additional cover shall not apply to systems installed on slopes of 30% or greater. Where additional soil cover must be provided to meet this minimum, it must be added prior to construction of the absorption field, and it must be crowned to provide positive drainage away from the absorption field. The minimum trench depth shall be increased by at least five inches for every 10% increase in slope. Sidewall depth is measured from the ground surface on the downhill side of the trench.

2. Width. All absorption trenches utilized with gravity distribution shall have a width of from 18 inches to 36 inches. All absorption trenches utilized with low pressure distribution shall have a width of eight inches to 24 inches.

F. Lateral separation of absorption trenches. The absorption trenches shall be separated by a center to center distance no less than three times the width of the trench for slopes up to 10%. However, where trench bottoms are two feet or more above rock, pans and impervious strata, the absorption trenches shall be separated by a center to center distance no less than three times the width of the trench for slopes up to 20%. The minimum horizontal separation distance shall be increased by one foot for every 10% increase in slope. In no case shall the center to center distance be less than 30 inches.

G. Slope of absorption trench bottoms.

1. Gravity distribution. The bottom of each absorption trench shall have a uniform slope not less than two inches or more than four inches per 100 feet.

2. Low pressure distribution. The bottom of each absorption trench shall be uniformly level to prevent ponding of effluent.

H. Placement of absorption trenches in the landscape.

1. The absorption trenches shall be placed on contour.

2. When the ground surface in the area over the absorption trenches is at a higher elevation than any plumbing fixture or fixtures, sewage from the plumbing fixture or fixtures shall be pumped.

I. Lateral ground water movement interceptors. Where subsurface, laterally moving water is expected to adversely affect an absorption system, a lateral ground water movement interceptor (LGMI) shall be placed upslope of the absorption area. The LGMI shall be placed perpendicular to the general slope of the land. The invert of the LGMI shall extend into, but not through, the restriction and shall extend for a distance of 10 feet on either side of the absorption area.

Table 5.4.
Area Requirements for Absorption Trenches.

Percolation Rate (Minutes/Inch)	Area Required (Ft^2/100 Gals)			Area Required (Ft^2/Bedroom)		
	Gravity	Gravity Gravelless	Low Pressure Distribution	Gravity	Gravity Gravelless	Low Pressure Distribution
5	110	83	110	165	124	165
10	120	90	120	180	135	180
15	132	99	132	198	149	198
20	146	110	146	218	164	218
25	158	119	158	237	178	237
30	174	131	164	260	195	255
35	191	143	170	286	215	260
40	209	157	176	314	236	264

45	229	172	185	344	258	279
50	251	188	193	376	282	293
55	275	206	206	412	309	309
60	302	227	217	452	339	325
65	331	248	228	496	372	342
70	363	272	240	544	408	359
75	398	299	251	596	447	375
80	437	328	262	656	492	394
85	479	359	273	718	539	409
90	525	394	284	786	590	424
95	575	489	288	862	733	431
100	631	536	316	946	804	473
105	692	588	346	1038	882	519
110	759	645	379	1138	967	569
115	832	707	416	1248	1061	624
120	912	775	456	1368	1163	684

J. Controlled blasting. When rock or rock outcroppings are encountered during construction of absorption trenches the rock may be removed by blasting in a sequential manner from the top to remove the rock. Percolation piping and sewer lines shall be placed so that at least one foot of compacted clay soil lies beneath and on each side of the pipe where the pipe passes through the area blasted. The area blasted shall not be considered as part of the required absorption area.

12VAC5-610-955. Drip dispersal.

A. Drip dispersal applies wastewater in an even and controlled manner over an absorption area. Drip dispersal system components may include treatment components, a flow equalization pump tank, a filtration system, a flow measurement method, supply and return piping, small diameter pipe with emitters, air/vacuum release valves, redistribution control, and electromechanical components or controls.

B. Drip dispersal system tubing shall be color coded and certified by the manufacturer as designed and manufactured for the dispersal of wastewater. All drip dispersal system tubing shall be equipped with emitters approved for use with wastewater. For the application of septic tank effluent, the tubing must have self-cleaning emitters.

1. The minimum linear feet of tubing in the system shall be one-half of the minimum soil absorption area in square feet.

2. All tubing shall be placed on contour.

3. Except as provided by 12VAC5-613, drip systems dispersing septic tank effluent shall comply with the requirements of 12VAC5-610-594. Drip systems dispersing secondary effluent or better require a minimum of six inches of cover over the tubing. Cover may be achieved by a combination of installation depth and Group II or Group III soil cover or other approved material over the drip field.

4. The discharge rate of any two emitters shall not vary by more than 10% in order to ensure that the effluent is uniformly distributed over the entire drip field or zone.

5. The emitters shall be evenly spaced along the length of the drip tubing at not less than six inches or more than 24 inches apart.

C. Drip dispersal systems shall comply with the following minimum soil absorption area requirements:

1. For the dispersal of septic tank effluent, the minimum soil absorption area for a drip system shall be calculated by multiplying the trench bottom area required for a low pressure distribution system in Table 5.4 of 12VAC5-610-950 by three.

2. For the dispersal of secondary or better effluent, the minimum soil absorption area shall be calculated by multiplying the trench bottom area for pressure distribution systems in accordance with subdivision 10 of 12VAC5-613-80 by three.

3. Landscape linear loading rates shall be considered for sloping absorption areas to the greatest extent possible. The landscape linear loading rate is the volume of effluent (gallons) applied per day per linear foot of the system along the natural contour (gallon per day/feet).

4. Air/vacuum release valves shall be located at the high points of the supply and return manifolds to each zone.

D. All drip dispersal systems shall be equipped with devices or methods to restrict effluent from draining by gravity to portions of a zone or laterals lower in elevation. Variable distribution due to gravity drainage shall be 10% or less within a zone.

E. A minimum of six hours of emergency storage above the high water alarm in the pump chamber shall be provided. The equalization volume shall be equal to 18 hours of storage. The equalization volume shall be measured from the pump off level to the high water alarm level. An audio/visual alarm meeting the requirements of 12VAC5-610-880 B 8 shall be provided for the pump chamber.

F. Each drip dispersal zone shall be time-dosed over a 24-hour period. The dose volume and interval shall be set to provide unsaturated flow conditions. Demand dosing is prohibited. Minimum dose volume per zone shall be 3.5 times the liquid capacity of the drip laterals in the zone plus the liquid capacity of the supply and return manifold lines (which drain between doses) accounting for instantaneous loading and drain back.

1. At each dosing cycle, the system design shall only allow a full dose volume to be delivered.

2. For design flows greater than 1,000 gallons per day, a means to take each zone off line separately shall be provided. The system shall have the capability to bypass each zone that is taken out of service such that each subsequent dose is dispersed to the next available zone in sequence.

G. Filtration shall be provided to remove suspended solids and prevent clogging of emitters. The filtration design shall meet the drip tubing manufacturer's particle size requirements for protection of the emitters at a flow rate equal to or greater than the rate of forward flushing. Filter flush water shall be returned to the treatment system at a point where the residuals and volume of the flush water do not negatively impact the effluent quality or exceed the hydraulic design capacity of the treatment system.

H. A means for measuring or estimating total flow dispersed to the soil absorption area and to verify field dosing and field flushing rates shall be provided.

I. The system shall provide forward field flushing to achieve scouring velocity as specified by the drip tubing manufacturer. Field flushing shall occur on a routine schedule to prevent excessive solids accumulation and clogging. Flush water shall be returned to the treatment system at a point where the residuals and volume of the flush water do not negatively impact the effluent quality or exceed the hydraulic design capacity of the treatment system.

J. Electrical components shall be Underwriters Laboratory (UL) listed for the intended purpose. The designer shall provide a description with a schematic diagram of the electrical and control functions in the operation and maintenance manual. The electrical control equipment shall be mounted within a National Electrical Manufacturers Association (NEMA) 4X rated enclosure with a rigid latching door. All switches shall be clearly identified, and all internal wiring shall be factory installed. All wiring shall be installed according to applicable electrical safety codes and the manufacturer's installation schematic.

K. All components in a drip dispersal system shall be rated to withstand contact with wastewater and recommended for this application by the manufacturer. All components shall be protected from freezing.

L. The designer of the drip dispersal system shall conduct a startup inspection that verifies the dosing rates, the flushing rates, and other parameters critical to the proper operation of the system. A summary of the startup inspection shall be included in the operation and maintenance manual and shall include, at a minimum, the dosing volume, the forward flow flushing rate, the pressure head of the system, and verification of proper cycling between zones.

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 (12VAC5-610)

Application for a Sewage Disposal System Construction Permit, C.H.S. 200 (rev. 4/83)

Sewage Disposal System Construction Permit, C.H.S. 202A (rev. 6/84)

Schematic Drawing of Sewage Disposal System and Topographic, C.H.S. 202B (rev. 6/84)

Application for Sewage Handling Permit, B.W.E. 23-1

Application for Pump and Haul, B.W.E. 25-1

Pump and Haul Storage Facility Construction Permit, B.W.E. 26-1

Soil Evaluation Form, C.H.S. 201 (rev. 4/83)

Soils Evaluation Percolation Test Data

Record of Inspection - Non-Public Drinking Water Supply System

Completion Statement, C.H.S. 204 (rev. 4/83)

Gravelless Material: Application for General Approval (undated)

VA.R. Doc. No. R14-3665; Filed January 2, 2014, 3:45 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

REAL ESTATE APPRAISER BOARD

Proposed Regulation

Title of Regulation: **18VAC130-30. Appraisal Management Company Regulations (adding 18VAC130-30-10 through 18VAC130-30-170).**

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

Public Hearing Information:

February 27, 2014 - 9 a.m. - 9960 Mayland Drive, Suite 200, Board Room 1, Richmond, VA 23233

Public Comment Deadline: March 28, 2014.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 350-7849, or email reappraisers@dpor.virginia.gov.

Basis: Title 12, Chapter 34A, Section 3353 (Appraisal Management Company Minimum Requirements) of the United States Code requires that appraisal management companies register with and be subject to supervision by a state appraiser certifying and licensing agency in each state in which such company operates.

The second and third enactments of Chapter 405 of the 2012 Acts of Assembly state: "That the Real Estate Appraiser Board shall promulgate regulations to implement the provisions of this act to be effective July 1, 2014. That the provisions of this act shall become effective on July 1, 2012, except that § 54.1-2021.1 of this act shall become effective July 1, 2014." Section 54.1-2021.1 of the Code of Virginia states that beginning July 1, 2014, the board may issue a license to do business as an appraisal management company in the Commonwealth to any applicant who has submitted a complete application and submitted certain satisfactory evidence.

Section 54.1-201 A 1 of the Code of Virginia authorizes the board to establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.

Section 54.1-201 A 5 of the Code of Virginia authorizes the board to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

Purpose: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) was signed into law on July 21, 2010, and requires that appraisal management companies register with and be subject to supervision by a state appraiser certifying and licensing agency in each state in which such company operates. To comply with this requirement, the General Assembly adopted § 54.1-2021.1 of the Code of Virginia, which permits the board, beginning July 1, 2014, to issue a license to do business as an appraisal management company in the Commonwealth to any applicant who has submitted a complete application. The proposed regulations complement the law enacted in Chapter 405 of the 2012 Acts of Assembly and provide minimum burdens on regulants while still protecting the public.

The board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive an appraisal management company license. The board sets minimum standards for licensure in compliance with the federal requirements to help protect the health and safety of the citizens of the Commonwealth.

Substance: The new chapter has several parts, as follows:

General: Defines the terms used throughout the regulations.

Entry: States the application procedures and provides qualifications for licensure of appraisal management companies, including responsible person and controlling person information, bond and letter of credit requirements, and past criminal conviction and disciplinary action information.

Fees: Lists all fees, including application fees, federal registry fees, renewal fees, and reinstatement fees.

Renewal and Reinstatement: Establishes requirements for renewal and reinstatement of license, including qualifications, procedures, and fees; status of license during period prior to reinstatement; and board discretion to deny renewal or reinstatement.

Standards of Practice: Describes grounds for disciplinary action, license maintenance requirements, and prohibited acts.

Issues: The Code of Virginia establishes the board as the state agency that oversees the licensure and regulation of appraisal management companies providing services in Virginia. The board's primary mission is to protect the citizens of the Commonwealth by prescribing requirements for minimal competencies, by prescribing standards of conduct and practice, and by imposing penalties for not complying with the regulations. The proposed regulations provide clarification and guidance to licensees so they can better serve the public and comply with industry standards.

The proposed regulations pose no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As permitted by Chapter 405 of the 2012 Acts of the Assembly, the Real Estate Appraisal Board (Board) proposes to promulgate new regulations for the licensure of real estate appraisal management companies.

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs for these proposed regulations.

Estimated Economic Impact. Legislative History: In 2010, the United States Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). This act, among other things, requires states to register appraisal management companies and also requires a group of governmental entities to jointly establish minimal requirements that states must apply to such registration.[1] Dodd-Frank mandates that regulations promulgated by these federal entities:

1) Require that appraisal management companies register with, and be supervised by, a state appraiser certifying and licensing agency in each state in which companies operate,

2) Verify that only licensed or certified appraisers are used for federally related transactions,

3) Require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice and

4) Require that appraisals are conducted independently and free from inappropriate influence and coercion.

Dodd-Frank states that no appraisal management company may perform services that are related to federal transactions in a state that has not set up a registration program that complies with Dodd-Frank 36 months after federal regulations are promulgated and in their final form. Dodd-Frank also allows a 12-month extension to the 36-month time limit for states that have made substantial progress in establishing an appraisal management company registration program. Board staff reports that, to their knowledge, the federal entities tasked with promulgation of federal regulations have not yet begun to write them.

In 2012, the Virginia General Assembly passed HB210 which amended some rules for appraisers and appraisal management companies and added § 54.1-2021.1 to the Code of Virginia. Section 54.1-2021.1 states that "(b)eginning July 1, 2014, the Board may issue a license to do business as an appraisal management company" and goes on to list required information for an application for licensure and some requirements for bond that are conditioned upon companies applying for licensure. Neither Chapter 405 of the 2012 Acts of Assembly nor any other part of the Code of Virginia requires appraisal management companies to be licensed by the Board to do business. Additionally, the Code of Virginia does not currently make unlicensed practice for appraisal management companies a crime with punishments attached. Given the permissive but not mandatory nature of the language that allows licensure, the lack of other licensure requirements in the Code of Virginia and the Board's lack of authority to punish unlicensed individuals or companies, the Board sought counsel from the Attorney Generals office which advised that the licensure program proposed by the Board in these regulations cannot be enforced against companies that decide not to be licensed. This program will be, in effect, voluntary.

Although Chapter 405 does not create or authorize a mandatory licensure program, other parts of the Code do meet three of the four requirements that Dodd-Frank lays out for federal regulations. Licensure for real estate appraisers is mandatory and, since 1992, § 54.1-2011 of the Code of Virginia has explicitly stated that only licensed appraisers may perform appraisals in connection with a federally related transaction (#2 on the list above). Section 54.1-2022 of the Code of Virginia appears to require that appraisal management companies follow the Uniform Standards of Professional Appraisal Practice as required by #3 on the list. Section 54.1-2022 also explicitly states that "(n)o employee, director, officer, or agent of an appraisal management company shall influence or attempt to influence the development, reporting, result or review of a real estate appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery or in any other manner" and goes on to list some, but not all, specific acts that are prohibited; this language in the Code would seem to handily satisfy the requirements in #4 on the list above.

If three of the four requirements for appraisal management companies that are explicitly listed in Dodd-Frank are already in the Code of Virginia, and absent the federal regulating agencies adding any other requirements in the yet to be promulgated federal regulations, Virginia might only have to require registration of appraisal management companies, similar to what is currently required for appraisal companies formed by independent licensed appraisers, in order to meet all requirements of Dodd-Frank.

Proposed Regulatory Requirements:

As allowed by Chapter 405 of the 2012 Acts of the Assembly, the Board now proposes to promulgate new regulations for licensure of appraisal management companies that operate in Virginia. These regulations will:

1) Define terms that are not already defined in the statute,

2) Create application procedures to list qualifications for appraisal management company licensure including requiring:

• A listing of the company's designated responsible person and controlling person information,

• A $25,000 bond or letter of credit requirements (as required of licensees in § 54.1-2021.1) and

• Disclosure of any past felony conviction, any misdemeanor convictions in the five years immediately prior to application for licensure and any disciplinary action information for responsible persons, controlling persons and any individual who owns 10% or more of an appraisal management company.

3) Establish a licensure fee of $490 plus the National Registry fee of $50 per appraiser employed by or contracting with a firm, a renewal fee of $300 plus the National Registry fee of $50 per appraiser, and a reinstatement fee of $790 plus the National Registry fee of $50 per appraiser,

4) Describe requirements for biennial renewal and reinstatement, including qualifications, procedures and fees, status of license during the time prior to reinstatement, and board discretion to deny renewal or reinstatement,

5) List grounds for disciplinary action, license maintenance requirements, and prohibited acts,

6) Specify that a change of business entity requires a new license and that licenses may not be transferred from one entity to another,

7) Clarify that licensees are required to notify the board of certain adverse actions, like criminal convictions or regulatory disciplinary actions, taken against any individual who is required to report such adverse actions on an application for licensure and

8) Mandate that licensees respond to the board's requests for information and provide records within certain timeframes.

All proposed regulatory requirements will only apply to licensees. As noted above, licensure under these proposed regulations will, in effect, be voluntary absent some changes to the Code of Virginia. Absent those changes, appraisal management companies will likely not have an incentive to become licensed until at least 36 months after federal regulations are promulgated when they would lose the right to perform services related to federal transactions if they are not registered with the state.

Individuals who choose to be licensed under these proposed regulations will incur time and possibly copying costs on account of having to compile and send information required as a part of the initial and renewal application processes. Companies who choose to be licensed will incur costs for the $25,000 bond or letter of credit that legislation requires they carry as security against claims due to poor service or non-payment of monies owed for contracted appraisal services. Companies will also incur costs for licensure fees listed above plus payment of a National Registry fee for each appraiser that works for or with them. Board staff reports that the Board does not have information about how many appraisers, on average, work for any particular appraisal management company but that they would estimate that 90% of appraisers work in some capacity for such companies. Information available on the Department of Professional and Occupational Regulations (DPOR) website indicates that there are approximately 3,390 real estate appraisers who hold a current active license from the Board; 90% of these would be approximately 3,055. This number multiplied by $50 (or $152,730) will approximate the total biennial costs for fees paid to the National Registry if all 150 appraisal management companies in the Commonwealth chose to be licensed (approximately $1,018 per firm). These costs would need to be weighed against any benefit that accrues to the public if appraisal management firms act in a more ethical, less profligate manner on account of licensure.

Businesses and Entities Affected. Board staff reports that there are approximately 150 appraisal management companies in the Commonwealth, all of which would qualify as small businesses. Any of these companies that choose to be licensed will be affected by these proposed regulations.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. Right now, firms are unlikely to choose licensure unless the benefits of being licensed outweigh its costs. Accordingly, these proposed regulations are unlikely to have an adverse impact on employment. In the future, if licensure is required by the state or when Dodd-Frank bans firms from performing services relating to federal transactions if they are not registered with the state, the costs of licensure may cause appraisal management companies to hire or contract with fewer appraisers. At that time, appraisal management firms that are only marginally attached to the market place may choose to stop working in appraisal management altogether.

Effects on the Use and Value of Private Property. As a voluntary program, these proposed regulations are unlikely to affect the use or value of private property in the Commonwealth. If licensure becomes required or when Dodd-Frank bans firms from performing services relating to federal transactions if they are not registered with the state, the costs of licensure may have a negative effect on the value of private firms.

Small Businesses: Costs and Other Effects. Currently, small businesses that choose to be licensed under these proposed regulations will incur costs for licensure fees, National Registry fees and for gathering and transmitting information required for licensure applications. These businesses will also incur costs associated with getting and keeping the $25,000 bond or letter of credit required by § 54.1-2021.1.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Since it appears that most of the requirements for appraisal management companies in Dodd-Frank are already met by language in the Code of Virginia, the Board or the General Assembly may wish to consider only requiring registration with the Board rather than moving toward requiring licensure of all companies if such a

registration program would be less costly for regulated entities.

Real Estate Development Costs. At this time, this regulatory action will likely have no effect on real estate development costs in the Commonwealth.

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

[1] The Board of Governors for the Federal Reserve System, the Comptroller of the Currency, representatives of the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, representatives of the Federal Housing Finance Agency and representatives of the Bureau of Consumer Financial Protection (that was newly formed by the Dodd-Frank Act) are jointly tasked with establishing minimum registration requirements for appraisal management companies.

Agency's Response to Economic Impact Analysis: The Real Estate Appraiser Board concurs with approval.

Summary:

To implement Chapter 405 of the 2012 Acts of Assembly, the proposed new chapter provides for the licensure and regulation of real estate appraisal management companies. The regulation establishes definitions, qualifications for licensure, fees, and standards of practice and conduct.

CHAPTER 30
APPRAISAL MANAGEMENT COMPANY REGULATIONS

Part I
General

18VAC130-30-10. Definitions.

A. Section 54.1-2020 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Appraisal management company"

"Appraisal services"

"Appraiser"

"Board"

"Employee"

"Uniform Standards of Professional Appraisal Practice"

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

"Address of record" means the mailing address designated by the regulant to receive notices and correspondence from the board. Notice mailed to the address of record by certified mail, return receipt requested, shall be deemed valid notice.

"Applicant" means an appraisal management company that has submitted an application for licensure.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation.

"Controlling person" means (i) an owner, officer, or director of a corporation or a partnership or a managing member of a limited liability company or other business entity seeking to offer appraisal management services; (ii) an individual employed, appointed, or authorized by an appraisal management company who has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and has the authority to enter into agreements with appraisers for the performance of appraisals; or (iii) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Direct supervision" means exercising oversight and direction of, and control over, the work of another.

"Firm" means a sole proprietorship, association, partnership, corporation, limited liability company, limited liability partnership, or any other form of business organization recognized under the laws of the Commonwealth of Virginia and properly registered, as may be required, with the Virginia State Corporation Commission.

"Regulant" means an appraisal management company as defined in § 54.1-2020 of the Code of Virginia that holds a license issued by the board.

"Reinstatement" means the process and requirements through which an expired license can be made valid without the regulant having to apply as a new applicant.

"Renewal" means the process and requirements for periodically approving the continuance of a license.

"Responsible person" means a person licensed under Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1 of the Code of Virginia who shall be designated by each regulant to ensure compliance with Chapter 20.2 (§ 54.1-2020 et seq.) of Title 54.1 of the Code of Virginia, and all regulations of the board, and to receive communications and notices from the board that may affect the regulant.

"Sole proprietor" means any individual, not a corporation or other registered business entity, who is trading under his own name or under an assumed or a fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Timely payment" means payment to an appraiser for the completion of an appraisal or a valuation assignment within 30 days after the appraiser delivers the completed appraisal or valuation assignment to the appraisal management company except in cases of breach of contract or noncompliance with the conditions of the engagement or performance of services that violates the Uniform Standards of Professional Appraisal Practice.

Part II
Entry

18VAC130-30-20. Application procedures.

An applicant seeking licensure shall submit an application with the appropriate fee specified in 18VAC130-30-60. Application shall be made on a form provided by the board or its agent.

By submitting the application to the department, the applicant certifies that the applicant has read and understands the applicable statutes and the board's regulations.

The receipt of an application and the deposit of fees by the board does not indicate approval by the board.

The board may make further inquiries and investigations with respect to the applicant's qualifications to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained in this chapter and on the application. Applications will not be considered complete until all documents are received by the board.

A firm will be notified within 30 days of the board's receipt of an initial application if the application is incomplete. A firm that fails to complete the process within 12 months of receipt of the application in the board's office must submit a new application and fee.

18VAC130-30-30. Qualifications for licensure as an appraisal management company.

A. Firms that meet the definition of appraisal management company as defined in § 54.1-2020 of the Code of Virginia shall submit an application on a form prescribed by the board and shall meet the requirements set forth in § 54.1-2021.1 of the Code of Virginia, as well as the additional qualifications of this section.

B. Any firm acting as an appraisal management company as defined in § 54.1-2020 of the Code of Virginia shall hold a license as an appraisal management company. All names under which the appraisal management company conducts business shall be disclosed on the application. The name under which the firm conducts business and holds itself out to the public (i.e., the trade or fictitious name) shall also be disclosed on the application. Firms shall be organized as business entities under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission or the clerk of the court in the county or jurisdiction where the business is to be conducted in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia before submitting an application to the board.

C. The applicant for an appraisal management company license shall disclose the firm's mailing address and the firm's physical address. A post office box is only acceptable as a mailing address when a physical address is also provided.

D. In accordance with § 54.1-204 of the Code of Virginia, each applicant for an appraisal management company license shall have any person who owns 10% or more of the firm and the controlling person of the firm submit to fingerprinting and a background investigation and disclose the following information:

1. All felony convictions.

2. All misdemeanor convictions in any jurisdiction that occurred within five years of the date of application.

3. Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

E. The applicant for an appraisal management company license, the controlling person, the responsible person, and any person who owns 10% or more of the firm shall be in good standing in Virginia and in every jurisdiction and with every board or administrative body where licensed, certified, or registered, and the board, in its discretion, may deny licensure to any applicant who has been subject to, or whose controlling person or responsible person has been subject to, or any person who owns 10% or more of the firm has been

subject to, any form of adverse disciplinary action, including but not limited to (i) reprimand; revocation, suspension, or denial of license; imposition of a monetary penalty; requirement to complete remedial education, or any other corrective action in any jurisdiction or by any board or administrative body or (ii) surrender of a license, a certificate, or registration in connection with any disciplinary action in any jurisdiction prior to obtaining licensure in Virginia.

F. The board shall deny the application for licensure of an applicant for an appraisal management company if any person or entity that owns 10% or more or the appraisal management company has had an appraiser license refused, denied, canceled, or revoked in Virginia or any jurisdiction.

G. The applicant for an appraisal management company license shall be in compliance with the standards of conduct and practice set forth in Part V (18VAC130-30-120 et seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the license is in effect.

H. The applicant for an appraisal management company license shall submit evidence of a bond or letter of credit in accordance with § 54.1-2021.1 C of the Code of Virginia. Proof of current bond or letter of credit with the appraisal management company as the named bond holder or letter of credit holder must be submitted to obtain or renew the license. The bond or letter of credit must be in force no later than the effective date of the license and shall remain in effect through the date of expiration of the license. The bond or letter of credit shall include:

1. The principal of the bond or letter of credit;

2. The beneficiary of the bond or letter of credit;

3. The name of the surety or financial institution that issued the bond or letter of credit;

4. The bond or letter of credit number as assigned by the issuer;

5. The dollar amount; and

6. The expiration date or, if self-renewing, the date by which the bond or letter of credit shall be renewed.

I. The firm shall provide the name, address, and contact information for any person or entity that owns 10% or more of the appraisal management company.

J. The firm shall designate a responsible person.

18VAC130-30-40. Application denial.

The board may refuse initial licensure due to an applicant's failure to comply with entry requirements or for any of the reasons the board may discipline a regulant.

Part III
Fees

18VAC130-30-50. General fee requirements.

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee is on time. Checks or money orders shall be payable to the Treasurer of Virginia.

18VAC130-30-60. Fee schedule.

Fee Type	Fee Amount	When Due
Initial Application - Appraisal Management Company	$490 plus National Registry fee of $50 per appraiser working for or contracting with the appraisal management company	With application
Renewal - Appraisal Management Company	$300 plus National Registry fee of $50 per appraiser working for or contracting with the appraisal management company	With renewal application
Reinstatement - Appraisal Management Company	$790 (includes a $490 reinstatement fee in addition to the regular $300 renewal fee) plus National Registry fee of $50 per appraiser working for or contracting with the appraisal management company	With reinstatement application

Each appraisal management company shall submit a $50 National Registry fee assessment for each appraiser working for or contracting with the appraisal management company during the previous year in accordance with § 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 USC §§ 3331-3351). This fee may be adjusted and charged to an appraisal management company in accordance with the Act.

Part IV
Renewal and Reinstatement

18VAC130-30-70. Renewal required.

A license issued under this chapter shall expire two years from the last day of the month in which it was issued. A fee shall be required for renewal.

18VAC130-30-80. Expiration and renewal.

A. Prior to the expiration date shown on the license, licenses shall be renewed upon (i) completion of the renewal application, (ii) submittal of proof of current bond or letter of credit as detailed in 18VAC130-30-30 G, and (iii) payment of the fees specified in 18VAC130-30-60.

B. The board will mail a renewal notice to the regulant at the last known mailing address of record. Failure to receive this notice shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a copy of the license may be submitted with the required fees as an application for renewal. By submitting an application for renewal, the regulant is certifying continued compliance with the standards of conduct and practice in Part V (18VAC130-30-120 et seq.) of this chapter.

C. Applicants for renewal shall continue to meet all of the qualifications for licensure set forth in Part II (18VAC130-30-20 et seq.) of this chapter.

18VAC130-30-90. Reinstatement of appraisal management company license required.

A. If all of the requirements for renewal of a license as specified in 18VAC130-30-80 A are not completed within 30 days of the license expiration date, the regulant shall be required to reinstate the license by meeting all renewal requirements and by paying the reinstatement fee specified in 18VAC130-30-60.

B. A license may be reinstated for up to one year following the expiration date. After one year, the license may not be reinstated under any circumstances and the firm must meet all current entry requirements and apply as a new applicant.

C. Any regulated activity conducted subsequent to the license expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

18VAC130-30-100. Status of license during the period prior to reinstatement.

A regulant who applies for reinstatement of a license shall be subject to all laws and regulations as if the regulant had been continuously licensed. The regulant shall remain under and be subject to the disciplinary authority of the board during this entire period.

18VAC130-30-110. Board discretion to deny renewal or reinstatement.

The board may deny renewal or reinstatement of a license for the same reasons as the board may refuse initial licensure or discipline a regulant.

The board may deny renewal or reinstatement of a license if the regulant has been subject to a disciplinary proceeding and has not met the terms of an agreement for licensure or other board order, has not satisfied all sanctions, or has not fully paid any monetary penalties and costs imposed by the board, plus any accrued interest.

Part V
Standards of Conduct and Practice

18VAC130-30-120. Grounds for disciplinary action.

The board has the power to fine any regulant, to place any regulant on probation, and to suspend or revoke any license issued under the provisions of Chapter 20.2 (§ 54.1-2020 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board, in accordance with subdivision 7 of § 54.1-201 and § 54.1-202 of the Code of Virginia and the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) when any regulant has been found to have violated or cooperated with others in violating any provision of Chapter 20.2 of Title 54.1 of the Code of Virginia, any relevant provision of the Uniform Standards of Professional Appraisal Practice as developed by the Appraisal Standards Board of the Appraisal Foundation, or any regulation of the board.

18VAC130-30-130. Maintenance of license.

A. No license issued by the board shall be assigned or otherwise transferred.

B. A regulant shall report, in writing, all changes of address to the board within 30 days of the change and shall return the license to the board. In addition to the address of record, a physical address is required for each license. If the regulant holds more than one license, certificate, or registration, the regulant shall inform the board of all licenses, certificates, and registrations affected by the address change.

C. Any change in any of the qualifications for licensure found in 18VAC130-30-30 shall be reported to the board within 30 days of the change.

D. Notwithstanding the provisions of subsection C of this section, a regulant shall report the cancellation, amendment, expiration, or any other change of any bond or letter of credit submitted in accordance with 18VAC130-30-30 G within five days of the change.

E. A regulant shall report to the board the discharge or termination of the responsible person and provide to the board the new responsible person designated by the regulant within five business days of the discharge or termination and name a new responsible person.

18VAC130-30-140. Change of business entity requires a new license.

A. Licenses are issued to firms as defined in this chapter and are not transferable. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the license becomes void and shall be returned to the board within 30 days of the change. Such changes include but are not limited to:

1. Cessation of the business or the voluntary termination of a sole proprietorship or general partnership;

2. Death of a sole proprietor;

3. Formation, reformation, or dissolution of a general partnership, limited partnership, corporation, limited liability company, association, or any other business entity recognized under the laws of the Commonwealth of Virginia; or

4. The suspension or termination of the corporation's existence by the State Corporation Commission.

B. When a new firm is formed, the new firm shall apply for a new license on a form provided by the board before engaging in any activity regulated by Chapter 20.2 (§ 54.1-2020 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.

18VAC130-30-150. Notice of adverse action.

A. Licensed appraisal management companies shall notify the board of the following actions against the firm, the responsible person, any controlling person, or any person who owns 10% or more of the firm:

1. Any disciplinary action taken by any jurisdiction, board, or administrative body of competent jurisdiction, including, but not limited to, any reprimand; license or certificate revocation, suspension, or denial; monetary penalty; or requirement for remedial education or other corrective action.

2. Any voluntary surrender of a license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.

3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, in any jurisdiction of the United States of any misdemeanor involving moral turpitude, sexual offense, drug distribution, or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having lapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.

B. The notice must be made to the board in writing within 30 days of the action. A copy of the order or other supporting documentation must accompany the notice. The record of conviction, finding, or case decision shall be considered prima facie evidence of a conviction or finding of guilt.

18VAC130-30-160. Prohibited acts.

The following acts are prohibited and any violation may result in disciplinary action by the board:

1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any of the regulations of the board or Chapter 20.2 (§ 54.1-2020 et seq.) of Title 54.1 of the Code of Virginia, or engaging in any acts enumerated in § 54.1-111 of the Code of Virginia.

2. Allowing a license issued by the board to be used by another.

3. Obtaining or attempting to obtain a license by false or fraudulent representation, or maintaining, renewing, or reinstating a license by false or fraudulent representation.

4. The regulant, the responsible person, any controlling person, or any person who owns 10% or more of the firm having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC130-30-150.

5. Failing to inform the board in writing within 30 days that the regulant, the responsible person, any controlling person, or any person who owns 10% or more of the firm was convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC130-30-150.

6. Failing to report a change as required by 18VAC130-30-130 or 18VAC130-30-140.

7. Engaging in dishonest or fraudulent conduct as an appraisal management company.

8. Failing to satisfy any judgments or restitution orders entered by a court or arbiter of competent jurisdiction.

9. Engaging in any acts enumerated in subsections A through D of § 54.1-2022 of the Code of Virginia.

10. Failing to act as an appraisal management company in a manner that safeguards the interests of the public.

11. Advertising in any name other than the name or names in which licensed.

12. Failing to maintain the bond or letter of credit as required by 18VAC130-30-30 G.

13. Failing to have a system in place to review the work of all appraisers who may perform appraisal services for the appraisal management company on a periodic basis to ensure that the appraisal services are being conducted in conformance with the Uniform Standards of Professional Appraisal Practice.

14. Failing to maintain a detailed record of the following: (i) each request for an appraisal service that the appraisal management company receives, (ii) the name of each independent appraiser that performs the appraisal, (iii) the physical address or legal identification of the subject property, (iv) the name of the appraisal management company's client for the appraisal, (v) the amount paid to the appraiser, and (vi) the amount paid to the appraisal management company.

15. Failing to have a system in place to ensure compliance with § 129E of the Truth in Lending Act (15 USC § 1601 et seq.).

16. Failing to include the regulant's Virginia license number on all contracts, agreements, letters of engagement, or other documentation entered with an independent appraiser for the performance of appraisal services.

18VAC130-30-170. Response to inquiry and provision of records.

A. A regulant must respond within 10 days to a request by the board or any of its agents regarding any complaint filed with the department.

B. Unless otherwise specified by the board, a regulant of the board shall produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any transaction pertaining to a complaint filed in which the regulant was involved, or for which the regulant is required to maintain records for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. A regulant shall not provide a false, misleading, or incomplete response to the board or any of its agents seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsections A and B of this section, a regulant must respond to an inquiry by the board or its agents within 21 days.

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 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 (18VAC130-30)

Appraisal Management Company License Application, A461-40##LIC-v1 (2014)

VA.R. Doc. No. R13-3435; Filed December 26, 2013, 11:31 a.m.

REAL ESTATE BOARD

Final Regulation

Title of Regulation: **18VAC135-50. Fair Housing Regulations (amending 18VAC135-50-10, 18VAC135-50-20, 18VAC135-50-50, 18VAC135-50-110, 18VAC135-50-200, 18VAC135-50-270, 18VAC135-50-290, 18VAC135-50-350, 18VAC135-50-400, 18VAC135-50-440).**

Statutory Authority: §§ 36-96.8 and 54.1-2105 of the Code of Virginia; 42 USC § 3613.

Effective Date: March 1, 2014.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email reboard@dpor.virginia.gov.

Summary:

The amendments clarify and update the regulations for consistency with federal and state laws. Amendments include (i) changing the definition of "handicap" to be synonymous with the term "disability," (ii) clarifying the procedure for determining the date of filing for a fair housing complaint, and (iii) clarifying that the fair housing administrator's duties include developing facts sufficient to support a recommendation regarding a complaint rather than a determination.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part I
General Provisions

18VAC135-50-10. Definitions.

The definitions provided in the Virginia Fair Housing Law, as they may be supplemented herein, shall apply throughout this chapter.

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

"Authorized representative" means (i) an attorney licensed to practice law in the Commonwealth, or (ii) a law student appearing in accordance with the third-year student practice rule, or (iii) a non-lawyer under the supervision of an attorney and acting pursuant to Part 6, § 1, Rule 1 (UPR 1-101(A)(1)) of the Rules of the Supreme Court of Virginia, or (iv) a person who, without compensation, advises a complainant, respondent, or aggrieved person in connection with a complaint, a conciliation conference or proceeding before the board. When a complainant, respondent, or aggrieved person authorizes a person to represent him under subdivision (iv) of this definition, such authority shall be made to the board, either in writing or orally in an appearance before the board, and shall be accepted by the representative by sending a written acknowledgement to the board or by the representative's appearance before the board.

"Board" means the Real Estate Board or the Fair Housing Board, or both.

"Broker" or "agent" means any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Fair housing administrator" means the individual employed and designated as such by the Director of the Department of Professional and Occupational Regulation.

"Fair housing law" means the Virginia Fair Housing Law, Chapter 5.1 (§ 36-96.1 et seq.) of Title 36 of the Code of Virginia, effective July 1, 1991.

"Person in the business of selling or renting dwellings" means any person who (i) within the preceding 12 months,

has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein; (ii) within the preceding 12 months, has participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or (iii) is the owner of any dwelling designed or intended for occupancy by or occupied by, five or more families.

"Receipt of notice" means the day that personal service is completed by handing or delivering a copy of the document to an appropriate person or the date that a document is delivered by certified mail, or three days after the date of the proof of mailing of first class mail.

18VAC135-50-20. Purpose.

This chapter governs the exercise of the administrative and enforcement powers granted to and the performance of duties imposed upon the Real Estate Board and the Fair Housing Board by the Virginia Fair Housing Law. In accordance with § 54.1-2344 of the Code of Virginia, the Real Estate Board is responsible for the administration and enforcement of the Fair Housing Law with respect to real estate licensees or their agents or employees who have allegedly violated or violated the Fair Housing Law. The Fair Housing Board is responsible for the administration and enforcement of the Fair Housing Law with respect to all others who have allegedly violated or violated the Fair Housing Law.

This chapter provides the board's interpretation of the coverage of the fair housing law regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, ~~and~~ the availability of residential real estate-related transactions, or any other discriminatory conduct prohibited by the Virginia Fair Housing Law.

18VAC135-50-50. Scope.

It is the policy of Virginia to provide, within constitutional limitations, for fair housing throughout the Commonwealth and to impose obligations, rights and remedies substantially equivalent to those granted under federal law. No person shall be subject to discriminatory housing practices ~~because of race, color, religion, sex, handicap, elderliness, familial status, or national origin~~ in the sale, rental, advertising of dwellings, inspection of dwellings or entry into a neighborhood, in the provision of brokerage services, financing ~~or,~~ the availability of residential real estate-related transactions, or any other discriminatory conduct prohibited by the Virginia Fair Housing Law because of race, color, religion, sex, handicap, elderliness, familial status, or national origin.

18VAC135-50-110. Discriminatory advertisements, statements and notices.

A. It shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, elderliness, or national origin, or an intention to make any such preference, limitation, or discrimination.

B. The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, or any documents used with respect to the sale or rental of a dwelling.

C. Discriminatory notices, statements, and advertisements include, but are not limited to:

1. Using words, phrases, photographs, illustrations, symbols, or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, handicap, familial status, elderliness or national origin.

2. Expressing to agents, brokers, employees, prospective sellers, or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, handicap, familial status, elderliness, or national origin of such person.

3. Selecting media or locations for advertising the sale or rental of dwelling which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

4. Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

D. Publishers' notice. All publishers shall publish at the beginning of the real estate advertising section a notice such as that appearing ~~in Table III, Appendix I to 24 CFR Part 109, Ch. 1 (4-1-00 edition)~~ in this subsection below. The notice shall include a statement regarding the coverage of any ~~local fair housing or human rights ordinance~~ Virginia and federal fair housing laws prohibiting discrimination in the sale, rental or financing of dwellings:

All real estate advertised herein is subject to the Virginia and federal fair housing laws, which make it illegal to advertise "any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, national origin, or elderliness, or intention to make any such preference, limitation, or discrimination."

We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis. (Table III, Appendix I to 24 CFR Part 109, Ch. 1 (4/1/2000 edition).

E. Fair housing poster requirements.

1. Persons subject to § 36-96.3 of the Virginia Fair Housing Law shall post and maintain a HUD approved fair housing poster as follows:

a. With respect to a single-family dwelling (not being offered for sale or rental in conjunction with the sale or rental of other dwellings) offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings, such person shall post and maintain a fair housing poster at any place of business where the dwelling is offered for sale or rental.

b. With respect to all other dwellings covered by the Virginia Fair Housing Law: (i) a fair housing poster shall be posted and maintained at any place of business where the dwelling is offered for sale or rental, and (ii) a fair housing poster shall be posted and maintained at the dwelling, except that with respect to a single-family dwelling being offered for sale or rental in conjunction with the sale or rental of other dwellings, the fair housing poster may be posted and maintained at the model dwellings or at a conspicuous location instead of at each of the individual dwellings.

c. With respect to those dwellings to which subdivision 1 b of this subsection applies, the fair housing poster must be posted at the beginning of construction and maintained throughout the period of construction and sale or rental.

2. The poster requirement does not apply to vacant land, or any single-family dwelling, unless such dwelling (i) is being offered for sale or rental in conjunction with the sale or rental of other dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in subdivision 1 b (ii) of this subsection, or (ii) is being offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in subdivision 1 a of this subsection.

3. All persons subject to § 36-96.4 of the Virginia Fair Housing Law, Discrimination in Residential Real Estate-Related Transactions, shall post and maintain a fair housing poster at all their places of business which participate in the covered activities.

4. All persons subject to 18VAC135-50-140, Discrimination in the Provision of Brokerage Services, shall post and maintain a fair housing poster at all their places of business.

5. Location of posters. All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate-related transactions or brokerage services.

6. Availability of posters. All persons subject to this part may obtain fair housing posters from the Virginia Department of Professional and Occupational Regulation. A facsimile may be used if the poster and the lettering are equivalent in size and legibility to the poster available from the Department of Professional and Occupational Regulation. Any person who claims to have been injured by a discriminatory housing practice may file a complaint with the administrator pursuant to Part III [(18VAC135-50-300 et seq.)] of this chapter.

18VAC135-50-200. General prohibitions against discrimination because of handicap.

A. Definitions. As used in this section unless a different meaning is plainly required by the context:

"Accessible," when used with respect to the public and common use areas of a building containing covered multi-family dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical ~~handicaps~~ disabilities. The phrase "readily accessible to and usable by" is synonymous with "accessible." A public or common use area that complies with the appropriate requirements of ANSI A117.1-1986 or with any other standards adopted as part of regulations promulgated by HUD at 24 CFR Part 100 providing accessibility and usability for physically handicapped people is accessible within the meaning of this section.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1-1986, or with any other standards adopted as part of regulations promulgated by HUD at 24 CFR Part 100, is an "accessible route."

"ANSI A117.1" means ANSI A117.1-1986, the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people, or an equivalent or stricter standard. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 ~~U.S.C.~~ USC § 552(a) and 1 CFR Part 51. Copies may be obtained from ~~American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018~~ Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 90112.

"Building" means a structure, facility or portion thereof that contains or serves one or more dwelling units.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or

sidewalks, if available. A building entrance that complies with ANSI A117.1 or a comparable standard complies with the requirements of this paragraph.

"Common use areas" shall include, but not be limited to, rooms, spaces, or elements inside or outside of a building which are not part of the dwelling unit and which are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mailrooms, recreational areas and passageways among and between buildings.

"Controlled substance" means any drug or other substance as defined in Virginia or federal law.

"Disability" or "disabled" means, and is synonymous with, the term "handicap" as defined in the Virginia Fair Housing Law.

"Dwelling unit" means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

"Entrance" means any access point to a building or portion of a building used by residents for the purpose of entering.

"Exterior" means all areas of the premises outside of an individual dwelling unit.

"First occupancy" means a building that has never before been used for any purpose.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

The following terms, as used in the definition of "handicap" contained in § 36-96.1:1 of the Code of Virginia, shall mean:

"Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

"Is regarded as having an impairment" means:

1. Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or

3. Has none of the impairments defined in "physical or mental impairment" but is treated by another person as having such an impairment.

"Interior" means the spaces, parts, components or elements of an individual dwelling unit.

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

"Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

"Physical or mental impairment" includes:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

"Premises" means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

"Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

B. General prohibitions against discrimination because of handicap. It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this subdivision does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

1. Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

2. Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;

3. Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;

4. Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;

5. Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

C. Reasonable modifications of existing premises.

1. It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

2. A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

3. Except as otherwise provided, the Joint Statement of the Department of Housing and Urban Development and the Department of Justice "Reasonable Modifications under the Fair Housing Act" dated March 5, 2008, is hereby incorporated by reference to provide guidance regarding the rights and obligations of persons with disabilities and housing providers relating to reasonable modifications. A copy of the joint statement may be obtained from the Virginia Fair Housing Office.

D. Reasonable accommodations.

1. It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

2. Except as otherwise provided, the Joint Statement of the Department of Housing and Urban Development and the Department of Justice "Reasonable Accommodations under the Fair Housing Act" dated May 17, 2004, is hereby incorporated by reference to provide guidance regarding the rights and obligations of persons with disabilities and housing providers relating to reasonable accommodations. A copy of this joint statement may also be obtained from the Virginia Fair Housing Office.

E. Design and construction requirements. Covered multi-family dwellings for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

18VAC135-50-270. Use of words, phrases, symbols and visual aids.

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations. In considering a complaint under the fair housing law, the board will consider the use of these and comparable words, phrases, symbols, and forms to determine a possible violation of the law and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the law is likely to result.

1. Words descriptive of dwelling, landlord and tenants. White private home, Colored home, Jewish home, Hispanic residence, adult building.

2. Words indicative of race, color, religion, sex, handicap, familial status, elderliness or national origin, including but not limited to:

a. Race: African-American, Negro, Black, White, Caucasian, Oriental, Asian, American Indian, Native American, Arab.

b. Color: White, Black, Colored.

c. Religion: Protestant, Christian, Catholic, Jewish, Muslim, Islamic.

d. National origin: Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.

e. Sex: The exclusive use of words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or intending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this section restricts advertisements of dwellings used exclusively for dormitory facilities by educational institutions.

f. Handicap: crippled, blind, deaf, mentally ill, retarded, impaired, handicapped, physically fit. Nothing in this section restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.

g. Familial status: adults, children, singles, mature persons. Nothing in this section restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute "housing for older persons" as defined in 18VAC135-50-210.

h. Elderliness: elderly, senior citizens, young, old, active, available to those between 25 and 55.

3. Catch words. Words and phrases used in a discriminatory context should be avoided, e.g., "restricted," "exclusive," "private," "integrated," "traditional," "board approval," "membership approval."

4. Symbols or logotypes. Symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status, elderliness or national origin.

5. Colloquialisms. Words or phrases used regionally or locally which imply or suggest race, color, religion, sex, handicap, familial status, elderliness or national origin.

6. Directions to real estate for sale or rent (use of maps or written instructions). Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its exclusion of minorities (signal to whites). Specific directions which make reference to a racial or national origin significant area may indicate a preference.

7. Area (location) description. Names of facilities which cater to a particular racial, national origin or religious group, such as country club or private school designations, or names of facilities which are used exclusively by one sex may indicate a preference.

18VAC135-50-290. Fair housing policy and practices.

In the investigation of complaints, the board will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under the fair housing law.

1. Use of equal housing opportunity logotype, statement, or slogan. All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the homeseeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, elderliness, or national origin. The choice of logotype, statement, or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. See Appendix I to 24 CFR Part 109, Ch. 1 (4/1/00 edition) for suggested use of the logotype, statement, or slogan and size of logotype and copies of the suggested equal housing opportunity logotype, statement and slogan. A copy of Appendix I to 24 CFR Part 109, Ch. 1 (4/1/2000 edition) is posted on the Fair Housing Office's website or may be obtained by contacting the Fair Housing Office.

2. Use of human models. Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness because of race, color, religion, sex, handicap, familial status, elderliness, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, elderliness, or national origin, and is not for the exclusive use of one such group. Human models include any depiction of a human being, paid or unpaid, resident or nonresident.

18VAC135-50-350. Date of filing of a complaint.

A. Except as provided in subsection B of this section, a complaint is filed when it is received by the board or dual filed with the federal government in a form that reasonably meets the standards of 18VAC135-50-340.

B. The administrator may determine that a complaint is filed for the purposes of the one-year period for filing of complaints upon submission of written information ~~(including information provided by telephone and reduced to writing by an employee of the board)~~ identifying the parties and describing generally the alleged discriminatory housing practice. Written information includes information provided by telephone and reduced to writing by Fair Housing Office staff. A filed complaint can be signed at any time during the investigation.

C. Where a complaint alleges a discriminatory housing practice that is continuing, as manifested in a number of incidents of such conduct, the complaint will be timely if filed within one year of the last alleged occurrence of that practice.

Article 3
Investigations

18VAC135-50-400. Investigations.

A. Upon the filing of a complaint, the administrator shall investigate the allegations. The purposes of an investigation are:

1. To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.

2. To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.

3. To develop factual data necessary for the administrator on behalf of the board to make a ~~determination~~ recommendation whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this part.

B. Based on the authority delegated to the fair housing administrator by the board, the administrator may investigate housing practices to determine whether a complaint should be filed. Such an initiation may include using testers and other established practices or procedures.

18VAC135-50-440. Completion of investigation.

The investigation will remain open until a determination regarding reasonable cause is made, the board determines that the matter involves the legality of local zoning or land use laws or ordinances, or a conciliation agreement is executed and approved.

DOCUMENTS INCORPORATED BY REFERENCE (18VAC135-50)

ANSI A117.1-1986, American National Standard for Buildings and Facilities-providing accessibility and usability for physically handicapped people, American National Standards Institute, Inc~~., A117.1 1986~~.

Reasonable Modifications under the Fair Housing Act, Joint Statement of the Department of Housing and Urban Development and the Department of Justice, March 5, 2008, Office of Fair Housing and Equal Opportunity, United States Department of Housing and Urban Development and the Civil Rights Division, United States Department of Justice, Washington, D.C.

Reasonable Accommodations under the Fair Housing Act, Joint Statement of the Department Of Housing and Urban Development and the Department of Justice, May 17, 2004, Office of Fair Housing and Equal Opportunity, United States Department of Housing and Urban Development and the Civil Rights Division, United States Department of Justice, Washington, D.C.

VA.R. Doc. No. R11-2269; Filed December 26, 2013, 11:14 a.m.

TITLE 22. SOCIAL SERVICES

BOARD FOR PROTECTION AND ADVOCACY

Final Regulation

REGISTRAR'S NOTICE: Pursuant to enactment 5 of Chapter 847 of the 2012 Acts of Assembly, the Registrar of Regulations is taking the following action to effect the repeal of the Board for Protection and Advocacy regulations in the Virginia Administrative Code.

Title of Regulation: **22VAC27-10. Public Participation Guidelines (repealing 22VAC27-10-10 through 22VAC27-10-110).**

Statutory Authority: § 51.5-39.5 of the Code of Virginia (repealed effective January 1, 2014).

Effective Date: January 1, 2014.

Summary:

Chapter 847 of the 2012 Acts of Assembly and Chapter 571 of the 2013 Acts of Assembly converted the Virginia Office for Protection and Advocacy to a nonprofit entity, the Disability Law Center of Virginia. Chapter 847 abolished the Board for Protection and Advocacy and repealed its regulations in effect before January 1, 2014. As provided in enactment 5 of Chapter 847, the Registrar of Regulations is taking action to effect the repeal of the regulations in the Virginia Administrative Code.

VA.R. Doc. No. R14-3955; Filed December 30, 2013, 12:05 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

VIRGINIA AVIATION BOARD

Forms

Title of Regulation: **24VAC5-20. Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia.**

Agency Contact: Susan Simmers, Senior Aviation Planner, Virginia Department of Aviation, 5702 Gulfstream Road, Richmond, VA 23250, telephone (804) 236-3632, or email susan.simmers@doav.virginia.gov.

NOTICE: Forms used in administering the following regulation have been filed by the Virginia Aviation Board. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended 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 (24VAC5-20)

~~Application for Public Use Airport License or License Modification (12/2010)~~

Application for Public-Use Airport License or License Modification (rev. 12/13)

Application for Public-Use Airport License Renewal (12/2010)

Application for Private-Use Airport Registration or License (12/2010)

Notice of Proposed Construction or Alteration, FAA Form 7460-1 (2/2012)

Airport License Reclassification Application, 200 DOAVS (10/13)

Application for Waiver of Minimum Requirements to a Public-Use Airport License (eff. 12/13)

VA.R. Doc. No. R14-3952; Filed December 30, 2013, 2:02 p.m.

MOTOR VEHICLE DEALER BOARD

Proposed Regulation

Title of Regulation: **24VAC22-30. Motor Vehicle Dealer Advertising Practices and Enforcement Regulations (amending 24VAC22-30-20, 24VAC22-30-30, 24VAC22-30-40; repealing 24VAC22-30-10, 24VAC22-30-50).**

Statutory Authority: §§ 46.2-1506 and 46.2-1582 of the Code of Virginia.

Public Hearing Information:

March 10, 2014 - 1:30 p.m. - Department of Motor Vehicles, Headquarters Building, 2300 West Broad Street, Room 702, Richmond, Virginia 23220

Public Comment Deadline: March 28, 2014.

Agency Contact: Bruce Gould, Executive Director, Motor Vehicle Dealer Board, 2201 West Broad Street, Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053, or email bruce.gould@mvdb.virginia.gov.

Basis: Section 46.2-1582 of the Code of Virginia authorizes the Motor Vehicle Dealer Board to promulgate regulations reasonably necessary for enforcement of Article 9 (§ 46.2-1580 et seq.) of Chapter 15 of Title 46.2 of the Code of Virginia (Motor Vehicle Dealer Advertising). In addition to any other sanctions or remedies available to the board under this chapter, the board may assess a civil penalty not to exceed $1,000 for any single violation of this article. Each day that a violation continues constitutes a separate violation.

Purpose: These regulations have not had a comprehensive review for nearly 15 years. The advertising laws have not changed over this period of time; however; the "advertising world" has changed much over this period of time.

The advertising laws and regulations are in place to protect consumers and to "level the playing field" between licensed motor vehicle dealers. Clear advertising that is not deceptive to consumers is essential as the purchase of a motor vehicle is one of the most important and expensive purchases that a consumer makes. Dealers need parameters to guide them in ensuring that advertisements are clear and not deceptive. The proposed amended regulations further these goals by updating the regulations.

Substance: Definitions have been updated and unnecessary language has been deleted. Updates are proposed to better fit today's advertising environment including the Internet. No substantive changes are proposed.

Issues: The primary advantages to the amendments are that the regulations will be more concise and better address advertising done via the Internet. There are no disadvantages for the public or the agency.

Small Business Impact Review Report of Findings: This regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Motor Vehicle Dealer Board (Board) proposes to: 1) no longer require that motor vehicle dealers maintain copies of their advertisements in newspapers and on the Internet for 60 days from the expiration of the ad, 2) make clarifying changes in language, and 3) repeal language that is repetitious of the Code of Virginia.

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

Estimated Economic Impact. Under the current regulations, motor vehicle dealers must maintain and make available to the Board, if requested, the original or a clear facsimile copy of all advertisements in a manner that permits systematic retrieval for a period of 60 days subsequent to the expiration date of the advertisement. The Board proposes to maintain this requirement for only radio and television advertisements. According to the Board, in practice complaints about Internet and newspaper advertising are always accompanied by copies of the ads in question. Consequently, there is essentially no benefit in requiring dealers to keep the original or copies of these types of ads. Since there are time and storage costs associated with maintaining originals or copies, the proposed repeal of the requirement will create a net benefit.

Businesses and Entities Affected. The proposed amendments potentially affect the approximately 3,500 new and used car dealers in the Commonwealth. Nearly all are small businesses.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

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

Effects on the Use and Value of Private Property. The proposal to no longer require that motor vehicle dealers keep copies of Internet and newspaper advertising will modestly reduce costs for such firms.

Small Businesses: Costs and Other Effects. The proposal to no longer require that small motor vehicle dealers keep copies of Internet and newspaper advertising will modestly reduce costs for such firms.

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

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

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

Agency's Response to Economic Impact Analysis: The Motor Vehicle Dealer Board concurs with Virginia Department of Planning and Budget's economic impact analysis review, dated August 26, 2013.

Summary:

The proposed amendments (i) eliminate the requirement that motor vehicle dealers maintain copies of their advertisements in newspapers and on the Internet for 60 days from the expiration of the advertisement, (ii) make clarifying changes in language, and (iii) repeal language that is repetitious of the Code of Virginia.

~~Part I~~

~~General Provisions~~

24VAC22-30-10. ~~Intent.~~ (Repealed.)

~~In the 1989 Acts of the Virginia General Assembly it was found that it is in the interest of the consuming public and legitimate motor vehicle dealers to ensure that the advertising of motor vehicles is honest, fair, and clear and that deceptive or misleading advertising of the retail sales of motor vehicles as described in Motor Vehicle Dealer Advertising, Article 9 (§ 46.2-1580 et seq.) of Chapter 15 of Title 46.2 of the Code of Virginia should be prohibited. In the 1995 Acts of the Virginia General Assembly it was found that it is in the interest of the consuming public and legitimate motor vehicle dealers for dealers to be regulated by a board of their peers, resulting in the formation of the Virginia Motor Vehicle Dealer Board. Therefore, the following regulations are promulgated by the board to administer the administrative and civil penalties necessary for enforcement of prohibited advertising practices.~~

Part I

General Provisions

24VAC22-30-20. Definitions.

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

"Act" means Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2 of the Code of Virginia.

"Administrative penalties" means the denial, suspension or revocation of a license as allowed in § 46.2-1576 of the Act and based on one or more of the grounds specified in § 46.2-1575 of the Act.

"Advertisement" means an oral, written, graphic or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio, the Internet, or via an ~~on-line~~ online computer service, or on television. The term does not include an in-person oral communication by a dealer's employee with a prospective customer.

"Advertiser" means same as licensee.

"Board" means the Motor Vehicle Dealer Board of this Commonwealth.

"Civil penalty" means the monetary assessment imposed by the board or the executive director against a licensee not to exceed $1,000 for any single violation of § 46.2-1581 of the Code of Virginia.

"Disclaimer" means those words or phrases used to provide a clear understanding or limitation to an advertised statement but not used to contradict or change the meaning of the statement.

"Disclosure" means a statement in clear terms of the dollar amounts, time frames, down payments and other terms which may be needed to provide a full understanding of credit terms, periodic payment, interest rates, time payment plans, etc.

"Executive director" means the Executive Director of the Motor Vehicle Dealer Board of this Commonwealth.

"Internet" means the international network of computer systems commonly known as the "Internet".

"License" means the document issued to a Virginia motor vehicle dealer and which permits such dealer to engage in the

business of buying and selling new and used motor vehicles or used motor vehicles only.

"Licensee" means any person, partnership, association, corporation or entity which is required to be licensed as a motor vehicle dealer in this Commonwealth.

"Line-make marketing group" means an association of motor vehicle dealers franchised to sell and advertise the same line-make of new motor vehicles.

"Manufacturer's factory invoice" or "distributor's invoice" means that document supplied by the manufacturer or the distributor listing the manufacturer's or distributor's charge to the dealer before any deduction for items such as holdback, group advertising, factory incentives or rebates, or any governmental charges.

"New motor vehicle" means ~~a vehicle which meets all of the following criteria. The new motor vehicle has:~~ the same as defined in § 46.2-1500 of the Code of Virginia.

~~1. Had limited use necessary in moving or road testing the vehicle prior to delivery to a customer;~~

~~2. Been transferred by a manufacturer's or distributor's certificate of origin which is the document provided by the manufacturer of a new motor vehicle, or its distributor to its franchised motor vehicle dealer;~~

~~3. The manufacturer's or distributor's certification that it conforms to all applicable federal motor vehicle safety and emission standards;~~

~~4. Not been previously sold by a dealer except for the purpose of resale and when the exchange is between franchised dealers of the same line-make;~~

~~5. Not been used as a rental, driver education, or demonstration motor vehicle; and~~

~~6. Not been used for the personal and business transportation of the manufacturer, distributor or dealer or any of their employees.~~

~~"On-line~~ "Online service" means any information service, system, or access software provider that enables computer access by multiple users to a computer server, including specifically a service or system that provides accesses to the Internet.

"Repossessed vehicle" means a vehicle which meets all of the following criteria. It has:

1. Been sold, titled, registered, and taken back from a purchaser for nonpayment; and

2. Not yet been resold to an ultimate user.

"Sale" means there is a significant reduction from the advertiser's usual and customary price of a motor vehicle and the offer is for a limited period of time.

"Used motor vehicle" means ~~any vehicle other than a new motor vehicle as defined in this chapter~~ the same as defined in § 46.2-1500 of the Code of Virginia.

Part II
Regulated Advertising Practices

24VAC22-30-30. Practices.

For purposes of this chapter, a violation of the following regulated advertising practices shall be an unfair, deceptive, or misleading act or practice.

A. New motor vehicle. A motor vehicle shall not be advertised as new, either by word or implication, unless it is one which conforms to the definition of a "new motor vehicle" as defined in 24VAC22-30-20.

B. Used motor vehicle.

1. The fact that a motor vehicle is used should be clearly and unequivocally expressed by the term "used" or by such other term as is commonly understood to mean that the vehicle is used. For example, "special purchase" or "program cars" by itself is not a satisfactory disclosure; however, such terms as ~~"demonstrator"~~ "pre-owned" or "former leased and/or rental vehicles" used alone clearly express that they meet the definition of a used vehicle for advertising purposes. When in doubt, the dealer should provide more information or simply say "used."

2. Once a certificate of origin as defined in § 46.2-1500 has been assigned to a purchaser, the motor vehicle becomes a used vehicle and must be advertised as such.

C. Finance charges or interest rates advertisements. ~~1.~~ Advertisements of finance charges or other interest rates "below market" (or words to that effect) shall not be used unless it is manufacturer or distributor sponsored or substantiated by a written agreement with the finance source.

~~2. Advertisement of finance charges or other interest rates shall not be used when there is a cost to buy down said charge or rate which is passed on, in whole or in part, to the purchaser.~~

D. Terms, conditions, and disclaimers.

1. When terms, conditions or disclaimers are used, they shall always be stated clearly and conspicuously. An asterisk or other reference symbol may be used to point to a disclaimer or other information; but, the disclaimer shall not be used as a means of contradicting or changing the meaning of an advertised statement. In addition, they must meet the Federal Trade Commission Truth in Lending Act Requirements 15 USC §§ 1601 et seq., 12 CFR Part 226 (Regulation Z) or the Federal Trade Commission Truth in Leasing Act Requirements, as applicable.

2. In all printed media, where terms, conditions or disclaimers are used, they shall be clearly and conspicuously visible and printed in not less than 8-point type print or printed in 6-point upper case type print. If ~~a processing fee or~~ freight charges or destination charges, or both, are not included in the advertised price, the amount of any such ~~processing fee and~~ freight charge or destination charge, or both, must be clearly and conspicuously disclosed in not less than 8-point boldface

type or not smaller than the largest typeface within the advertisement. If ~~the~~ a processing fee is not included in the advertised price, the amount of the processing fee must be clearly and conspicuously disclosed in not less than 8-point boldface type or not smaller than the largest typeface within the advertisement; however the amount of the processing fee may be omitted from any advertisement in which the largest type size is less than 8-point typeface, so long as the dealer participates in a media-provided listing of processing fees and the dealer's advertisement includes an asterisk or other such notation to refer the reader to the listing of the fees. When billboards, portable signs, posters, etc., are used, all terms, conditions or disclaimers need to be displayed and phrased in a manner which is clear and conspicuous.

3. In radio advertisements~~, where~~ all terms, conditions~~, or~~ disclaimers ~~are used, they shall~~, and required disclosures must be clearly announced during the advertisement. They must be explained clearly and at an understandable speed and volume level.

4. In television advertisements~~, where~~ all terms, conditions~~, or~~ disclaimers ~~are used, they shall~~, and required disclosures must be clearly and conspicuously displayed or announced, or both, during the advertisement. They shall be at an understandable speed or understandable volume level, or both.

5. In Internet advertisements all terms, conditions, disclaimers, and required disclosures must be clearly and conspicuously displayed.

E. Sale or sales. The expiration date of an advertised "sale" shall be clearly and conspicuously disclosed. If the sale exceeds 30 days, the advertiser should be prepared to substantiate that the offering is indeed a valid reduction and has not become his regular price.

F. "List price," "sticker price," "suggested retail price." These terms and similar terms shall be used only as follows:

1. In reference to the manufacturer's or distributor's suggested retail price for new vehicles; or

2. The dealer's own usual and customary price for used vehicles.

G. "Cost" and "invoice price" terms.

1. "At cost," "below cost," "$ off cost" shall not be used in advertisements because of the difficulty in determining a dealer's actual net cost at the time of sale.

2. "Invoice price," "$ over invoice," may be used, provided that the invoice referred to is the manufacturer's factory invoice, distributor's invoice, or a bona fide bill of sale, as applicable, and that it is available for customer inspection.

~~3. "Manufacturer's factory invoice" or "distributor's invoice" means that document supplied by the manufacturer or the distributor listing the manufacturer's or distributor's charge to the dealer before any deduction for items such as holdback, group advertising, factory incentives or rebates, or any governmental charges.~~

H. Price or credit terms of advertised vehicles. When the price or credit terms of a vehicle are advertised ~~in print, or on radio or television~~, the vehicle should be fully identified as to year, make, and model. In addition, in all advertisements placed by individual dealers and not marketing groups, the advertised price or credit terms shall include all charges which the buyer must pay to the seller including "freight" or "destination charges." If there are deferred payments on credit sales where accrued finance charges are ultimately charged to the consumer for any part of the deferred period, then these charges must be clearly stated. State and local fees and taxes and buyer-selected options need not be included in the advertised price. If the buyer will be required to pay to the seller charges which increase the advertised price, the charges must be disclosed as set-out in subsection D of this section and priced in the advertisement.

I. Matching or bettering competitor's price advertisements. Advertisements ~~which~~ that set out a policy matching or bettering a competitor's price shall not be used unless the terms of the offer are specific, verifiable, and reasonable. All terms of the offer shall be included in the disclosure and disclaimer area and may not say such things as "rules or terms available in showroom" or "available before delivery." Any material or significant conditions ~~which~~ that must be met or the evidence the consumer must present to take advantage of the offer must be fully disclosed as a part of the advertisement.

J. Advertisements of dealer rebates shall not be used. Offers to match down payments or guarantee minimum trade-in allowances or offers of cash or money back are forms of dealer rebates.

K. "Free," "at no extra cost" terms. No equipment, accessory, other merchandise or service shall be described using any term that implies that such equipment, accessory, other merchandise or service is free if a purchase is required in order to receive the "free" offer. Examples of prohibited terms include:

1. Free.

2. Complimentary.

3. At no extra cost.

4. At no extra charge.

5. At no extra fee.

6. At no extra price.

7. At no additional cost.

8. At no additional charge.

9. At no additional fee.

10. At no additional price.

11. Present.

12. Gift.

13. On the house.

14. Gratis.

15. Courtesy.

L. "Bait advertising" shall not be used.

1. The purpose of this section is to ensure that customers will be informed the vehicle is in limited quantity or availability. If a specific vehicle is advertised, the seller shall be in possession of a reasonable supply of said vehicles and they shall be available at the advertised price. If the advertised vehicle is available only in limited numbers or only by order, that shall be stated in the advertisement. The listing of vehicles by stock numbers or vehicle identification numbers is permissible and is one means of satisfactorily disclosing a limitation of availability, provided a separate number is used for each vehicle. For new vehicles, if the offer is limited, ~~you~~ the dealer will be able to say such things as "in stock" or "will order" provided ~~you~~ the dealer can order the vehicle just as advertised and delivery can be assured as soon as the manufacturer or distributor can confirm the order and deliver it to ~~your~~ the dealer's dealership. If ~~you~~ the dealer cannot get an order confirmation within 30 days, ~~you~~ the dealer must refund all moneys collected from the buyer at his request. If the vehicle is available only by order then it must be clearly and conspicuously disclosed in the advertisement.

2. Advertising a vehicle at a certain price (including "as low as" statements), but having available for sale only vehicles equipped with dealer added cost "options" which increase the selling price above the advertised price, may also be considered "bait advertising."

3. If a lease payment is advertised, the fact that it is a lease arrangement shall be disclosed.

M. The term "repossessed vehicle" shall not be used unless the full criteria of the definition in 24VAC22-30-20 is met. Advertisers offering such vehicles for sale shall provide proof of repossession upon request.

N. "Finance" or "loan." Words such as "finance" or "loan" shall not be used in a motor vehicle dealer advertiser's firm name or trade name unless that person is actually engaged in the financing of motor vehicles.

O. "Special arrangement or relationship" advertisements. Statements such as "big volume buying power," "manufacturer's outlet," "factory authorized outlet," and "factory wholesale outlet," shall not be used. Any term that gives the consumer the impression the dealer has a special arrangement with the manufacturer or distributor as compared to similarly situated dealers, is misleading and shall not be used.

P. Records retention. ~~Advertisers~~ Licensees shall maintain for a period of 60 days from the expiration date of the advertisement and make available to the board and the board staff, if requested, ~~the original or a clear facsimile copy~~ copies of all radio and television advertisements ~~in a manner that permits systematic retrieval for a period of 60 days subsequent to the expiration date of the advertisement~~.

Part III
Enforcement

24VAC22-30-40. Administrative and civil penalties.

~~A.~~ Violations of any regulated advertising practice may, in the discretion of the board or executive director, be addressed by a verbal or written warning to the licensee as an initial step in the enforcement process.

~~B. Any single violation of a regulated advertising practice may also, after an informal fact finding proceeding as provided in the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia, result in an assessment of a civil penalty up to $1,000.~~

~~C. Subsequent, same or similar violations may, after an informal fact finding proceeding as provided in the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia, result in an assessment of a civil penalty up to the $1,000 and may also be grounds for denying, suspending or revoking a license subject to the hearing requirements pursuant to § 46.2-1576 of the Act, either or both.~~

~~24VAC22-30-50. Appeals.~~ (Repealed.)

~~The action of the board in suspending, revoking or refusing any license or in imposing a monetary civil penalty against the licensee shall be subject to judicial review as provided in §§ 46.2-1577 and 46.2-1578 of the Act.~~

VA.R. Doc. No. R13-3540; Filed December 23, 2013, 2:04 p.m.

EXECUTIVE ORDER NUMBER 1 (2014)

Equal Opportunity

Importance of the Initiative

By virtue of the authority vested in me as Governor, I hereby declare that it is the firm and unwavering policy of the Commonwealth of Virginia to assure equal opportunity in all facets of state government. The foundational tenet of this Executive Order is premised upon a steadfast commitment to foster a culture of inclusion, diversity, and mutual respect for all Virginians.

This policy specifically prohibits discrimination on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, or against otherwise qualified persons with disabilities. The policy permits appropriate employment preferences for veterans and specifically prohibits discrimination against veterans.

State appointing authorities and other management principals are hereby directed to take affirmative measures, as determined by the Director of the Department of Human Resource Management, to emphasize the recruitment of qualified minorities, women, disabled persons, and older Virginians to serve at all levels of state government. This directive does not permit or require the lowering of bona fide job requirements, performance standards, or qualifications to give preference to any state employee or applicant for state employment.

Allegations of violations of this policy shall be brought to the attention of the Office of Equal Employment Services of the Department of Human Resource Management. No state appointing authority, other management principal, or supervisor shall take retaliatory actions against persons making such allegations.

Any state employee found in violation of this policy shall be subject to appropriate disciplinary action.

The Secretary of Administration is directed to review and update annually state procurement, employment, and other relevant policies to ensure compliance with the non-discrimination mandate contained herein, and shall report to the Governor his or her findings together with such recommendations as he or she deems appropriate. The Director of the Department of Human Resource Management shall assist in this review.

This Executive Order supersedes and rescinds Executive Order No. 6 (2010), Equal Opportunity, issued by Governor Robert F. McDonnell on February 5, 2010.

Effective Date of the Executive Order

This Executive Order shall become effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 11th day of January 2014.

/s/ Terence R. McAuliffe
Governor

EXECUTIVE ORDER NUMBER 2 (2014)

Personnel Directive Prohibiting the Receipt of Certain Gifts; Establishment of Executive Branch Ethics Commission

Part I – Importance of the Initiative

Every citizen of the Commonwealth is entitled to have complete confidence and the highest degree of trust in Virginia's government. It is the intent of this Executive Order (the "Order") to ensure that Virginians are governed and represented with integrity. This Order is initiated to establish an ethical framework for state Executive Branch officers and employees with regard to gifts that will enhance the public's trust in the actions of such officers and employees by addressing the receipt of gifts that may result in, or create an appearance of, impropriety.

Therefore, by virtue of the authority vested in me under Article V of the Constitution of Virginia and under the laws of the Commonwealth of Virginia, including but not limited to, Chapters 1, 12, and 29 of Title 2.2 of the Code of Virginia, and as the Governor and Chief Personnel Officer of the Commonwealth, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish (i) the following personnel policy, banning the solicitation and receipt of certain gifts by officers and employees of the state Executive Branch of the Commonwealth and (ii) an Executive Branch Ethics Commission to perform such duties and responsibilities as are specified below. An officer's or employee's ethical duties and responsibilities under this Executive Order are in addition to those prescribed by law, primarily the State and Local Government Conflict of Interests Act, § 2.2-3100 et seq., and the Virginia Public Procurement Act, § 2.2-4300 et seq., of the Code of Virginia.

Part II – Definitions

As used in this Executive Order, unless the context clearly requires otherwise:

"Advisory agency" means any board, commission, committee or post of the state Executive Branch that does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the

purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Anything of value" means:

1. A pecuniary item, including money, or a bank bill or note;

2. A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money;

3. A contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;

4. A stock, bond, note, or other investment interest in an entity;

5. A receipt given for the payment of money or other property;

6. A gratuity, favor, special privilege or exception;

7. The provision of services;

8. Lodging;

9. A meal, or other food or beverage, or both;

10. Entertainment, including a ticket to an event, or hospitality;

11. The provision of travel or the payment or reimbursement of travel expenses;

12. A right in action;

13. A tangible good, chattel, or an interest in a tangible good, or chattel;

14. A loan or forgiveness of indebtedness;

15. A work of art, antique, or collectible;

16. An automobile or other means of personal transportation;

17. Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within realty, a leasehold interest, or other beneficial interest in realty;

18. An honorarium or compensation for services;

19. A rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as an officer or employee, or the sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public;

20. A promise or offer of employment; or

21. Any other thing of value that is pecuniary or compensatory in value to a person.

"Anything of value" does not mean a campaign contribution properly received and reported pursuant to Chapter 9 (§ 24.2-900 et seq.) and Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2.

"Dependent" means a son, daughter, father, mother, brother, sister or other individual, whether or not related by blood or marriage, if such individual receives from the officer or employee, or provides to the officer or employee, more than one-half of his or her financial support.

"Employee" means, unless otherwise limited by the context of its use, all individuals who are not officers of a component part of the state Executive Branch but are employed by a component part of the state Executive Branch on an at will basis or serve at the pleasure of the Governor, and all individuals who are employed by the component parts of the state Executive Branch and who are covered by the Virginia Personnel Act, Va. Code § 2.2-2900 et seq.

"Fair market" value means the price that a good or service would bring between a willing seller and a willing buyer in the open market after negotiations. If the fair market value cannot be determined, the actual price paid for the good or service shall be given consideration.

"Gift" means anything of value to the extent that a consideration of equal or greater value is not received by the donor.

"Gift" does not mean:

1. Printed informational or promotional material;

2. A gift that is not used and, no later than sixty (60) days after receipt, is returned to the donor or delivered to a charitable organization or to a state governmental or advisory agency and is not claimed as a charitable contribution for federal income tax purposes;

3. A gift, devise, or inheritance from an officer's or employee's spouse, child, nephew, niece, aunt, uncle, first cousin, or the officer's or employee's or his or her spouse's parent, grandparent, grandchild, brother, sister, the spouse of any individual covered by this subdivision, or an individual to whom the officer or employee is engaged to be married; provided the donor is not acting as the agent or intermediary for someone other than an individual covered by this subdivision;

4. Anything of value provided by an individual on the basis of a personal friendship unless the officer or employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the officer or employee and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the circumstances under which the gift was given shall be considered, including: (1) the history of the relationship of the individual receiving the gift with the individual giving the gift, including any previous exchange between them; (2) whether the individual receiving the gift

knew that the individual giving the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (3) whether the individual receiving the gift knew that the individual giving the gift also gave the same or similar gifts to other officers or employees;

5. Anything of value provided to an officer or employee, or an immediate family member of an officer or employee, by an individual on the basis of a private business relationship between them that is unrelated to the official duties and responsibilities of the officer or employee, unless the officer or employee has reason to believe that, under the circumstances, the thing of value was provided by the individual to the officer or employee or the immediate family member because of the official position of the officer or employee and not because of the private business relationship;

6. Any offer of a ticket or other admission or pass unless the ticket, admission, or pass is used or unless it is a ticket, admission or pass to an event held by a team or organization that is an official team or organization of a public or private institution of higher education or elementary or secondary school located in the Commonwealth or held by another governmental or advisory agency, or by a local government or component part of a local government, or by a school board;

7. Honorary degrees;

8. Payment or reimbursement of reasonable legitimate travel and related expenses incurred by an officer or employee in order to engage in an activity that serves a legitimate public purpose;

9. Attendance by an officer or employee at a widely attended event that is attended by at least twenty (20) non-officers or employees, is open to the public or to a wide range of individuals, and where (i) such attendance serves a legitimate public purpose, or (ii) the officer or employee attends by virtue of being the spouse of an invited public official who attends without charge;

10. Attendance by an officer or employee at a political or inaugural event where the officer or employee is invited to attend by the elected official, the candidate, or their authorized representative;

11. Financial aid awarded by an educational institution or training institution or program, provided that the financial aid is awarded pursuant to the institution's or program's normal financial aid standards and procedures;

12. Something of value given to an officer or employee by a governmental or advisory agency related to the officer's or employee's service as a public officer or employee or upon his or her retirement;

13. A prize in a competition that was widely available, or an award from a charitable, religious, civic, or educational group; or

14. A gift with a value of $25 or less.

"Governmental agency" means each component part of the state Executive Branch, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties.

"Immediate family" means (i) a spouse, regardless of whether he or she resides in the same household as the officer or employee, (ii) any individual residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent, (iii) any individual who has a child in common with the officer or employee, whether or not the officer or employee and that individual have been married or have resided together at any time, as long as there is a legally enforceable financial relationship between them, or (iv) any individual who cohabits or who, within the previous 12 months, cohabited with the officer or employee, and any children of either of them then residing in the same household as the officer or employee. With regard to the receipt of gifts, "immediate family" also shall mean an officer's or employee's child, grandchild, parent, grandparent, brother, sister, or brother's or sister's spouse or children, if such individual knew or should have known that the gift was given because of the officer's or employee's position as an officer or employee.

"Legitimate travel and related expenses" include reasonable expenses incurred by the officer or employee in order to engage in an activity that serves a legitimate public purpose, including, but not limited to, air, train, bus, and taxi fare, rental car charges, the cost of meals and lodging, and expenses related to attendance at an event that has a legitimate public purpose, including, but not limited to, costs of registration, admission, tickets, food, refreshments, instruction, and materials.

"Legitimate public purpose" means an activity that is intended to promote the interests of the Commonwealth, a political subdivision of the Commonwealth, an advisory or governmental agency of the Commonwealth, or a component part of a political subdivision of the Commonwealth, including, but not limited to, activities that promote tourism, economic development, charitable, public health, environmental, or educational goals; attendance at training and educational events and conferences designed to improve the efficiencies and effectiveness of public service, or to enhance the knowledge and skills of public officers or employees, or both, relative to their official duties; and any purpose defined as a legitimate public purpose by the Commonwealth, the Governor, the governing body of a

political subdivision of the Commonwealth, an advisory or governmental agency, or the Commission established by Part V of this Order.

"Officer" means the Governor, his Cabinet, Deputy Secretaries, and any individual appointed or elected to any governmental or advisory agency who serves at the pleasure of the Governor or whose position may be affected "for cause," whether or not he or she receives compensation or other emolument of office.

"State Executive Branch" means every component part of the government of the Commonwealth of Virginia except any component part of the state Legislative or Judicial Branches, the Office of the Lieutenant Governor, the Office of the Attorney General, the State Corporation Commission, the Virginia Workers' Compensation Commission, the State Lottery Department, local governments and their component parts, and the offices of constitutional officers.

"Value" means the actual cost or fair market value of an item or items, whichever is greater. If the fair market value cannot be determined, the actual amount paid for the item or items shall be given consideration. For food and beverages, "value" includes a proportional amount of any tip, a portion of which was for the food item or beverage.

Part III – Personnel Directive – Prohibited Conduct

No officer or employee of the state Executive Branch or an immediate family member of such officer or employee shall (i) solicit anything of value, or (ii) accept, directly or indirectly, any gift from any lobbyist or from any principal or employee or agent of a principal, as the terms "lobbyist" and "principal" are defined in § 2.2-419 of the Commonwealth's lobbying laws, § 2.2-418 et seq. of the Code of Virginia, or (iii) accept directly or indirectly, any gift valued at over $100, from any one source, singularly or in the aggregate over the course of any given calendar year. An officer or employee may receive or may be reimbursed for any legitimate travel and related expenses incurred while engaging in an activity that serves a legitimate public purpose. The receipt of anything of value with a value of $25 or less does not count toward the $100 cumulative total set forth in this paragraph.

An officer or employee or an immediate family member of such officer or employee is not prohibited from accepting an unsolicited gift that is valued at less than $100, from one source, singularly or in the aggregate over the course of any given calendar year, unless a reasonable person, having knowledge of the relevant circumstances, would conclude that the officer or employee may unduly favor the source or be influenced by the source when performing the officer's or employee's official duties.

Part IV– Department of Human Resources Management

The Department of Human Resource Management is designated and directed to work with the Executive Branch Ethics Commission established by Part V of this Executive Order to implement this Order and, specifically, is authorized and directed:

(a) In cooperation and collaboration with the Executive Branch Ethics Commission, to develop and issue appropriate personnel guidelines implementing Part III of this Order, including, but not limited to, (i) any applicable discipline for a violation of Part III of this Executive Order and (ii) the procedures available to any officer or employee alleged to have violated Part III of this Order; and

(b) To recommend to the Governor, at least annually, such revisions to this Executive Order as may appear necessary to ensure the maintenance of high ethical standards within the state Executive Branch.

Part V – Executive Branch Ethics Commission

The Executive Branch Ethics Commission (the "Commission") is hereby established and shall be comprised of three (3) members who shall be appointed by the Governor. Members of the Commission shall serve without compensation, but shall receive reimbursement for reasonable expenses incurred in the discharge of their official duties.

The Commission shall be responsible for overseeing the execution of this Order.

The Commission shall:

(a) Upon request from an officer or employee, provide a written opinion as to whether engagement in an activity, or receipt of a gift or other thing of value violates the provisions of this Executive Order, and whether payment or reimbursement for expenses related to that activity, gift, or other thing of value would constitute legitimate travel and related expenses. Any officer or employee who is informed by the Commission that engagement in the activity or receipt of the gift or other thing of value would not violate this Order, and who in good faith relies on an interpretation by the Commission issued before the activity is undertaken or the gift or other thing of value is received and upon the full disclosure to the Commission by the officer or employee of all the relevant facts, shall not be subject to discipline under Part VI of this Order.

(b) Enforce this Order as specified in paragraph (c) of Part VI of this Order.

(c) Recommend to the Governor, at least annually, such revisions to this Executive Order as may appear necessary to ensure the maintenance of high ethical standards within the state Executive Branch.

The Commission may employ a professional staff of up to two (2) individuals to assist the Commission in the exercise of its duties and responsibilities specified in this Order. The necessary staff shall be furnished by the Office of the Governor, the Virginia Department of Human Resources

Management, and such other agencies and offices as are designated by the Governor. An estimated 2000 hours of staff time per year will be required to support the Commission's work

The Commission shall remain assembled for one full calendar year following the signing of this Executive Order, unless reauthorized by further Executive Order.

Part VI – Enforcement

(a) The head of each advisory or governmental agency of the state Executive Branch (the "agency head") shall enforce this Executive Order, receive any complaint that an officer or employee of his or her agency has violated this Executive Order, investigate such a complaint, and determine the need for and impose the appropriate discipline, using the normal, then-existing personnel policies, rules, and procedures of the officer's or employee's advisory or governmental agency, including the Virginia Personnel Act, Va. Code § 2.2-2900 et seq., where the officer or employee is covered by that Act. If the officer or employee is not covered by the Virginia Personnel Act, the agency head shall use whatever normal, then-existing personnel policies, rules, and procedures that the agency normally uses for officers and employees who are not covered by the Virginia Personnel Act. Disciplinary action may include any action up to and including suspension or termination.

(b) With regard to an alleged violation by a Deputy Secretary, member of a Secretary's staff, or the head of an advisory or governmental agency of the state Executive Branch within a particular Secretariat, the Secretary shall be the "agency head" for purposes of the enforcement process set forth in paragraph (a) above.

(c) With regard to an alleged violation of this Order by the Governor or a member of the Governor's Cabinet, the Commission shall receive and investigate the complaint, and shall determine whether a violation occurred. The results along with a recommendation for appropriate discipline shall be forwarded to the Governor or his designee.

(d) Each agency head who determines whether or not a violation of this Executive Order by an officer or employee in his or her agency has occurred shall, within thirty (30) days of making that determination, report the facts on which that determination was made, and the discipline, if any, that was imposed, to the Governor's Cabinet Secretary under whose Secretariat that advisory or governmental agency falls. The Secretary shall forward such report, or a report prepared by him or her pursuant to paragraph (b) above, to the Commission within ten (10) days of receipt or completion. The Commission shall report to the Governor, on a quarterly basis, the results of all investigations of officers and employees conducted pursuant to this Executive Order.

Part VII – General

The funding to support this Executive Order shall be provided from the budget of the Office of the Governor and of such other state agencies as are designated by the Governor. The estimated direct costs for this Commission are $100,000.

Effective Date of the Executive Order

This Executive Order shall be effective upon signing and shall remain in full force and effect for one full calendar year following its signing, unless amended or rescinded, or reauthorized, by further Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia on this 11th day of January, 2014.

/s/ Terence R. McAuliffe
Governor

EXECUTIVE ORDER NUMBER 3 (2014)

Authority and Responsibility of the Chief of Staff

Importance of the Initiative

By virtue of the authority vested in me as Governor under Article V, Sections 1, 7, 8, and 10 of the Constitution of Virginia and Sections 2.2-100 and 2.2-104 of the Code of Virginia, and subject always to my continuing ultimate authority and responsibility to act in such matters and to reserve to myself any and all such powers, I hereby affirm and delegate to my Chief of Staff the powers and duties enumerated below.

1. To direct, as the deputy planning and budget officer, the administration of the state government planning and budget process, except as to the responsibilities enumerated below, which are retained by me:

- ○ Submission of the budget and accompanying documents to the General Assembly;
- ○ Final review and determination of all proposed expenditures and of estimated revenues and borrowings to be included in the Executive Budget for each state department, division, office, board, commission, institution, or other agency or undertaking;
- ○ Amendment of Position Levels;
- ○ Authorization of deficits.

2. To direct, as the deputy personnel officer, the administration of the state government personnel system, except as to the responsibility enumerated below, which are retained by me:

○ Final determination with respect to employee compensation plans;

○ Submission of reports to the General Assembly by the Governor as required by law;

○ Issuance, amendment, or suspension of the Rules for the Administration of the Virginia Personnel Act;

○ Final action on appeals from appointing authorities to the Governor.

3. To review, in the event of my absence or unavailability, major planning, budgetary, personnel, policy, and legislative matters that require my decision.

4. To review, in the event of my absence or unavailability, policy or operational differences that may arise among or between my Secretaries and other Cabinet members.

5. To administer the direction and supervision of the Governor's Office, as well as budgetary and personnel authority for the Office.

Effective Date of the Executive Order

This Executive Order rescinds Executive Order No. 3 (2010) issued on January 29, 2010, by Governor Robert F. McDonnell. This Executive Order shall become effective upon its signing and shall remain in full force and effect until January 31, 2018, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 11th day of January 2014.

/s/ Terence R. McAuliffe
Governor

EXECUTIVE ORDER NUMBER 4 (2014)

Delegation of Governor's Authority to Declare a State of Emergency, to Call the Virginia National Guard to Active Service for Emergencies or Disasters, and to Declare the Governor Unable to Discharge the Powers and Duties of His Office When the Governor Cannot Be Reached or Is Incapacitated

Importance of the Initiative

By virtue of the authority vested in me by Section 2.2-104 of the Code of Virginia, and subject to the provisions stated herein, I hereby affirm and delegate to the Chief of Staff, followed in protocol order by the Secretary of Public Safety, the State Coordinator of the Virginia Department of Emergency Management, and the Secretary of Veterans Affairs and Homeland Security, my authorities under Sections 44-146.17 and 44-75.1 of the Code of Virginia, to declare a state of emergency and to call forth the Virginia National Guard or any part thereof to state active duty in any of the circumstances outlined in subsections 4 and 5 of Section 44-75.1.A.

I further hereby affirm and delegate to the Chief of Staff, my authority under Article V Section 16 of the Constitution and under Section 24.2-211 of the Code of Virginia to transmit to the President pro tempore of the Senate and the Speaker of the House of Delegates, a declaration that I am unable to discharge the powers and duties of the Governor's office. Each of these declarations is subject to the following conditions:

1. Such delegation is subject always to my continuing, ultimate authority and responsibility to act in such matters, and in the case of a declaration that I am unable to discharge the powers and duties of my office, my ability to transmit to the Clerk of the Senate and Clerk of the House of Delegates, my written declaration that no inability continues to exist and to resume the powers and duties of my office.

2. Use of this delegation is contingent upon my being unable to be reached so as to give my approval for the declaration of a state of emergency, as defined in Section 44-146.16 of the Code of Virginia, or use of the Virginia National Guard.

3. Use of this delegation to declare that I am unable to discharge the powers and duties of my office is specifically contingent upon my being unable to be reached or otherwise incapacitated for over 24 hours and the unavailability of any one of the Attorney General, President pro tempore of the Senate, or the Speaker of the House of Delegates.

4. This delegation is strictly standby in nature, to be held in abeyance until such time as there may be explicit circumstances involving an emergency whereby human lives and public and private property are threatened in the event of natural or man-made emergencies or disasters.

5. If the authority granted under this order is used, the Lieutenant Governor and I shall be informed of such use as soon as practicable.

Effective Date of the Executive Order

This Executive Order rescinds Executive Order No. 4 (2010) issued on January 29, 2010, by Governor Robert F. McDonnell. This Executive Order shall become effective upon its signing and shall remain in full force and effect until January 31, 2018, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 11th day of January 2014.

/s/ Terence R. McAuliffe
Governor

AIR POLLUTION CONTROL BOARD

Air Quality Monitoring Data - Proposed Exceptional Events Demonstration

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public review and comment on a proposed exceptional events demonstration showing that certain air quality monitoring data gathered during August of 2011 were affected by exceptional events. Therefore, this data should not be used to make determinations regarding National Ambient Air Quality Standards. The exceptional event was the wildfire in the Great Dismal Swamp in Suffolk, Virginia. This exceptional event impacted fine particulate matter monitoring data in the Hampton Roads area.

Purpose of notice: DEQ is seeking comments on the overall demonstration.

Public comment period: January 6, 2014, to February 14, 2014.

Description of proposal: The proposed demonstration provides meteorological information, photographs, and other evidence of air pollution generated by the wildfires. The proposed demonstration also provides evidence of the air pollution impacts on fine particulate matter monitors at various times in August of 2011 in Hampton Roads, Virginia.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 50.14).

How to comment: DEQ accepts written comments by email, facsimile transmission, and postal mail. In order to be considered, written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ no later than the last day of the comment period (February 14, 2014).

To review the proposal: Please note, the information will not be available until the start of the comment period (January 6, 2014). The proposal and any supporting documents are available on the DEQ Air Monitoring Division website: http://www.deq.virginia.gov/airmon/. 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 locations:

1) Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070;

2) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020; or,

3) Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA, telephone (757) 518-2000.

The document may also be obtained by contacting the DEQ representative named below.

Contact Information: Doris 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 Implementation Plan Revision - General Definitions

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 State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation to EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulation of the board affected by this action is 9VAC5-10, General Definitions (Revision G12).

Purpose of notice: DEQ is seeking comments on the issue of whether the regulation amendments should be submitted as revisions to the plan.

Public comment period: January 27, 2014, to February 26, 2014.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ on the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: Because the regulation amendments have been adopted by the board in accordance with the Administrative Process Act and have subsequently become effective, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: The proposed revision consists of adding trans-1,3,3,3-tetrafluoropropene (HFO-1234ze) to the list of substances not considered to be volatile organic compounds (VOCs) in accordance with EPA's June 22, 2012, (77 FR 37610) revision.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR

51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All 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: 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) 698-4070;

2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (540) 676-4800;

3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700;

4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (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; and

8) Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4390, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

State Implementation Plan Revision - Reasonably Available Control Technology Determination

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan regarding air pollution emitted by a facility in Henrico County, Virginia. The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comments and announcing a public hearing on a proposed permit to limit air pollution emitted by a facility in Henrico County, Virginia.

Public comment period: January 8, 2014, to February 10, 2014.

Public hearing: Conference Room, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen VA, at 9 a.m. on February 4, 2014. A question and answer period will be held one half hour prior to the beginning of the public hearing.

Permit name: State Operating Permit issued by DEQ, under the authority of the State Air Pollution Control Board.

Name, address, and registration number: Mondelez Global LLC, Inc. (formerly Kraft Foods Global, Inc., Richmond Bakery), 6002 South Laburnum Avenue, Richmond, VA 23231, Registration No. 50703.

Description of proposal: The proposed revision consists of a determination of reasonably available control technology (RACT) for the control of emissions of volatile organic compounds (VOCs) to the atmosphere from the Mondelez Global bakery located in the Henrico County, Virginia portion of the Richmond Ozone Maintenance Area. The RACT determination is being made pursuant to 9VAC5-40-7370 of the Virginia Administrative Code. A state operating permit is being issued as an administrative mechanism to enforce the RACT determination. The permit is being issued pursuant to Article 5 (9VAC5-80-800 et seq.) of 9VAC5-80 (Permit for Stationary Sources) of the Virginia Administrative Code and is federally enforceable upon issuance.

A permit was issued to the facility by DEQ on September 19, 2007, which contained the RACT for the control of VOC emissions and specified certain operating conditions for the facility's Oven #1 and catalytic oxidizer. In a subsequent action, the facility requested changes to the permit, including changes needed to accommodate replacement of the catalytic oxidizer with a more efficient regenerative thermal oxidizer. This change in the type of control device did not affect VOC emissions. The revised permit was issued on December 11, 2012, and submitted to EPA as a SIP revision on December 13, 2012. Since then, the permit has been updated to make it more streamlined by removing certain conditions (throughput and emission limits) and regulatory references (to malfunctions) that are not necessary to achieve the RACT requirements. These changes are in the interest of providing clarity and will not result in any change in operations or emissions increase.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, written 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 information received is part of the public record.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website: http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx. The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070, and

2) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020.

Contact Information: Jennifer Hoeffner, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5123, FAX (804) 527-5106, or email jennifer.hoeffner@deq.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Naser #2 of Brookneal, LLC, d.b.a. Naruna Minit Mart

An enforcement action has been proposed for Naser #2 of Brookneal, LLC, d.b.a. Naruna Minit Mart (Naser #2), regarding the Naser #2's underground petroleum storage tanks in Brookneal, Virginia, for violations of State Water Control Law and regulations. The proposed enforcement action includes a civil charge and a schedule of compliance. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX at (540) 562-6725, or postal mail at Department of Environmental Quality, Roanoke Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from January 27, 2014, to February 27, 2014.

Proposed Enforcement Action for River Ridge Association, Inc.

An enforcement action has been proposed for the River Ridge Association, Inc. (RRA) regarding the RRA's wastewater treatment plant in Bracey, Virginia, for violations of State Water Control Law and the applicable permit and regulations. The proposed enforcement action includes a civil charge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX at (540) 562-6725, or postal mail at Department of Environmental Quality, Roanoke Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from January 27, 2014, to February 27, 2014.

Proposed Enforcement Action for Mr. Itemaad Salem, d.b.a. Salem and Sons No. 9

An enforcement action has been proposed for Mr. Itemaad Salem, d.b.a. Salem and Sons No. 9, regarding Mr. Salem's underground petroleum storage tanks at the convenience store on Campbell Avenue in Lynchburg, Virginia, for violations of State Water Control Law and regulations. The proposed enforcement action includes a civil charge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX at (540) 562-6725, or postal mail at Department of Environmental Quality, Roanoke Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from January 27, 2014, to February 27, 2014.

Proposed Enforcement Action for United States Army and BAE Systems Ordinance Systems, Inc.

An enforcement action has been proposed for the United States Army and BAE Systems Ordinance Systems, Inc. for violations of State Water Control Law and the applicable permit and regulations related to releases at the Radford Army Ammunition Plant. The proposed enforcement action includes a civil charge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX at (540) 562-6725, or postal mail at Department of Environmental Quality, Roanoke Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from January 27, 2014, to February 26, 2014.

Proposed Consent Special Order for Watermark Partners, LLC

An enforcement action has been proposed for Watermark Partners, LLC for alleged violations at Watermark Subdivision, Chesterfield County, VA. The State Water Control Board proposes to issue a consent special order to

Watermark Partners, LLC to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Gina Pisoni will accept comments by email at gina.pisoni@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from January 27, 2014, to February 28, 2014.

Release of the Final 2012 305(b)/303(d) Water Quality Assessment Integrated Report

The Virginia Department of Environmental Quality (DEQ) will release the Final 2012 305(b)/303(d) Water Quality Assessment Integrated Report on January 27, 2014.

The Integrated Report combines both the § 305(b) Water Quality Assessment and the § 303(d) Report on Impaired Waters. The draft report was available for public comment March 26, 2012, through April 27, 2012. Comments were received from the public and the United States Environmental Protection Agency (EPA). The report was slightly revised to address these comments and resubmitted to EPA on September 12, 2012. EPA approved the final report on December 12, 2013.

The final report, public comment response document, and map images are available for download on the website: http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityAssessments/2012305b303dIntegratedReport.aspx.

Copies are available at no charge on CD-ROM (limit one per person) by request via the website or via phone at (804) 698-4191. These CD-ROMs include the entire final report, all of its appendices, and a digital book of maps developed from the 2012 assessment. Due to the cost of printing, hard copies are only available by special request.

Questions regarding the report can be directed to the agency contact listed below.

Contact Information: Arthur Butt, Ph.D., Department of Environmental Quality, Office of Water Monitoring and Assessment, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4314, or email arthur.butt@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Water Control Board has conducted a small business impact review of **9VAC25-101, Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Regulation,** and determined that this regulation should be retained in its current form. The State Water Control Board is publishing its report of findings dated January 8, 2014, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

The primary goal of this regulation is to protect the environment from discharges of oil from tank vessels by establishing procedures and requirements for operators to respond to the threat of an oil discharge and to contain, clean up, and mitigate a discharge within the shortest feasible time, as well as demonstrate adequate financial responsibility to cover the costs of clean up and the liabilities for damages specified in the law.

The federal Oil Pollution Act of 1990 contains many of the same requirements as this regulation. State statute and regulation recognizes that an operator's compliance with the requirements of the Oil Pollution Act of 1990 complies with Virginia's statutory and regulatory requirements. This minimizes the impact that these regulations have on the regulated community, and allows for the regulated community to comply with federal requirements as they operate through multiple jurisdictions.

Any changes the board would propose to the regulations to lessen the burden on small businesses would not be realized by small businesses since they would still be required by federal law to meet existing federal requirements.

Contact Information: Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, or email melissa.porterfield@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Water Control Board has conducted a small business impact review of **9VAC25-590, Petroleum Underground Storage Tank Financial Responsibility Requirements,** and determined that this regulation should be retained in its current form. The State Water Control Board is publishing its report of findings dated January 10, 2014, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

The regulation provides financial responsibility requirements and different types of financial mechanisms that may be used to cover these responsibilities. Financial assurance needs to be provided by owners/operators to ensure that owners/operators will be able to clean up any releases of petroleum that mat occur from underground storage tanks (USTs).

Virginia's regulations are based on federal regulations; however, state regulations provide more flexibility to owners/operators. State regulations allow certificate of deposits (CDs) to be used to provide financial assurance. Federal regulations do not specifically allow CDs to be used to demonstrate financial assurance; however, EPA granted Virginia approval to include the CD as an option. Virginia has established the Virginia Petroleum Storage Tank Fund (Fund) that assists owners/operators with demonstrating

financial responsibility. Owners/operators use the Fund in combination with another mechanism to demonstrate financial responsibility. Without the use of the Fund, most owners/operators would be required to demonstrate as much as $1,000,000, which would be burdensome, especially on small businesses. Allowing the Fund to be used to demonstrate a portion of the owner's/operator's financial assurance greatly reduces the regulatory burden on owners/operators.

The regulations were last amended in October 2013 to include CDs as an acceptable mechanism for providing financial assurance. The addition of the option to use a CD as a mechanism for providing financial assurance benefits owners/operators by allowing them to utilize a mechanism that a third party does not charge a fee to administer. Previously, owners/operators using a letter of credit (LOC) were assessed fees from third parties to maintain this mechanism and were frequently required to have a CD with the third party in order to receive the LOC. This change revised the regulations to address changes that had occurred in the banking industry.

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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: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-740. Water Reclamation and Reuse Regulation**

Publication: 30:9 VA.R. 1190-1225 December 30, 2013

Correction to Final Regulation:

Page 1200, 9VAC25-740-70 A, at the top of the page, above the row labeled "1. Level 1" insert as the table heading:

"Table 70-A

Treatment and Standards for Reclaimed Water"

Page 1200, 9VAC25-740-70 A, at the end of the table, under the row labeled "f. Total Suspended Solids (TSS)" insert the following footnotes:

"[[1]After disinfection.

[2]For the purpose of calculating the geometric mean, bacterial analytical results below the detection level of the analytical method used shall be reported as values equal to the detection level.

[3]Applies only if chlorine is used for disinfection.

[4]TRC less than 1.0 mg/l may be authorized by the board if demonstrated to provide comparable disinfection through a chlorine reduction program in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790).

[5]Applies only if $CBOD_5$ is used in lieu of BOD_5.

[6]Where ultraviolet radiation will be used for disinfection of Level 1 reclaimed water, other turbidity standards may apply in accordance with 9VAC25-740-110 A 2 a.]"

Page 1208, 9VAC25-740-100 C 3, line 5, remove the quote marks around "biological nutrient removal" and after that phrase insert "(BNR)"

Page 1225, FORMS (9VAC25-740), second column, line 2, after "Permit" insert "or a Virginia Pollution Abatement Permit"

VA.R. Doc. No. R11-2622; Filed January 2, 2014, 11:38 a.m.