VIRGINIA REGISTER OF REGULATIONS

VOL. 30 ISS. 18 PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION MAY 5, 2014

TABLE OF CONTENTS

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

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).

May 2014 through June 2015

Volume: Issue	Material Submitted By Noon*	Will Be Published On
30:18	April 16, 2014	May 5, 2014
30:19	April 30, 2014	May 19, 2014
30:20	May 14, 2014	June 2, 2014
30:21	May 28, 2014	June 16, 2014
30:22	June 11, 2014	June 30, 2014
30:23	June 25, 2014	July 14, 2014
30:24	July 9, 2014	July 28, 2014
30:25	July 23, 2014	August 11, 2014
30:26	August 6, 2014	August 25, 2014
31:1	August 20, 2014	September 8, 2014
31:2	September 3, 2014	September 22, 2014
31:3	September 17, 2014	October 6, 2014
31:4	October 1, 2014	October 20, 2014
31:5	October 15, 2014	November 3, 2014
31:6	October 29, 2014	November 17, 2014
31:7	November 12, 2014	December 1, 2014
31:8	November 25, 2014 **(Tuesday)**	December 15, 2014
31:9	December 10, 2014	December 29, 2014
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
31:15	March 4, 2015	March 23, 2015
31:16	March 18. 2015	April 6, 2015
31:17	April 1, 2015	April 20, 2015
31:18	April 15, 2015	May 4, 2015
31:19	April 29, 2015	May 18, 2015
31:20	May 13, 2015	June 1, 2015
31:21	May 27, 2015	June 15, 2015

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Agency Decision

Title of Regulation: **9VAC5-80. Permits for Stationary Sources.**

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

Name of Petitioner: Virginia Manufacturers Association (VMA).

Nature of Petitioner's Request: The petitioner is requesting the board to amend Article 8 (9VAC5-80-1605 et seq.), Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas, and Article 9 (9VAC5-80-2000 et seq.), Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas or the Ozone Transport Region, as follows:

1. Amend the definition of "baseline actual emissions" in 9VAC5-80-1615 C and 9VAC5-80-2010 C, and make any other regulatory changes necessary to make the Virginia regulation conform with the federal definition. This would allow VMA members and other facility owners in Virginia to use a 10-year lookback period, thus making the Virginia regulations no more stringent than federal requirements.

2. Amend subdivision b (4) of the definition of "baseline actual emissions" in 9VAC5-80-1615 C and 9VAC5-80-2010 C and amend 9VAC5-80-1865 E and 9VAC5-80-2144 E, and make any other regulatory changes necessary to make the Virginia regulation conform with the federal definition. This would allow VMA members and other facility owners in Virginia to use different lookback periods for different regulated NSR pollutants, thus making the Virginia regulations no more stringent than federal requirements.

3. Amend 9VAC5-80-1615 C, 9VAC5-80-1865 C 1 f, 9VAC5-80-2010 C, and 9VAC5-80-2144 C 1 f, and make any other regulatory changes necessary to make the Virginia regulation conform with the federal definition. This would allow VMA members and other facility owners in Virginia to obtain PALs for 10 years, rather than only five years, thus making the Virginia regulations no more stringent than federal requirements.

4. Amend the definition of "emissions unit," add a definition of "replacement unit" in 9VAC5-80-1615 C and 9VAC5-80-2010 C, and make any other regulatory changes necessary to make the Virginia regulation conform with the federal definition. This would allow VMA members and other facility owners in Virginia to use the baseline actual emissions of the unit being replaced and the projected actual emissions of the replacement unit, thus making the Virginia regulations no more stringent than federal requirements.

Agency's Decision: Request granted.

Statement of Reason for Decision: At the State Air Pollution Control Board meeting on April 4, 2014, the board granted the petitioner's request to initiate a rulemaking concerning major new source review regulations and authorized the department to initiate the associated regulatory action.

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, TDD (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

VA.R. Doc. No. R14-03; Filed April 8, 2014, 1:24 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Initial Agency Notice

Title of Regulation: **12VAC30-120. Waivered Services.**

Statutory Authority: § 32.1-325 of the Code of Virginia.

Name of Petitioner: Michele Frances Jackson.

Nature of Petitioner's Request: Per this document http://townhall.virginia.gov/UM/chartpetitionpublic.pdf, I would like to use § 2.2-4007 of the Code of Virginia to request that the Department of Medical Assistance Services (DMAS) change the regulations relating to the Medicaid Elderly or Disabled with Consumer-Direction (EDCD) Waiver.

1) Repeal all Medicaid Elderly or Disabled with Consumer Direction Waiver regulations into one regulation that assertively promotes the home and community presence and participation of persons with disabilities. For example, the EDCD Waiver should seek to encourage disabled people eating in restaurants with wait staff and flying airplanes to national and international destinations. Repeal 12VAC30-120-900, 12VAC30-120-980, 12VAC30-120-930, 12VAC30-120-920, 12VAC30-110, 12VAC30-20-500 through 12VAC30-20-560, 12VAC30-120-758, 12VAC30-120-762, 12VAC30-120-2000, 12VAC30-120-2010 and any other regulation about the EDCD Waiver into one regulation that clearly and completely explains the program.

2) Change the EDCD Waiver regulation to increase $11.47 hourly personal attendant wage by multiples, so that the personal attendants who are often family of the disabled

individual will have the freedom of choice to purchase their own charitable contributions, housing, utilities, car, food, clothing, medical, entertainment, travel and other needs and wants. Persons with disabilities and their caretakers should have the income to eat in restaurants with wait staff, to fly and to participate in other good and enjoyable things. This is a love, truth and disability rights issue. Many personal attendants are family members and friends of persons with disabilities who do not want their family and friends to end up in foster care, nursing facilities, assisted-living facilities, other mental health institutions, group homes, etc. Freedom of choice allows family and friends, the best people, the biggest lovers of persons with disabilities (after God and persons with disabilities), to be caregivers for persons with disabilities.

3) Change the EDCD Waiver regulation to include an annual cost of living increase for the personal attendants.

4) Change the EDCD Waiver regulation, so that personal attendants and the employer of record can be the same person. Single parents need to be able to be both the personal attendant and the employer of record. Many single parents go through obtaining custody and child support for the disabled child because the noncustodial parent refuses to provide for the disabled child financially and in other ways. Married couples also benefit when a personal attendant and the employer of record are the same person. For example, a husband who is primarily the employer of record and a wife who is primarily the personal attendant can switch roles allowing the husband to serve as the personal attendant. Some personal attendants work more than 40 hours weekly and need rest. All personal attendants should be paid. Some family have more than one elderly or disabled member and also need flexibility of personal attendants and the employer of record being the same person.

5) Change the EDCD Waiver regulation, so that an individual age 18 and older can be a personal attendant including parents of minor disabled children, spouses of disabled individuals, all biological/adoptive family members and others. Encourage family to be personal attendants.

6) Change EDCD Waiver regulation, so that an individual age 17 and younger who is the mother/father of a disabled individual can serve as a personal attendant/employer of record.

7) Repeal EDCD Waiver regulation implementing periodic authorization. There should be one evaluation to qualify for the EDCD Waiver and no further authorizations. Disabilities like autism and Down Syndrome are life-long. Also, institutions have a long history of discriminating against persons with disabilities.

8) Change EDCD Waiver regulation, so that disabled individuals have compliments or complaints handled by the EDCD program head. Disabled individuals or their representatives are not to go through the Medicaid appeals process. EDCD Waiver is to handle compliments/complaints as an opportunity to improve the EDCD Waiver service not as a way to reduce or deny benefits/income to disabled individuals and their personal attendants. EDCD Waiver should strive to ensure that personal attendants are continuously paid and providing service to elderly or disabled individual from day one of birth and older until end of disability or death.

9) Change EDCD Waiver regulation, so that service facilitators are visiting disabled individuals and their representatives once annually to inform them about the EDCD Waiver, check that the personal attendants are being paid continuously and trouble shoot payment problems.

10) Repeal EDCD Waiver regulation where service facilitator is collecting data on the disabled individual and their family/personal attendants as it relates to the periodic authorization. (See point 7 where the periodic authorization is repealed.)

11) Change EDCD Waiver regulation, so that service facilitators are responsible for informing local medical facilities, mental health facilities, schools and government agencies about the EDCD Waiver with the goal that these groups will tell persons with disabilities and their families and friends about the EDCD Waiver. One of the goals should be that when parents receive genetic counseling they are also told about the EDCD Waiver, so that from day one if a disabled individual is born, they are enrolled in the EDCD Waiver receiving personal attendant and other services. Another goal is to end situation where some family have disabled members in foster care, nursing facilities, assisted living facilities, group homes and other institutions not because they want them there but because they have no knowledge of or little knowledge of the EDCD Waiver.

12) Change EDCD Waiver regulation, so that service facilitators assist a disabled person holding a Virginia EDCD Waiver with a move to another state and his/her personal attendant not lose any income.

13) Change EDCD Waiver regulation, so that service facilitators work on problem of how to help a disabled person with an EDCD Waiver from another state to move to Virginia without his/her personal attendant losing income.

14) EDCD Waiver should be a tool to empower disabled person to live daily the best possible life.

Agency Plan for Disposition of Request: DMAS plans to post this petition for rulemaking as required by the Code of Virginia.

Public Comment Deadline: May 26, 2014.

Agency Contact: Brian McCormick, Regulatory Coordinator, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, or email brianmccormick@dmas.virginia.gov.

VA.R. Doc. No. R14-26; Filed April 4, 2014, 2:01 p.m.

TITLE 17. LIBRARIES AND CULTURAL RESOURCES

BOARD OF HISTORIC RESOURCES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Historic Resources intends to consider amending **17VAC5-20, Regulations Governing Permits for the Archaeological Removal of Human Remains**. The purpose of the proposed action is to (i) enhance public notification requirements, (ii) ensure that applicants have the resources to complete the proposed work, (iii) ensure respectful disposition of recovered remains, and (iv) modernize and simplify regulatory language.

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

Statutory Authority: §§ 10.1-2202 and 10.1-2305 of the Code of Virginia.

Public Comment Deadline: June 4, 2014.

Agency Contact: Jennifer Pullen, Executive Assistant, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6085, FAX (804) 367-2391, or email jennifer.pullen@dhr.virginia.gov.

VA.R. Doc. No. R14-3990; Filed April 9, 2014, 11:05 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services has WITHDRAWN the Notice of Intended Regulatory Action for amending **22VAC40-295, Temporary Assistance for Needy Families (TANF)**, which was published in 30:15 VA.R. 2019 April 7, 2014.

Agency Contact: Bridget Shelmet, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7144, FAX (804) 726-7357, or email bridget.shelmet@dss.virginia.gov.

VA.R. Doc. No. R14-3994; Filed April 14, 2014, 9:08 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Final Regulation

Title of Regulation: **4VAC50-70. Resource Management Plans (adding 4VAC50-70-10, 4VAC50-70-20, 4VAC50-70-30, 4VAC50-70-40, 4VAC50-70-50, 4VAC50-70-60, 4VAC50-70-70, 4VAC50-70-80, 4VAC50-70-90, 4VAC50-70-100, 4VAC50-70-110, 4VAC50-70-120, 4VAC50-70-130, 4VAC50-70-140, 4VAC50-70-150).**

Statutory Authority: § 10.1-104.8 of the Code of Virginia.

Effective Date: July 1, 2014.

This final action readopts without amendment 4VAC50-70, Resource Management Plans. The regulation initially was adopted by the Virginia Soil and Water Conservation Board with an effective date of December 6, 2013, as published in 29:18 VA.R. 2198-2207 May 6, 2013. On November 21, 2013, the board suspended the effective date, and notice of the suspension was published in 30:7 VA.R. 814-815 December 2, 2013. At its meeting on April 4, 2014, the board rescinded the suspension of these regulations and readopted the final regulation without amendment; therefore, the text is not set out here. The board established a new effective date of July 1, 2014.

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

VA.R. Doc. No. R12-3140; Filed April 17, 2014, 11:02 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC5-80. Permits for Stationary Sources (Rev. A14) (amending 9VAC5-80-1695, 9VAC5-80-1715).**

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

Effective Date: June 4, 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.

Summary:

On December 9, 2013 (78 FR 73698), the U.S. Environmental Protection Agency removed certain provisions regarding the significant impact levels and significant monitoring concentration for particulate matter less than 2.5 micrometers from its prevention of significant deterioration regulations. The State Air Pollution Control Board administers the new source review program under an approved state implementation plan; therefore, the board has amended the regulation to reflect the federal regulation revisions.

9VAC5-80-1695. Exemptions.

A. The requirements of this article shall not apply to a particular major stationary source or major modification; if:

1. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

a. Coal cleaning plants (with thermal dryers).

b. Kraft pulp mills.

c. Portland cement plants.

d. Primary zinc smelters.

e. Iron and steel mills.

f. Primary aluminum ore reduction plants.

g. Primary copper smelters.

h. Municipal incinerators capable of charging more than 250 tons of refuse per day.

i. Hydrofluoric acid plants.

j. Sulfuric acid plants.

k. Nitric acid plants.

l. Petroleum refineries.

m. Lime plants.

n. Phosphate rock processing plants.

o. Coke oven batteries.

p. Sulfur recovery plants.

q. Carbon black plants (furnace process).

r. Primary lead smelters.

s. Fuel conversion plants.

t. Sintering plants.

u. Secondary metal production plants.

v. Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

w. Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

x. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

y. Taconite ore processing plants.

z. Glass fiber processing plants.

aa. Charcoal production plants.

bb. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

cc. Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Part 60 or 61; or

2. The source or modification is a portable stationary source that has previously received a permit under this article, and

a. The owner proposes to relocate the source and emissions of the source at the new location would be temporary;

b. The emissions from the source would not exceed its allowable emissions;

c. The emissions from the source would affect no class I area and no area where an applicable increment is known to be violated; and

d. Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the board.

B. The requirements of this article shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9VAC5-20-204.

C. The requirements of 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Would affect no class I area and no area where an applicable increment is known to be violated; and

2. Would be temporary.

D. The requirements of 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 as they relate to any maximum allowable increase for a class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

E. The board may exempt a proposed major stationary source or major modification from the requirements of 9VAC5-80-1735 with respect to monitoring for a particular pollutant if:

1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide -- 575 μg/m^3, 8-hour average

Nitrogen dioxide -- 14 μg/m^3, annual average

$PM_{2.5}$ - ~~4~~ 0 μg/m^3, 24-hour average*

PM_{10} - 10 μg/m^3, 24-hour average

Sulfur dioxide -- 13 μg/m^3, 24-hour average

Ozone**

Lead -- 0.1 μg/m^3, 3-month average

Fluorides -- 0.25 μg/m^3, 24-hour average

Total reduced sulfur -- 10 μg/m^3, 1-hour average

Hydrogen sulfide -- 0.2 μg/m^3, 1-hour average

Reduced sulfur compounds -- 10 μg/m^3, 1-hour average; or

*No exemption is available with regard to $PM_{2.5}$.

~~*~~No **No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or NO_X subject to this article would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

2. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subdivision 1 of this subsection, or

the pollutant is not listed in subdivision 1 of this subsection.

F. The requirements of this article shall not apply to a particular major stationary source with respect to the use of an alternative fuel or raw material if the following conditions are met:

1. The owner demonstrates to the board that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

2. The use of an alternative fuel or raw material would not be subject to review under this article as a major modification.

9VAC5-80-1715. Source impact analysis.

~~A. The following demonstration is required for any new major stationary source or major modification:~~

~~1.~~ A. The owner of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

~~a.~~ 1. Any ambient air quality standard in any air quality control region; or

~~b.~~ 2. Any applicable maximum allowable increase over the baseline concentration in any area.

~~2. For purposes of $PM_{2.5}$, the demonstration required in subdivision 1 of this subsection is deemed to have been made if the emissions increase from the new stationary source alone or from the modification alone would cause, in all areas, air quality impacts less than the following amounts:~~

~~Averaging time~~	~~Class I area~~	~~Class II area~~	~~Class III area~~
~~Annual~~	~~0.06 µg/m³~~	~~0.3 µg/m³~~	~~0.3 µg/m³~~
~~24 hour~~	~~0.07 µg/m³~~	~~1.2 µg/m³~~	~~1.2 µg/m³~~

B. The following applies to any new major stationary source or major modification if it would cause or contribute to a violation of any ambient air quality standard.

1. A new major stationary source or major modification will be considered to cause or contribute to a violation of an ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable air quality standard:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
SO_2	1.0 µg/m³	5.0 µg/m³		25.0 µg/m³	
PM_{10}	1.0 µg/m³	5.0 µg/m³			
$PM_{2.5}$	0.3 mg/m³	1.2 mg/m³			
NO_2	1.0 µg/m³				
CO			500 µg/m³		2000 µg/m³

2. A proposed new major stationary source or major modification may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the new major stationary source or major modification would otherwise cause or contribute to a violation of any ambient air quality standard. In the absence of such emission reductions, the board will deny the proposed construction.

3. The requirements of this subsection do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9VAC5-20-204.

VA.R. Doc. No. R14-3965; Filed April 15, 2014, 9:14 a.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 § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-192. Virginia Pollution Abatement (VPA) General Permit Regulation for Animal Feeding Operations (amending 9VAC25-192-10 through**

9VAC25-192-70; adding 9VAC25-192-25, 9VAC25-192-80, 9VAC25-192-90).

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

Effective Date: November 16, 2014.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, FAX (804) 698-4116, or email betsy.bowles@deq.virginia.gov.

Summary:

The State Water Control Board is reissuing the general permit regulation for animal feeding operations with a 10-year permit term that expires on November 15, 2024. The regulation governs the pollutant management activities of animal wastes at animal feeding operations not covered by a Virginia Pollutant Discharge Elimination System permit and having 300 or more animal units utilizing a liquid manure collection and storage system. These animal feeding operations may operate and maintain treatment works for waste storage, treatment, or recycling and may perform land application of manure, wastewater, compost, or sludges.

The amendments include options to (i) transfer animal waste off the farm as long as specific requirements are followed by the permittee and the end-users of the animal waste and (ii) manage imported waste materials as long as specific requirements are followed by the permittee. Amendments since publication of the proposed regulation include modification of the requirements for waste storage not under roof and removal of the option of having an employee of a soil and water conservation district with appropriate engineering approval authority certify compliance with the siting, design, and construction requirements of the permit.

CHAPTER 192
VIRGINIA POLLUTION ABATEMENT (VPA)
REGULATION AND GENERAL PERMIT ~~REGULATION~~
FOR ANIMAL FEEDING OPERATIONS AND ANIMAL WASTE MANAGEMENT

9VAC25-192-10. 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 Permit Regulation (9VAC25-32) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Agricultural storm water discharge" means ~~storm water that is not the sole result of land application of manure, litter or process wastewater. Where manure, litter or process wastewater has been applied~~ a precipitation-related discharge of manure, litter, or process wastewater that has been applied on land areas under the control of an animal feeding operation or under the control of an animal waste end-user in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater~~, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of an animal feeding operation is an agricultural storm water discharge~~.

"Animal feeding operation" means a lot or facility ~~(other than an aquatic animal production facility)~~ where the following conditions are met:

1. 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

2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of wastes.

"Animal waste" means liquid, semi-solid, and solid animal manure [~~, poultry waste~~] and process wastewater, compost, or sludges associated with [~~livestock and poultry~~] animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.

"Animal waste end-user" or "end-user" means any recipient of transferred animal waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use for an operation under his control.

"Animal waste fact sheet" means the document that details the requirements regarding utilization, storage, and management of animal waste by end-users. The fact sheet is approved by the department.

"Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or environment.

"Confined animal feeding operation," for the purposes of this regulation, has the same meaning as an "animal feeding operation."

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or his designee.

"Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment, and management of animal waste and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; except that for an animal waste end-user who is not covered under the general permit, the requirements of 9VAC25-192-90 constitute the NMP.

~~"Operator" means any person who owns or operates an animal feeding operation.~~

~~"Permittee" means the owner whose animal feeding operation is covered under this general permit.~~

"Organic source" means any nutrient source including, but not limited to, manures, biosolids, compost, and waste or sludges from animals, humans, or industrial processes, but for the purposes of this regulation it excludes waste from wildlife.

"Waste nutrient analysis rate" means a land application rate for animal waste approved by the board as specified in this regulation.

"Waste storage facility" means (i) a waste holding pond or tank used to store manure prior to land application, ~~or~~ (ii) a lagoon or treatment facility used to digest or reduce the solids or nutrients [, or (iii) a structure used to store manure or waste].

"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.

"300 animal units" means 300,000 pounds of live animal weight, or the following numbers and types of animals:

a. 300 slaughter and feeder cattle;

b. 200 mature dairy cattle (whether milked or dry cows);

c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);

d. 150 horses;

e. 3,000 sheep or lambs;

f. 16,500 turkeys;

g. 30,000 laying hens or broilers.

9VAC25-192-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs the pollutant management activities ~~of animal wastes~~ at animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit~~, and having 300 or more animal units utilizing a liquid manure collection and storage system~~ and animal waste utilized or stored by animal waste end-users. These animal feeding operations may operate and maintain treatment works for waste storage, treatment, or ~~recycle~~ recycling and may perform land application of manure, wastewater, compost, or sludges.

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

C. This general permit will become effective on November 16, ~~2004~~ 2014. This general permit will expire 10 years from the effective date.

9VAC25-192-25. Duty to comply.

A. Any person who manages or proposes to manage pollutants regulated by 9VAC25-192 shall comply with the applicable requirements of this chapter.

B. In order to manage pollutants from an animal feeding operation, the owner shall be required to obtain coverage under the Virginia Pollution Abatement (VPA) general permit or an individual VPA permit provided that the owner has not been required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit. The owner shall comply with the requirements of this chapter and the permit.

C. An animal waste end-user shall comply with the technical requirements outlined in 9VAC25-192-80 and 9VAC25-192-90.

9VAC25-192-50. Authorization to manage pollutants.

A. Owner of an animal feeding operation. Any owner governed by this general permit is hereby authorized to manage pollutants at animal feeding operations provided that the owner files the registration statement of 9VAC25-192-60, complies with the requirements of 9VAC25-192-70, and provided that:

1. The ~~operator~~ owner has not been required to obtain a VPDES permit or an individual VPA permit according to subdivision 2 of 9VAC25-32-260 ~~B~~;

2. The operation of the animal feeding operation 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 wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural [stormwater ~~storm water~~] discharges are permitted. Domestic sewage ~~or industrial~~ shall not be managed under this general permit. Industrial waste shall not be managed under this general permit, except for wastes that have been approved by the department and are managed in accordance with 9VAC25-192-70;

3. The owner of any proposed pollutant management activities or those which have not previously been issued a valid Virginia Pollution Abatement (VPA) permit or Virginia Pollutant Discharge Elimination System (VPDES) permit must attach to the registration statement, the Local Government Ordinance Form (a notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia).

4. The owner shall obtain Department of Conservation and Recreation ~~must approve~~ approval of a nutrient

management plan for the animal feeding operation prior to the submittal of the registration statement. The ~~operator~~ owner shall attach to the registration statement a copy of the approved ~~Nutrient Management Plan~~ nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the ~~Nutrient Management Plan, and if the plan was written after December 31, 2005,~~ nutrient management plan that ~~the plan~~ was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The ~~operator~~ owner shall implement the approved nutrient management plan.

5. a. The ~~operator~~ owner shall give notice of the registration statement to all owners or residents of property that adjoins the property on which the animal feeding operation will be located. Such notice shall include (i) the types and maximum number of animals which will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the ~~permit~~ registration statement may be submitted. This notice requirement is waived whenever registration is for the purpose of renewing coverage under the permit and no expansion is proposed and the department has not issued any special or consent order relating to violations under the existing permit.

b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the general permit, the director shall require the owner to obtain an individual permit for the operation. Any such determination by the director shall be made in writing and ~~received by~~ mailed to the owner not more than 45 days after the filing of the registration statement or, if in the director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement.

6. ~~Each operator~~ As required by § 62.1-44.17:1 F of the Code of Virginia, each owner of a facility covered by this general permit shall have completed the training program offered or approved by the ~~Department of Conservation and Recreation~~ department in the two years prior to submitting the registration statement for general permit coverage, or shall complete such training within one year after the registration statement has been submitted for general permit coverage. All ~~operators~~ permitted owners shall complete the training program at least once every three years.

B. Animal waste end-user. An animal waste end-user shall comply with the requirements outlined in 9VAC25-192-80 and 9VAC25-192-90.

1. When an animal waste end-user does not comply with the requirements of 9VAC25-192-80 and 9VAC25-192-90, the department may choose to do any or all of the following:

a. Initiate enforcement action based upon the violation of the regulation;

b. Require the animal waste end-user to register for coverage under the general permit;

c. Require the animal waste end-user to apply for the VPA individual permit; or

d. Take other actions set forth in the VPA Permit Regulation (9VAC25-32).

2. An animal waste end-user governed by this general permit is hereby authorized to manage pollutants relating to the utilization and storage of animal waste provided that the animal waste end-user files the registration statement of 9VAC25-192-60, complies with the requirements of 9VAC25-192-70, and:

a. The animal waste end-user has not been required to obtain a VPA individual permit according to subdivision 2 of 9VAC25-32-260;

b. The activities of the animal waste end-user shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage shall not be managed under this general permit. Industrial waste shall not be managed under this general permit, except for wastes that have been approved by the department and are managed in accordance with 9VAC25-192-70;

c. The animal waste end-user shall obtain Department of Conservation and Recreation approval of a nutrient management plan for land application sites where animal waste will be utilized or stored and managed prior to the submittal of the registration statement. The animal waste end-user shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan that was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The animal waste end-user shall implement the approved nutrient management plan; and

d. As required by § 62.1-44.17:1 F of the Code of Virginia, each permitted animal waste end-user shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted

animal waste end-users shall complete a training program at least once every three years.

C. Continuation of permit coverage.

1. Any owner that was authorized to manage pollutants under the general permit issued in 2004 and that submits a complete registration statement on or before November 15, 2014, is authorized to continue to manage pollutants under the terms of the 2004 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 coverage under this permit is denied.

2. When the permittee 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 expiring or expired 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 activities authorized by the expiring or expired general permit or be subject to enforcement action for operating without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions set forth in the VPA Permit Regulation (9VAC25-32).

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

9VAC25-192-60. Registration statement.

A. The owner of an animal feeding operation. In order to be covered under the general permit, the ~~operator~~ owner shall file a complete VPA General Permit Registration Statement for the management of pollutants at animal feeding operations in accordance with this chapter. The registration statement shall be deemed complete for registration under the VPA General Permit if it contains the following information:

1. The animal feeding operation owner's name, mailing address, email address (if available), and telephone number;

2. The ~~animal feeding operation operator's~~ name, mailing address, email address (if available), and telephone number of the operator or contact person other than the owner, if applicable;

~~2.~~ 3. The farm name (if applicable) and location of the animal feeding operation;

~~3. The name and telephone number of a contact person other than the operator, if necessary;~~

4. The best time of day and day of the week to contact the operator or the contact person;

5. If the facility has an existing VPA or VPDES permit number, the permit number;

6. The type or types of animals (dairy cattle, slaughter and feeder cattle, swine, other) and the maximum number and average weight of the type or types of animals to be maintained at the animal feeding operation;

7. [The types of wastes that will be managed at the facility and how much of each type of waste will be managed;

8. If waste will be transferred off-site, the type of waste and how much will be transferred;

9.] The ~~operator~~ owner of any proposed pollutant management activities or those which have not previously been issued a valid VPA permit or ~~Virginia Pollutant Discharge Elimination System (VPDES)~~ VPDES permit must attach to the registration statement, the Local Government Ordinance Form (the notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia);

[~~8.~~ 10.] A copy of the nutrient management plan approved by the Department of Conservation and Recreation ~~and a copy of the letter certifying approval of the plan, and if the plan was written after December 31, 2005, that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia~~; ~~and~~

[~~9.~~ 11.] A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

~~9.~~ [~~10.~~ 12.] The following certification: "I certify that notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the animal feeding operation will be located. This notice included the types and numbers of animals which will be maintained at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. (The preceding certification is waived if the registration is for renewing coverage under the general permit and no expansion of the operation is proposed and the department has not issued any special or consent order relating to violations under the existing permit.) I certify under penalty of law that all the requirements of the board for the general permit are being met and 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."

B. The animal waste end-user. In order to be covered under the general permit, the animal waste end-user shall file a complete VPA General Permit Registration Statement in accordance with this chapter. The registration statement shall be deemed complete for registration under the VPA General Permit if it contains the following information:

1. The animal waste end-user's name, mailing address, email address (if available), and telephone number;

2. The name (if applicable) and location of the facility where the animal waste will be utilized, stored, or managed;

3. The best time of day and day of the week to contact the animal waste end-user;

4. If the facility has an existing VPA or VPDES permit number, the permit number;

5. If confined animals are located at the facility, indicate the type or types of animals (dairy cattle, slaughter and feeder cattle, swine, other) and the maximum number and average weight of the type or types of animals;

6. [The types of wastes that will be managed at the facility and how much of each type of waste will be managed;

7. If waste will be transferred off-site, the type of waste and how much will be transferred;

8.] A copy of the nutrient management plan approved by the Department of Conservation and Recreation;

[~~7.~~ 9.] A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

[~~8.~~ 10.] The following certification: "I certify under penalty of law that all the requirements of the board for the general permit are being met and 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."

~~B.~~ C. The registration statement shall be signed in accordance with ~~9VAC25-32-50~~ Part II F of 9VAC25-32-70.

9VAC25-192-70. Contents of the general permit.

Any ~~operator~~ owner or animal waste end-user whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPA permit regulation, 9VAC25-32.

General Permit No.: VPG1
Effective Date: November 16, ~~2004~~ 2014
~~Modification Date:~~
Expiration Date: November 15, ~~2014~~ 2024

GENERAL PERMIT FOR POLLUTANT MANAGEMENT ACTIVITIES FOR ANIMAL FEEDING OPERATIONS AND ANIMAL WASTE MANAGEMENT

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system, and animal waste end-users are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations ~~or policies~~ prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement, supporting documents submitted to the Department of Environmental Quality, this cover page, Part I-Pollutant Management and Monitoring Requirements for Animal Feeding Operations, Part II-Conditions Applicable to all VPA Permits, and Part III-Pollutant Management and Monitoring Requirements for Animal Waste End-Users, as set forth herein.

Part I
Pollutant Management and Monitoring Requirements for Animal Feeding Operations

A. Pollutant management and monitoring requirements.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the facility's approved nutrient management plan.

2. At earthen liquid waste storage facilities constructed after December 1, 1998, to an elevation below the seasonal high water table or within one foot thereof, ~~ground water~~ groundwater monitoring wells shall be installed. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires ~~ground water~~ groundwater monitoring. Existing wells may be utilized to meet this requirement if properly located and constructed.

3. All facilities previously covered under a VPA permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed below regardless of where they are located relative to the seasonal high water table.

4. At facilities where groundwater monitoring is required, the following conditions apply:

a. One data set shall be collected from each well prior to any waste being placed in the storage facility.

b. The static water level shall be measured prior to bailing well water for sampling.

c. At least three well volumes of ~~ground water~~ groundwater shall be withdrawn immediately prior to sampling each monitoring well.

5. In accordance with subdivisions 2 and 3 of this subsection, the ~~ground water~~ groundwater shall be monitored by the permittee at the monitoring wells as specified below. Additional groundwater monitoring may be required in the facility's approved nutrient management plan.

GROUNDWATER MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Static Water Level	NL	Ft	1/3 years	Measured
Ammonia Nitrogen	NL	mg/L	1/3 years	Grab
Nitrate Nitrogen	NL	mg/L	1/3 years	Grab
pH	NL	SU	1/3 years	Grab
Conductivity	NL	umhos/cm	1/3 years	Grab

NL = No limit, this is a monitoring requirement only.

6. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the facility's approved nutrient management plan.

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

7. Soil monitoring shall be conducted at a depth of between 0-6 inches, unless otherwise specified in the facility's approved nutrient management plan.

8. Waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/year	Composite

Ammonia Nitrogen	NL	*	1/year	Composite
Total Phosphorus	NL	*	1/year	Composite
Total Potassium	NL	*	1/year	Composite
Calcium	NL	*	1/year	Composite
Magnesium	NL	*	1/year	Composite
Moisture Content	NL	%	1/year	Composite

NL = No limit, this is a monitoring requirement only.

*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

9. Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.

10. All monitoring data collected as required by this section and any additional monitoring shall be maintained on site for a period of five years and shall be made available to department personnel upon request.

B. Other requirements or special conditions.

1. Any liquid manure collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Waste storage facilities constructed after December 1, 1998, shall not be located on a 100-year floodplain.

3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer [, or] an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority [~~, or an employee of a soil and water conservation district with appropriate engineering approval authority~~] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.

4. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of the waste must be maintained at a level of at least two feet above the water table.

5. All liquid waste storage or treatment facilities shall maintain at least one foot of freeboard at all times, ~~except in the case of a storm event greater than a~~ up to and including [a] 25-year, 24-hour storm.

6. For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer [, or] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [~~or an employee of a soil and water conservation district with appropriate engineering approval authority~~] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.

7. The permittee shall notify the department's regional office at least 14 days prior to (i) animals being initially placed in the confined facility or (ii) utilization of any new waste storage or treatment facilities.

8. [Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. Waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Waste shall be covered to protect it from precipitation and wind;

b. Stormwater shall not run onto or under the stored waste;

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these

conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ($1X10^{-6}$ centimeters per second); and

d.] For waste that is not stored [in a waste storage facility or] under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

9. All equipment needed for the proper operation of the permitted facilities shall be maintained in good working order. The manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate. The ~~operator~~ permittee shall periodically inspect for leaks on equipment used for land application of waste.

10. When wastes are treated by a digester or other manure treatment technologies, the waste treatment process shall be approved by the department and shall be managed by a facility covered under this permit and in accordance with the following conditions:

a. All treated wastes generated by a digester or other manure treatment technologies must be managed through an approved nutrient management plan or transferred to another entity in accordance with animal waste transfer requirements in Part 1 B 15 and 16.

b. When a facility covered under this permit generates a treated waste from animal waste and other feedstock, the permittee shall maintain records related to the production of the treated waste.

(1) If off-site wastes are added to generate the treated waste, the permittee shall record the following items:

(a) The amount of waste brought to the facility; and

(b) From whom and where the waste originated.

(2) For all treated wastes generated by the facility, the permittee shall record the following items:

(a) The amount of treated waste generated;

(b) The nutrient analysis of the treated waste; and

(c) The final use of the treated waste.

(3) Permittees shall maintain the records required by Part I B 10 b (1) and (2) on site for a period of three years. All records shall be made available to department personnel upon request.

11. Animal waste generated by this facility shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

~~7.~~ 12. The ~~operator~~ permittee shall implement a nutrient management plan (NMP) ~~approved by the Department of Conservation and Recreation. All NMPs written after December 31, 2005, shall be~~ developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia~~. The NMP shall be maintained~~ and approved by the Department of Conservation and Recreation and maintain the plan on site. The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus loss to ground and surface waters. ~~NMPs written after December 31, 2005, and NMPs implemented after December 31, 2006, shall also include provisions to minimize phosphorus loss to ground and surface waters according to the most current standards and criteria developed by DCR at the time the plan is written.~~ The terms of the NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements;

e. Calculation of waste application rates; and

f. Waste application schedules~~; and~~.

~~g. A plan for waste utilization in the event the operation is discontinued.~~

~~8.~~ 13. Waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the ~~owner's~~ permittee's property ~~.....~~: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs ~~.....~~: 100 feet;

~~c. Distance from surface water courses~~

~~(1) 100 feet (without a vegetated buffer); or~~

~~(2) 35-foot wide vegetated buffer; or~~

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). ~~(3)~~ Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer~~,~~ or 35-foot wide vegetated buffer~~.~~;

d. Distance from rock outcropping (except limestone) ~~.....~~: 25 feet;

e. Distance from limestone outcroppings ~~.....~~: 50 feet; and

f. Waste shall not be applied in such a matter that it would discharge to sinkholes that may exist in the area.

~~9.~~ 14. ~~Records shall be maintained to demonstrate where and at what rate waste has been applied, that the application schedule has been followed, and what crops have been planted.~~ The following land application records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of five years after ~~recorded~~ the date the application is made and shall be made available to department personnel upon request.

~~10. The permittee shall notify the department's regional office at least 14 days prior to: (i) animals being initially placed in the confined facility or (ii) utilization of any new waste storage facilities.~~

15. Animal waste generated by this facility may be transferred from the permittee to another person if one or more of the following conditions are met:

a. Animal waste generated by this facility may be transferred off-site for land application or another acceptable use approved by the department, if:

(1) The sites where the animal waste will be utilized are included in this permitted facility's approved nutrient management plan; or

(2) The sites where the animal waste will be utilized are included in another permitted facility's approved nutrient management plan.

b. Animal waste generated by this facility may be transferred off-site without identifying in the permittee's approved nutrient management plan the fields where such waste will be utilized, if one of the following conditions are met:

(1) The animal waste is registered with the Virginia Department of Agriculture and Consumer Services in accordance with regulations adopted pursuant to subdivision A 2 of § 3.2-3607 of the Code of Virginia; or

(2) When the permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall maintain records in accordance with Part I B 16.

16. Animal waste may be transferred from a permittee to another person without identifying the fields where such waste will be utilized in the permittee's approved nutrient management plan if the following conditions are met:

a. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall provide that person with:

(1) Permittee's name, address, and permit number;

(2) A copy of the most recent nutrient analysis of the animal waste; and

(3) An animal waste fact sheet.

b. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall keep a record of the following:

(1) The recipient name and address;

(2) The amount of animal waste received by the person;

(3) The date of the transaction;

(4) The nutrient analysis of the animal waste;

(5) The locality in which the recipient intends to utilize the animal waste (i.e., nearest town or city and zip code);

(6) The name of the stream or waterbody, if known, to the recipient that is nearest to the animal waste utilization or storage site; and

(7) The signed waste transfer records form acknowledging the receipt of the following:

(a) The animal waste;

(b) The nutrient analysis of the animal waste; and

(c) An animal waste fact sheet.

c. Permittees shall maintain the records required by Part I B 16 a and b for at least three years after the date of the transaction and shall make them available to department personnel upon request.

17. When the waste storage or treatment facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or the atmosphere. At closure, the permittee shall remove all waste residue from the animal waste storage or treatment facility. Removed waste materials shall be utilized according to the approved NMP.

~~11. Each operator of a facility~~ 18. As required by § 62.1-44.17:1 F of the Code of Virginia, each permittee covered

~~by~~ under this general permit shall have completed the training program offered or approved by the ~~Department of Conservation and Recreation~~ department in the two years prior to submitting the registration statement for general permit coverage, or shall complete such training within one year after the registration statement has been submitted for general permit coverage. All ~~operators~~ permittees shall complete the training program at least once every three years.

Part II

Conditions Applicable to all VPA Permits

A. Sampling and analysis methods.

1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.

2. Unless otherwise specified in this permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants ~~(40 CFR 136 (2001))~~ (40 CFR Part 136).

3. The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.

4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Recording of results. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

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

2. The persons who performed the sampling or measurements;

3. The dates analyses were performed;

4. The persons who performed each analysis;

5. The analytical techniques or methods used; and

6. The results of such analyses and measurements.

C. Records retention. All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation shall be retained on site for five years from the date of the sample, measurement or report. 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 director.

D. Additional monitoring by permittee. If the permittee monitors any pollutant at the locations designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the project report. Such increased frequency shall also be reported.

E. Reporting requirements.

1. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the department at least the following information:

a. A description and cause of noncompliance;

b. The period of noncompliance, including exact dates and times or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance. Whenever such noncompliance may adversely affect state waters or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The director may waive the written report requirement on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

2. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information, specified in Part II E 1 a through c, regarding each such discharge immediately, that is, as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

NOTE: The immediate (within 24 hours) reports required in Parts II E 1 and 2 may be made to the department's regional office. Reports may be made by telephone or by fax. For reports outside normal working hours, a message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

F. Signatory requirements. Any registration statement or certification required by this permit shall be signed as follows:

1. For a corporation, by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities

employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

2. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)

3. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

~~Part III~~

~~A.~~ G. Change in management of pollutants. ~~1.~~ All pollutant management activities authorized by this permit shall be made in accordance with the terms and conditions of the permit. The permittee shall submit a new registration statement 30 days prior to all expansions, production increases, or process modifications, that will result in the management of new or increased pollutants. The management of any pollutant at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

~~2. The permittee shall promptly provide written notice of the following:~~

~~a. Any new introduction of pollutant or pollutants, into treatment works or pollutant management activities which represents a significant increase in the management of pollutant or pollutants which may interfere with, pass through, or otherwise be incompatible with such works or activities, from an establishment or treatment works, if such establishment, treatment works has the potential to discharge pollutants to state waters; and~~

~~b. Any substantial change, whether permanent or temporary, in the volume or character of pollutants being introduced into such treatment works by an establishment, treatment works, or pollutant management activity that was introducing pollutants into such treatment works at the time of issuance of the permit.~~

~~Such notice shall include information on: (i) the characteristics and quantity of pollutants to be introduced into or from such treatment works or pollutant management activities; (ii) any anticipated impact of such change in the quantity and characteristics of the pollutants to be managed at a pollutant management activity; and (iii) any additional information that may be required by the director.~~

~~B.~~ H. Treatment works operation and quality control.

1. Design and operation of facilities or treatment works and disposal of all wastes shall be in accordance with the registration statement filed with the department. The permittee has the responsibility of designing and operating the facility in a reliable and consistent manner to meet the facility performance requirements in the permit. If facility deficiencies, design or operational, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies.

2. All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities and pollutant management activities shall be operated in a prudent and workmanlike manner.

b. The permittee shall provide an adequate operating staff to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

c. Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and limitation requirements are not violated.

d. Collected solids shall be stored and utilized as specified in the approved ~~Nutrient Management Plan~~ nutrient management plan in such a manner as to prevent entry of those wastes (or runoff from the wastes) into state waters.

~~C.~~ I. Adverse impact. The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation or limitations or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation or limitations or conditions.

~~D.~~ J. Duty to halt, reduce activity or to mitigate.

1. 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.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

~~E.~~ K. Structural stability. The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

~~F.~~ L. Compliance with state law. Compliance with this permit during its term constitutes compliance with the State Water Control 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.

~~G.~~ M. Property rights. The issuance of 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 any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

~~H.~~ N. Severability. The provisions of this permit are severable.

~~I.~~ O. Duty to reregister. If the permittee wishes to continue to operate under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 30 days prior to the expiration date of this permit.

~~J.~~ P. Right of entry. The permittee shall allow, or secure necessary authority to allow, authorized state representatives, upon the presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge or discharges is located or in which any records are required to be kept under the terms and conditions of this permit;

2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. To sample at reasonable times any waste stream, process stream, raw material or by-product; and

5. To inspect at reasonable times any collection, treatment, or pollutant management activities required under this permit. For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or involved in managing pollutants. Nothing contained here shall make an inspection time unreasonable during an emergency.

~~K.~~ Q. Transferability of permits. ~~This~~ Coverage under this permit may be transferred to a new owner by a permittee if:

1. The current permittee notifies the department 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the department includes a written agreement between the existing and proposed new permittee containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The department does not within the 30-day time period notify the existing permittee and the proposed permittee of the board's intent to ~~modify or revoke and reissue~~ transfer coverage under the permit. Such ~~a~~ transferred coverage under this permit shall, as of the date of the transfer, be ~~as~~ fully effective ~~as if it had been issued directly to the new permittee~~.

~~L.~~ R. Permit modification. The permit may be modified when ~~any of the following developments occur: 1. When~~ a change is made in the promulgated standards or regulations on which the permit was based~~; or~~.

~~2. When the level of management of a pollutant, not limited in the permit, exceeds applicable Water Quality Standards or the level which can be achieved by technology based treatment requirements appropriate to the permittee.~~

~~M.~~ S. Permit termination. After public notice and opportunity for a hearing, coverage under the general permit may be terminated for cause.

~~N.~~ T. When an individual permit may be required. The director may require any permittee authorized to manage pollutants covered under this general permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The pollutant management activities violate the terms or conditions of this permit;

2. When additions or alterations have been made to the affected facility ~~which~~ that require the application of permit conditions that differ from those of the existing permit or are absent from it; and

3. When new information becomes available about the operation or pollutant management activities covered ~~by~~ under this permit ~~which~~ that were not available at the time of permit ~~issuance and would have justified the application of different permit conditions at the time of permit issuance~~ coverage.

~~This~~ Coverage under this general permit may be terminated as to an individual permittee for any of the reasons set forth above after appropriate notice and an opportunity for a hearing.

~~O.~~ U. When an individual permit may be requested. Any permittee operating under this permit may request to be excluded from the coverage ~~of~~ under this permit by applying for an individual permit. When an individual permit is issued to a permittee the applicability of this general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

~~P.~~ V. Civil and criminal liability. Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

~~Q.~~ W. 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 § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

~~R.~~ X. Unauthorized discharge of pollutants. Except in compliance with this permit, it shall be unlawful for any permittee 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 uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

Part III

Pollutant Management and Monitoring Requirements for Animal Waste End-Users

A. Pollutant management and monitoring requirements.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the facility's approved nutrient management plan.

2. At earthen liquid waste storage facilities constructed after December 1, 1998, to an elevation below the seasonal high water table or within one foot thereof, groundwater monitoring wells shall be installed. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires groundwater monitoring. Existing wells may be utilized to meet this requirement if properly located and constructed.

3. All facilities previously covered under a VPA permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed below regardless of where they are located relative to the seasonal high water table.

4. At facilities where groundwater monitoring is required, the following conditions apply:

a. One data set shall be collected from each well prior to any waste being placed in the storage facility.

b. The static water level shall be measured prior to bailing well water for sampling.

c. At least three well volumes of groundwater shall be withdrawn immediately prior to sampling each monitoring well.

5. In accordance with subdivisions 2 and 3 of this subsection, the groundwater shall be monitored by the permittee at the monitoring wells as specified below. Additional groundwater monitoring may be required in the facility's approved nutrient management plan.

GROUNDWATER MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Static Water Level	NL	Ft	1/3 years	Measured
Ammonia Nitrogen	NL	mg/L	1/3 years	Grab
Nitrate Nitrogen	NL	mg/L	1/3 years	Grab
pH	NL	SU	1/3 years	Grab
Conductivity	NL	umhos/cm	1/3 years	Grab

NL = No limit, this is a monitoring requirement only.

6. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the facility's approved nutrient management plan.

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

7. Soil monitoring shall be conducted at a depth of between 0-6 inches, unless otherwise specified in the facility's approved nutrient management plan.

8. Waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/year	Composite
Ammonia Nitrogen	NL	*	1/year	Composite
Total Phosphorus	NL	*	1/year	Composite
Total Potassium	NL	*	1/year	Composite
Calcium	NL	*	1/year	Composite
Magnesium	NL	*	1/year	Composite
Moisture Content	NL	%	1/year	Composite

NL = No limit, this is a monitoring requirement only.

*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

9. Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.

10. All monitoring data collected as required by this section and any additional monitoring shall be maintained on site for a period of five years and shall be made available to department personnel upon request.

B. Other requirements or special conditions.

1. Any liquid manure collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Waste storage facilities constructed after December 1, 1998, shall not be located on a 100-year floodplain.

3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer [~~,~~ or] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [~~, or an employee of a soil and water conservation district with appropriate engineering approval authority~~] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.

4. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of the waste must be maintained at a level of at least two feet above the water table.

5. All liquid waste storage or treatment facilities shall maintain at least one foot of freeboard at all times, up to and including [a] 25-year, 24-hour storm.

6. For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer [~~,~~ or] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [~~, or an employee of a soil and water conservation district with appropriate engineering approval authority~~] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.

7. The permittee shall notify the department's regional office at least 14 days prior to (i) animals being initially placed in the confined facility or (ii) utilization of any new waste storage or treatment facilities.

8. [Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and groundwater. Waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Waste shall be covered to protect it from precipitation and wind;

b. Stormwater shall not run onto or under the stored waste;

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ($1X10^{-6}$ centimeters per second); and

d.] For waste that is not stored [in a waste storage facility or] under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

9. All equipment needed for the proper operation of the permitted facilities shall be maintained in good working order. The manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate. The permittee shall periodically inspect for leaks on equipment used for land application of waste.

10. All treated wastes generated by a digester or other manure treatment technologies shall be approved by the department and shall be managed by a facility covered under this permit and in accordance with the following conditions:

a. All treated wastes generated by a digester or other manure treatment technologies must be managed through an approved nutrient management plan or transferred to another entity in accordance with animal waste transfer requirements in Part III B 15 and 16.

b. When a facility covered under this permit generates a treated waste from animal waste and other feedstock, the permittee shall maintain records related to the production of the treated waste.

(1) If off-site wastes are added to generate the treated waste, the permittee shall record the following items:

(a) The amount of waste brought to the facility; and

(b) From whom and where the waste originated.

(2) For all treated wastes generated by the facility, the permittee shall record the following items:

(a) The amount of treated waste generated;

(b) The nutrient analysis of the treated waste; and

(c) The final use of the treated waste.

(3) Permittees shall maintain the records required by Part III B 10 b (1) and (2) on site for a period of three years. All records shall be made available to department personnel upon request.

11. Animal waste generated by this facility shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

12. The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus loss to ground and surface waters. The terms of the NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements;

e. Calculation of waste application rates; and

f. Waste application schedules.

13. Waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will

provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer or 35-foot wide vegetated buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a matter that it would discharge to sinkholes that may exist in the area.

14. The following land application records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of five years after the date the application is made and shall be made available to department personnel upon request.

15. Animal waste generated by this facility may be transferred from the permittee to another person, if one or more of the following conditions are met:

a. Animal waste generated by this facility may be transferred off-site for land application or another acceptable use approved by the department, if:

(1) The sites where the animal waste will be utilized are included in this permitted facility's approved nutrient management plan; or

(2) The sites where the animal waste will be utilized are included in another permitted facility's approved nutrient management plan.

b. Animal waste generated by this facility may be transferred off-site without identifying in the permittee's approved nutrient management plan the fields where such waste will be utilized, if the following conditions are met:

(1) The animal waste is registered with the Virginia Department of Agriculture and Consumer Services in accordance with regulations adopted pursuant to subdivision A 2 of § 3.2-3607 of the Code of Virginia; or

(2) When the permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall maintain records in accordance with Part III B 16.

16. Animal waste may be transferred from a permittee to another person without identifying the fields where such waste will be utilized in the permittee's approved nutrient management plan if the following conditions are met:

a. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall provide that person with:

(1) Permittee's name, address, and permit number;

(2) A copy of the most recent nutrient analysis of the animal waste; and

(3) An animal waste fact sheet.

b. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall keep a record of the following:

(1) The recipient name and address;

(2) The amount of animal waste received by the person;

(3) The date of the transaction;

(4) The nutrient analysis of the animal waste;

(5) The locality in which the recipient intends to utilize the animal waste (i.e., nearest town or city and zip code);

(6) The name of the stream or waterbody, if known, to the recipient that is nearest to the animal waste utilization or storage site; and

(7) The signed waste transfer records form acknowledging the receipt of the following:

(a) The animal waste;

(b) The nutrient analysis of the animal waste; and

(c) An animal waste fact sheet.

c. Permittees shall maintain the records required by Part III B 16 a and b for at least three years after the date of the transaction and shall make them available to department personnel upon request.

17. When the waste storage or treatment facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or the atmosphere. At closure, the permittee shall remove all waste residue from the animal waste storage or treatment facility. Removed waste materials shall be utilized according to the approved NMP.

18. As required by § 62.1-44.17:1 F of the Code of Virginia, each permittee covered under this general permit shall have completed the training program offered or approved by the department in the two years prior to

submitting the registration statement for general permit coverage or shall complete such training within one year after the registration statement has been submitted for general permit coverage. All permittees shall complete the training program at least once every three years.

9VAC25-192-80. Tracking and accounting requirements for animal waste end-users.

A. When an animal waste end-user is the recipient of more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% percent or more moisture) in any 365-day period from an owner or operator of an animal feeding operation covered by a VPA or VPDES permit, the end-user shall maintain records regarding the transfer and land application of animal waste.

1. The animal waste end-user shall provide the permittee with the following items:

a. End-user name and address;

b. The locality in which the end-user intends to utilize the waste (i.e., nearest town or city and zip code);

c. The name of the stream or waterbody, if known, to the end-user that is nearest to the waste utilization or storage site; and

d. Written acknowledgement of receipt of:

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) An animal waste fact sheet.

2. The animal waste end-user shall record the following items regarding the waste transfer:

a. The source name, address, and permit number (if applicable);

b. The amount of animal waste that was received;

c. The date of the transaction;

d. The final use of the animal waste;

e. The locality in which the waste was utilized (i.e., nearest town or city and zip code); and

f. The name of the stream or waterbody, if known, to the recipient that is nearest to the waste utilization or storage site.

Records regarding animal waste transfers shall be maintained on site for a period of three years after the date of the transaction. All records shall be made available to department personnel upon request.

3. If waste is land applied, the animal waste end-user shall keep a record of the following items regarding the land application of the waste:

a. The nutrient analysis of the waste;

b. Maps indicating the animal waste land application fields and storage sites;

c. The land application rate;

d. The land application dates;

e. What crops were planted;

f. Soil test results, if obtained;

g. NMP, if applicable; and

h. The method used to determine the land application rates (i.e., phosphorus crop removal, waste nutrient analysis rate, soil test recommendations, or a nutrient management plan).

Records regarding land application of animal waste shall be maintained on site for a period of three years after the date the application is made. All records shall be made available to department personnel upon request.

B. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

9VAC25-192-90. Utilization and storage requirements for transferred animal waste.

A. An animal waste end-user who receives animal waste from an owner or operator of an animal feeding operation covered by a VPA or VPDES permit shall comply with the requirements outlined in this section.

B. Storage requirements. An animal waste end-user who receives animal waste from an owner or operator of an animal feeding operation covered by a VPA or VPDES permit shall comply with the requirements outlined in this subsection regarding storage of animal waste in his possession or under his control.

1. Animal waste shall be stored in a manner that prevents contact with surface water and groundwater. Animal waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Animal waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored animal waste;

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored [~~poultry~~] waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at

which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour [~~(1X10-6~~ ($1X10^{-6}$] centimeters per second); and

d. For animal waste that is not stored [in a waste storage facility or] under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

2. Any liquid animal waste collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

3. Waste storage facilities constructed after December 1, 1998, shall not be located on a 100-year floodplain.

4. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer [~~,~~ or] an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority [~~or an employee of a soil and water conservation district with appropriate engineering approval authority~~] shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this subsection. This certification shall be maintained on site.

5. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of the waste must be maintained at a level of at least two feet above the water table.

6. All liquid waste storage or [~~waste~~] treatment facilities shall maintain at least one foot of freeboard at all times, [~~except in the case of a storm event~~] up to and including a 25-year, 24-hour storm.

C. Land application requirements. An animal waste end-user who (i) receives more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) from an owner or operator of an animal feeding operation covered by a VPA or VPDES permit and (ii) land applies animal waste shall follow appropriate land application requirements as outlined in this subsection. The application of animal waste shall be managed to minimize adverse water quality impacts.

1. The maximum application rates can be established by the following methods:

a. Phosphorus crop removal application rates can be used when:

(1) Soil test phosphorus levels do not exceed the values listed in the table below:

Region	Soil Test P (ppm) VPI & SU Soil Test (Mehlich I) *
Eastern Shore and Lower Coastal Plain	135
Middle and Upper Coastal Plain and Piedmont	136
Ridge and Valley	162
* If results are from another laboratory the Department of Conservation and Recreation approved conversion factors must be used.	

(2) The phosphorus crop removal application rates are set forth by regulations promulgated by the Department of Conservation and Recreation in accordance with § 10.1-104.2 of the Code of Virginia.

b. Animal waste may be applied to any crop once every three years at a rate of no greater than 80 pounds [of plant available phosphorus] per acre when:

(1) The plant available phosphorus supplied by the animal waste is based on a waste nutrient analysis obtained in the last two years;

(2) In the absence of current soil sample analyses and recommendations; and

(3) Nutrients have not been supplied by an organic source, other than pastured animals, to the proposed land application sites within the previous three years of the proposed land application date of animal waste.

c. Soil test recommendations can be used when:

(1) Accompanied by analysis results for soil tests that have been obtained from the proposed field or fields in the last three years;

(2) The analytical results are from procedures in accordance with [~~4VAC5-15-150 A 2 f~~ 4VAC50-85-140 A 2 f]; and

(3) Nutrients from the waste application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops. The recommendations shall be in accordance with [~~4VAC5-15-150 A 2 a~~ 4VAC50-85-140 A 2 a].

d. A nutrient management plan developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

2. The timing of land application of animal waste shall be appropriate for the crop, and in accordance with [~~4VAC5-15-150 A 4~~ 4VAC50-85-140 A 4], except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated.

3. Animal waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

D. Animal waste end-users shall maintain the records demonstrating compliance with the requirements of subsections B and C of this section for at least three years and make them available to department personnel upon request.

E. The activities of the animal waste end-user shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

F. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

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 (9VAC25-192)

~~Virginia Pollution Abatement General Permit Registration Statement for Animal Feeding Operations (rev. 8/04).~~

Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations for Owners of Animal Feeding Operations, RS VPG1 (rev. [~~2/13)~~ 3/14)]

Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations for Animal Waste End-Users, RS End-Users, VPG1 [~~(2/13)~~ (rev. 3/14)]

Local Government Ordinance Form (eff. 11/94)

[Virginia DEQ Fact Sheet for Animal Waste Use and Storage (rev. 4/14)]

VA.R. Doc. No. R12-3285; Filed April 15, 2014, 10:01 a.m.

Notice of Effective Date

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-450).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1251 et seq. of the federal Clean Water Act; 40 CFR Part 131.

Effective Date: April 23, 2014.

On August 4, 2011, the State Water Control Board adopted revisions to the Water Quality Standards in 9VAC25-260-450. This revision designates approximately 1.34 miles of the Dan River and its tributaries as a public water supply. The proposed amendment was published in 27:12 VA.R. 1367-1376 February 14, 2011, with a comment period ending April 15, 2011, and the final amendment was published in 29:26 VA.R. 3763-3770 August 26, 2013. The State Water Control Board hereby notices EPA approval of these revisions to the water quality standards via a letter dated April 16, 2014, from Jon M. Capacasa, Director of the Water Protection Division, EPA Region 3, to David K. Paylor, Director of the Virginia Department of Environmental Quality. The effective date of these amendments is April 23, 2014. Copies are available online at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityStandards.aspx, by calling (804) 698-4121, by written request to David Whitehurst, P.O. Box 1105, Richmond, VA 23218, or by email request to david.whitehurst@deq.virginia.gov.

Agency Contact: David C. Whitehurst, Department of Environmental Quality, P.O. Box 1105, 629 East Main Street, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4116, or email david.whitehurst@deq.virginia.gov.

VA.R. Doc. No. R09-24; Filed April 23, 2014, 10:00 a.m.

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 § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. 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: **9VAC25-600. Designated Groundwater Management Areas (amending 9VAC25-600-20).**

Statutory Authority: § 62.1-256 of the Code of Virginia.

Effective Date: June 4, 2014.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, TTY (804) 698-4021, or email melissa.porterfield@deq.virginia.gov.

Summary:

This regulatory action removes Arlington County from the list of counties east of Interstate 95 that are included in the Eastern Virginia Groundwater Management Area. Arlington County is located entirely west of Interstate 95 and was inadvertently listed in the regulation as being partially in the Eastern Virginia Groundwater Management Area.

9VAC25-600-20. Declaration of groundwater management areas.

A. The board hereby orders the declaration of the eastern part of Virginia as a groundwater management area. This area shall be known as the Eastern Virginia Groundwater Management Area. This area encompasses the counties of Charles City, Essex, Gloucester, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northumberland, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York; the areas of ~~Arlington,~~ Caroline, Chesterfield, Fairfax, Hanover, Henrico, Prince William, Spotsylvania, and Stafford counties east of Interstate 95; and the cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

B. The board hereby orders the declaration of the Eastern Shore of Virginia as a groundwater management area. This area shall be known as the Eastern Shore Groundwater Management Area. The area encompasses the counties of Accomack and Northampton.

C. All aquifers located between the land surface and basement rock within the geographic area defined will be included in the area and will be subject to the corrective controls set forth in Act.

VA.R. Doc. No. R14-3964; Filed April 15, 2014, 9:10 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-60).**

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

Effective Date: June 4, 2014.

Agency Contact: Elizabeth McKercher, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4032, or email elizabeth.mckercher@deq.virginia.gov.

Summary:

The amendments add four total maximum daily load wasteload allocations for the James River Basin.

9VAC25-720-60. James River Basin.

A. Total maximum daily load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Pheasanty Run	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Bath	I14R	Organic Solids	1,231.00	LB/YR
2.	Wallace Mill Stream	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and	Augusta	I32R	Organic Solids	2,814.00	LB/YR

		James River Basins					
3.	Montebello Sp. Branch	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Nelson	H09R	Organic Solids	37.00	LB/YR
4.	Unnamed Tributary to Deep Creek	General Standard Total Maximum Daily Load for Unnamed Tributary to Deep Creek	Nottoway	J11R	Raw Sewage	0	GAL/YR
5.	Unnamed Tributary to Chickahominy River	Total Maximum Daily Load (TMDL) Development for the Unnamed Tributary to the Chickahominy River	Hanover	G05R	Total Phosphorus	409.35	LB/YR
6.	Rivanna River	Benthic TMDL Development for the Rivanna River Watershed	Albemarle, Greene, Nelson, and Orange	H27R H28R	Sediment	10,229	Lbs/Day
7.	Jackson River	Benthic TMDL Development for the Jackson River, Virginia	Alleghany, Bath, Highland	I04R, I09R	Total Phosphorus	72,955	LB/GS[1]
8.	Jackson River	Benthic TMDL Development for the Jackson River, Virginia	Alleghany, Bath, Highland	I04R, I09R	Total Nitrogen	220,134	LB/GS
9.	Little Calfpasture	Total Maximum Daily Load Development to Address a Benthic Impairment in the Little Calfpasture River, Rockbridge County, Virginia	Rockbridge	132R	Sediment	30.4	T/YR
10.	Phelps Branch	Phelps Branch Sediment TMDL Development Report for a Benthic Impairment in Appomattox County, Virginia	Appomattox	H06R	Sediment	115.7	T/YR

11.	Long Branch	Sediment TMDL Development Report for Benthic Impairments in Long Branch and Buffalo River in Amherst County, Virginia	Amherst	H11R	Sediment	16.2	T/YR
12.	Buffalo River	Sediment TMDL Development Report for Benthic Impairments in Long Branch and Buffalo River in Amherst County, Virginia	Amherst	H11R	Sediment	306.4	T/YR
13.	Chickahominy River	Benthic TMDL Development for Chickahominy River, Virginia	Hanover, Henrico	G05R	Sediment	294.03	T/YR

[1] GS means growing season.

EDITOR'S NOTE: Subsections B and C of 9VAC25-720-60 are not amended; therefore, the text of those subsections is not set out.

VA.R. Doc. No. R14-4021; Filed April 15, 2014, 9:07 a.m.

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is claiming an exemption from the Administrative Process Act pursuant to subdivision B 21 of § 2.2-4002 of the Code of Virginia when promulgating regulations relating to the Virginia Breeders Fund created pursuant to § 59.1-372.

Title of Regulation: **11VAC10-130. Virginia Breeders Fund (amending 11VAC10-130-10, 11VAC10-130-20, 11VAC10-130-40, 11VAC10-130-51).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: May 31, 2014.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Lane, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

Summary:

The amendments clarify the regulation to reflect the actual practices for the administration of the Virginia Breeders Fund related to the registration process and requirements.

Part I
Definitions

11VAC10-130-10. Definitions.

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

"Breeding season" means a period of time beginning on February 1 and ending on August 1 of each year. For Standardbreds, the breeding season means a period of time beginning February 15 and ending on July 15 of each year.

"Registered" means the completion of the process of filing an application with the commission or its designee to satisfy the requirements for participation in the Virginia Breeders Fund.

"Stallion owner" means an owner or lessee of record of a stallion that covered mares in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred horse.

"Virginia-bred Arabian horse" means a registered Arabian horse foaled in the Commonwealth of Virginia.

"Virginia Arabian horse breeder" means the owner or lessee of record of the mare at the time of foaling of a Virginia-bred Arabian horse.

"Virginia Arabian sire" means a registered Arabian stallion that covered mares only in the Commonwealth of Virginia

during the breeding season in which it sired a Virginia-bred Arabian horse.

"Virginia-bred Quarter Horse" means a registered Quarter Horse foaled or conceived in the Commonwealth of Virginia.

"Virginia Quarter Horse breeder" means the owner or lessee of record of the mare at the time of conception of a Virginia-bred Quarter Horse.

"Virginia Quarter Horse sire" means a registered Quarter Horse stallion or registered Virginia Thoroughbred stallion that covered mares only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Quarter Horse.

"Virginia resident" means a person legally required to file a resident income tax return with the Commonwealth of Virginia or a partnership, corporation, stable name or other entity that is solely owned by Virginia residents and owners legally required to file resident income tax returns with the Commonwealth.

"Virginia-bred Standardbred horse" means a registered Standardbred horse sired by a Virginia Standardbred sire, a registered Standardbred horse foaled in the Commonwealth of Virginia provided that the foal-producing mare is domiciled in the Commonwealth from July 15 through December 31 of the year in which the horse is foaled, or a registered Standardbred horse foaled in the Commonwealth provided that the foal-producing mare is bred back that same breeding season to a Virginia Standardbred sire with the following exceptions:

1. A registered Standardbred horse that is purchased in its two-year-old year by a Virginia resident before April 1, 2007, prior to making its first start in a nonqualifying race;

2. A registered Standardbred horse that is purchased or owned by a Virginia resident after December 31, 2004, and before April 30, 2007, provided that the horse was sired by a Virginia Standardbred sire; or

3. A registered Standardbred horse that was foaled in the Commonwealth of Virginia prior to April 30, 2007.

"Virginia Standardbred horse breeder" means the owner or lessee of record of the mare at the time of conception of a Virginia-bred Standardbred horse.

"Virginia Standardbred sire" means a registered Standardbred stallion that stood only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Standardbred horse. Shipment of semen for the breeding of mares outside the Commonwealth shall be permitted so long as any resulting foals meet the requirements of this chapter in all other respects.

"Virginia-bred Thoroughbred horse" means a registered Thoroughbred horse foaled in Virginia.

"Virginia-sired Thoroughbred horse" means a registered Thoroughbred horse sired by a Virginia Thoroughbred sire, but not foaled in Virginia or not otherwise satisfying the requirements for a Virginia-bred Thoroughbred horse.

"Virginia Thoroughbred horse breeder" means the owner or lessee listed on The Jockey Club registration papers as the owner or lessee of record of the mare at the time of foaling a Virginia-bred Thoroughbred horse.

"Virginia Thoroughbred sire" means a registered Thoroughbred stallion that covers mares, other than test mares, only in the Commonwealth during the breeding season in which it sires a Virginia-bred Thoroughbred horse, or only during that part of the breeding season after entering the Commonwealth.

Part II
General

11VAC10-130-20. Generally.

The purpose of this chapter is to establish procedures for the administration of the Virginia Breeders Fund by the Virginia Racing Commission as provided for in § 59.1-372 of the Code of Virginia.

A. Certification. The commission or its designee shall certify that a racehorse is Virginia bred for eligibility for entry into races restricted to Virginia-bred horses, and to qualify its owner, the stallion owner, if applicable, and breeder for awards.

B. Determination of eligibility. The final determination of all questions, disputes or protests relating to the registration, eligibility for certification or breeding of a Virginia-bred horse and the final determination of eligibility of any horse to enter a race restricted to Virginia-bred horses shall rest solely with the commission.

C. Documentation. In making its determination, the commission or its designee, in its discretion, may require the submission of any certificate of foal registration, eligibility paper or any other registration document, affidavits or other substantive proof to support or deny any claim concerning registration of a horse as Virginia bred.

D. False statements. Any person who submits false or misleading information to a breed registry, to the commission or its designee, or to any racing official may be fined, have his permit suspended or revoked, be denied participation in the Virginia Breeders Fund for a period of time deemed appropriate by the commission, or any or all of the foregoing.

E. Forfeiture of awards and purse moneys. Any person who is denied participation in the Virginia Breeders Fund under the provisions of this chapter shall forfeit and restore to the fund any awards and purse moneys received based upon the submission of false or misleading information. Until the awards and purse moneys are restored, the commission may suspend the person's permit to participate in horse racing at licensed facilities.

F. Recognized registries. The commission shall recognize certificates of registration from the following breed registries:

1. Thoroughbred: The Jockey Club;

2. Standardbred: The United States Trotting Association;

3. Quarter Horse: The American Quarter Horse Association; and

4. Arabian horse: The Arabian Horse Registry of America.

G. Payment of awards. All awards for owners, stallion owners and breeders shall be distributed from the Virginia Breeders Fund in a manner prescribed by the commission. The following provisions shall apply to payment of owner, stallion owner and breeder awards:

1. Determination of individual distributions to a stallion owner shall be in the same ratio as the amount of first-place purse money won by the Virginia-bred horse at the race meeting, which qualifies the stallion owner for an award, to the total amount of first-place purse money won by all Virginia-bred horses that qualify stallion owners for awards at the race meeting;

2. Determination of individual distributions to a breeder shall be in the same ratio as the amount of first-place purse money won by the Virginia-bred horse at the race meeting, which qualifies the breeder for an award, to the total amount of first-place purse money won by all Virginia-bred horses at the race meeting;

3. Determination of individual distributions to an owner shall be in the same ratio as the amount of nonsupplemented first-place purse money won by the Virginia-bred horse at the race meeting that qualifies the owner for an award to the total amount of nonsupplemented first-place purse money won by all Virginia-bred horses at the race meeting;

4. To become eligible for an owner, a stallion owner or a breeder award from the Virginia Breeders Fund, the owner, stallion owner or breeder must be certified by the commission or its designee prior to receiving any award, unless his racehorse, stallion or foal has been previously registered with the commission or its designee;

~~5. A stallion owner or breeder will have 25 days after the closing of the race meeting, at which he becomes eligible for an award, to be certified by the commission or its designee unless his stallion or foal has been previously registered with the commission or its designee;~~

~~6.~~ 5. A stallion owner or breeder need only be certified once per racehorse; and

~~7.~~ 6. Any unclaimed awards from the Virginia Breeders Fund shall be remitted to the fund.

H. Distribution by breeds. The funds generated by the breed of horse through pari-mutuel wagering at a race meeting shall be distributed to that breed of horse through owner awards, stallion owner awards, breeder awards, purses and purse supplements.

I. Reimbursement of funds. The source of funding is 1.0% of all pari-mutuel pools, which shall be paid to the commission within five days of the date that the funds were generated. Purse moneys shall be paid from the horsemen's account when approval is granted by the stewards. The commission shall reimburse the horsemen's account to the extent that funds are available from the Virginia Breeders Fund.

J. Restrictions. In disbursing the Virginia Breeders Fund, the following restrictions shall apply:

1. Supplements to purses from the Virginia Breeders Fund shall not be considered in determining owner awards;

2. The amount of the purses for races restricted to Virginia-bred horses or any adjustments must be fair, equitable and appropriate to the quality of the horses competing for those purses;

3. Purses from the Virginia Breeders Fund shall be considered for stallion owner and breeder awards.

4. Funds allocated for purses shall be credited to the owner's account by the horsemen's bookkeeper in accordance with procedures established elsewhere in this chapter; and

5. Underpayment of moneys generated by each breed shall be remitted to the Virginia Breeders Fund.

K. Reservation of funds. The commission may set aside funds for distribution in future years if the commission, in its discretion, determines that there is an insufficient supply of Virginia-bred horses of a certain breed to warrant a distribution. In this event, the funds shall be deposited in an interest-bearing account for future distribution of awards and purse supplements to the breed that generated the funds so set aside.

L. Assignment of awards. Awards distributable to breeders and stallion owners are only assignable pursuant to a court order.

M. Advisory committee. To assist it in establishing this awards and incentive program to foster the industry of breeding racehorses in Virginia, the commission shall appoint an advisory committee composed of two members from each of the registered breed associations representing each breed of horse participating in the fund program, one member representing the owners and operators of racetracks and one member representing all the meets sanctioned by the National Steeplechase Association.

The commission, in its discretion, may establish and appoint the members of subcommittees of the advisory committee for each breed of horse participating in the fund program. Each subcommittee shall be composed of one commissioner, the executive secretary of the commission, two advisory committee members, a member representing an owner or operator of a horse racing facility, and an at-large member associated with the breed of horse participating in the fund program. All appointments shall be approved by the commission.

11VAC10-130-40. Stallion registration.

A. Initial registration. For a stallion owner to be certified to receive stallion owner awards from the Virginia Breeders Fund, the stallion owner shall register his stallion with the commission or its designee by satisfying the following requirements:

1. Each year prior to the commencement of the breeding season, but no later than January 31, or within 30 days following the entry into stud in Virginia if entry is after the breeding season commences, the owner or authorized agent shall submit an application on a form approved by the commission that shall set forth the name of the stallion, year of foaling, registration number, pedigree, including sire, dam and sire of the dam, where the stallion is standing at stud, the date of entry to stud if after the commencement of the breeding season, and the names and addresses of owners and lessees; and

2. The application shall be signed and dated by the owner or lessee, or the authorized agent~~;~~.

~~3. A notarized copy of the stallion's Certificate of Foal Registration, clearly showing the front and transfer side of the document, shall accompany the application;~~

~~4. If the stallion is held under a lease or a syndicate agreement, a copy of the lease or agreement shall accompany the application, and the lease or agreement must include a statement that the lessee or syndicate manager is authorized to sign the service certificate and receive stallion awards; and~~

~~5. The owner or authorized agent shall submit to the commission or its designee a notarized copy of The Jockey Club's Report of Mares Bred at the conclusion of the breeding season but no later than August 1.~~

B. Registration fees. A stallion may be registered with the commission or its designee for the breeding season after January 31 or 30 days following its entry into stud in Virginia. A registration fee of $100 for current members of the Virginia Thoroughbred Association (VTA) and $200 for non-VTA members shall accompany the application. A late registration fee of $250 for current VTA members and $350 for non-VTA members shall be assessed. A late registration of a stallion shall be accepted by the commission or its designee until August 1 for that breeding year.

C. Change of ownership. If there is a change in ownership or the stallion is subsequently leased or syndicated or the location of where the stallion is standing is changed, the new owner, lessee or syndicate manager shall submit to the commission or its designee a new application for stallion registration.

11VAC10-130-51. Foal registration.

A. Requirements. For an owner or lessee of a dam to be certified to receive breeder awards from the Virginia Breeders Fund, the owner or lessee must register his foal with the commission or its designee by satisfying the following requirements:

1. The breeder, owner, lessee, or his authorized agent must submit an application on a form approved by the commission, including the name of the stallion; the name of the dam; the sire of the dam; the sex; color; year of birth; the location of foaling; and name, address and telephone number of the owner, lessee or his authorized agent;

2. The application must be signed and dated by the breeder, owner, lessee, or his authorized agent; and

~~3. If the dam is held under a lease, a statement to that effect and a copy of the lease which must include a statement that the lessee is authorized to register the foal must accompany the application;~~

~~4. If the dam of the foal was not bred to a Virginia Thoroughbred sire or is not bred back to a Virginia Thoroughbred sire, then the owner, lessee or his authorized agent must sign the affidavit stating that the dam has been domiciled in the Commonwealth of Virginia from September 1 of the preceding year to February 1; and~~

~~5.~~ 3. As of September 1, 1999, all Virginia-bred Thoroughbred horses must be registered with the commission or its designee prior to being entered in any race at race meeting designated by the commission for purse supplements or awards from the Virginia Breeders Fund.

B. Registration fees. A foal may be registered by December 31 of its year of foaling by submitting a $25 fee for current members of the Virginia Thoroughbred Association (VTA) and $125 for non-VTA members that must accompany the application for foal registration. A yearling may be registered by December 31 of its yearling year by submitting a $50 fee for current VTA members and $150 for non-VTA members that must accompany the application for foal registration. A two-year-old or older may be registered by submitting a $200 fee for current VTA members and $300 for non-VTA members which must accompany the application for foal registration.

VA.R. Doc. No. R14-3986; Filed April 16, 2014, 11:51 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the

requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-75).**

12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-221).

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-20, 12VAC30-80-30).

12VAC30-95. Standards Established and Methods Used for Fee-For-Service Reimbursement (adding 12VAC30-95-5).

12VAC30-130. Amount, Duration and Scope of Selected Services (amending 12VAC30-130-800).

Statutory Authority § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: June 5, 2014.

Agency Contact: Lois Gray, Regulatory Coordinator, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email lois.gray@dmas.virginia.gov.

Summary:

The amendments update references to the 10th edition of the International Classification of Diseases in compliance with federal requirements (77 FR 54664 (September 5, 2012)).

12VAC30-60-75. Durable medical equipment (DME) and supplies.

A. No provider shall have a claim of ownership on DME reimbursed by Virginia Medicaid once it has been delivered to the Medicaid individual. Providers shall only be permitted to recover DME, for example, when DMAS determines that it does not fulfill the required medically necessary purpose as set out in the Certificate of Medical Necessity (CMN), when there is an error in the ordering practitioner's CMN, or when the equipment was rented. DMAS shall not reimburse the DME and supply provider for services that are provided either: (i) prior to the date prescribed by the licensed practitioner; (ii) prior to the date of the delivery; or (iii) when services are not provided in accordance with DMAS' published regulations and guidance documents. In instances when the DME or supply is shipped directly to the Medicaid individual, the DME provider shall confirm that the DME or supplies have been received by the individual before submitting his claim for payment to DMAS.

B. DME providers, as defined in 12VAC30-50-165, shall retain copies on file of the fully completed CMN and all applicable supporting documentation for post payment audit reviews. Reimbursement that has been made by Medicaid shall be retracted if the DME and supplies have not been ordered on the CMN. Additional supporting documentation is allowed to justify the medical need for durable medical equipment and supplies. Supporting documentation shall not replace the requirement for a properly completed CMN. The dates of the supporting documentation shall coincide with the dates of service on the CMN. The licensed practitioner providing the supporting documentation shall be identified by name and title. DME providers shall not create or revise CMNs or supporting documentation for durable medical equipment and supplies that have been provided once the post payment audit review has been initiated.

C. Individuals requiring only DME or supplies may obtain such services directly from the DME provider without having to consult or obtain services from a home health service or home health provider. Supplies used for treatment during a home health visit shall be included in the visit rate of the home health provider. Treatment supplies left in the home to maintain treatment after the visits shall be charged separately.

D. CMN requirements. The CMN shall have two required components: (i) the licensed practitioner's order and (ii) the clinical diagnosis. Failure to have a complete CMN may result in nonpayment of services rendered or retraction of payments made subsequent to post payment audits.

1. Licensed practitioner's order.

a. The licensed practitioners' complete order shall appear on the face of the CMN. A complete order on the CMN shall consist of the item's complete description, the quantity ordered, the frequency of use, and the licensed practitioner's signature and complete date of signing as defined in 12VAC30-50-165. If the DME provider determines that the prescribing licensed practitioner's signature and complete date of signing are missing, he shall consider the CMN to be invalid and he shall request a new CMN.

b. The following CMN fields (as indicated by an asterisk on the CMN) shall be required for reimbursement:

(1) The ordered item's description. If the item is an E1399 (miscellaneous), the description of the item shall not be "miscellaneous DME," but the provider shall specify the DME item or supply.

(2) The quantity ordered as found in the licensed practitioner's order. For expendable supplies the provider shall designate supplies needed for one month. If an item is not needed every month, the provider may designate an alternate time frame.

(3) The frequency of use of the DME item or supply.

(4) The licensed practitioner's signature and full date. If either the licensed practitioner's signature or full date, or

both, are missing, then the entire CMN shall be deemed to be invalid and a new CMN shall be obtained. The licensed practitioner's signature certifies that the ordered DME and supplies are a part of the treatment plan and are medically necessary for the Medicaid individual.

c. The begin service date on the CMN is optional.

(1) If the provider enters a begin service date, the CMN must be signed and dated by the licensed practitioner within 60 days of the begin service date in order for the CMN to start from the begin date.

(2) If no begin service date is documented on the CMN, the date of the practitioner's signature shall be the start date of the CMN.

2. The clinical diagnosis.

a. The narrative description of the clinical diagnosis shall be recorded on the face of the CMN.

b. The recording on the face of the CMN of the relevant ~~ICD-9~~ ICD diagnosis code shall be optional. As used here, the term "ICD" is defined in 12VAC30-95-5.

3. Supporting documentation.

a. Supporting documentation may be included in the additional information attached to the CMN.

b. The attachment of supporting documentation shall not replace the requirement for a properly completed CMN.

Article 2

Prospective (DRG-Based) Payment Methodology

12VAC30-70-221. General.

A. Effective July 1, 2000, the prospective (DRG-based) payment system described in this article shall apply to inpatient hospital services provided in enrolled general acute care hospitals, rehabilitation hospitals, and freestanding psychiatric facilities licensed as hospitals, unless otherwise noted.

B. The following methodologies shall apply under the prospective payment system:

1. As stipulated in 12VAC30-70-231, operating payments for DRG cases that are not transfer cases shall be determined on the basis of a hospital specific operating rate per case times relative weight of the DRG to which the case is assigned.

2. As stipulated in 12VAC30-70-241, operating payments for per diem cases shall be determined on the basis of a hospital specific operating rate per day times the covered days for the case with the exception of payments for per diem cases in freestanding psychiatric facilities. Payments for per diem cases in freestanding psychiatric facilities licensed as hospitals shall be determined on the basis of a hospital specific rate per day that represents an all-inclusive payment for operating and capital costs.

3. As stipulated in 12VAC30-70-251, operating payments for transfer cases shall be determined as follows: (i) the transferring hospital shall receive an operating per diem payment, not to exceed the DRG operating payment that would have otherwise been made and (ii) the final discharging hospital shall receive the full DRG operating payment.

4. As stipulated in 12VAC30-70-261, additional operating payments shall be made for outlier cases. These additional payments shall be added to the operating payments determined in subdivisions 1 and 3 of this subsection.

5. As stipulated in 12VAC30-70-271, payments for capital costs shall be made on an allowable cost basis.

6. As stipulated in 12VAC30-70-281, payments for direct medical education costs of nursing schools and paramedical programs shall be made on an allowable cost basis. Payment for direct graduate medical education (GME) costs for interns and residents shall be made quarterly on a prospective basis, subject to cost settlement based on the number of full time equivalent (FTE) interns and residents as reported on the cost report.

7. As stipulated in 12VAC30-70-291, payments for indirect medical education costs shall be made quarterly on a prospective basis.

8. As stipulated in 12VAC30-70-301, payments to hospitals that qualify as disproportionate share hospitals shall be made quarterly on a prospective basis.

C. The terms used in this article shall be defined as provided in this subsection:

"Base year" means the state fiscal year for which data is used to establish the DRG relative weights, the hospital case-mix indices, the base year standardized operating costs per case, and the base year standardized operating costs per day. The base year will change when the DRG payment system is rebased and recalibrated. In subsequent rebasings, the Commonwealth shall notify affected providers of the base year to be used in this calculation.

"Base year standardized costs per case" ~~reflects~~ means the statewide average hospital costs per discharge for DRG cases in the base year. The standardization process removes the effects of case-mix and regional variations in wages from the claims data and places all hospitals on a comparable basis.

"Base year standardized costs per day" ~~reflects~~ means the statewide average hospital costs per day for per diem cases in the base year. The standardization process removes the effects of regional variations in wages from the claims data and places all hospitals on a comparable basis. Base year standardized costs per day were calculated separately, but using the same calculation methodology, for the different types of per diem cases identified in this subsection under the definition of "per diem cases."

"Cost" means allowable cost as defined in Supplement 3 (12VAC30-70-10 through 12VAC30-70-130) and by Medicare principles of reimbursement.

"Disproportionate share hospital" means a hospital that meets the following criteria:

1. A Medicaid utilization rate in excess of 14%, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

2. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a state Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

3. Subdivision 2 of this definition does not apply to a hospital:

a. At which the inpatients are predominantly individuals under 18 years of age; or

b. Which does not offer nonemergency obstetric services as of December 21, 1987.

"DRG cases" means medical/surgical cases subject to payment on the basis of DRGs. DRG cases do not include per diem cases.

"DRG relative weight" means the average standardized costs for cases assigned to that DRG divided by the average standardized costs for cases assigned to all DRGs.

"Groupable cases" means DRG cases having coding data of sufficient quality to support DRG assignment.

"Hospital case-mix index" means the weighted average DRG relative weight for all cases occurring at that hospital.

"Medicaid utilization percentage" is equal to the hospital's total Medicaid inpatient days divided by the hospital's total inpatient days for a given hospital fiscal year. The Medicaid utilization percentage includes days associated with inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers. This definition includes all paid Medicaid days (from DMAS MR reports for fee-for-service days and managed care organization or hospital reports for HMO days) and nonpaid/denied Medicaid days to include medically unnecessary days, inappropriate level of care service days, and days that exceed any maximum day limits (with appropriate documentation). The definition of Medicaid days does not include any general assistance, Family Access to Medical Insurance Security (FAMIS), State and Local Hospitalization (SLH), charity care, low-income, indigent care, uncompensated care, bad debt, or Medicare dually eligible days. It does not include days for newborns not enrolled in Medicaid during the fiscal year even though the mother was Medicaid eligible during the birth.

"Medicare wage index" and the "Medicare geographic adjustment factor" are published annually in the Federal Register by the Health Care Financing Administration. The indices and factors used in this article shall be those in effect in the base year.

"Operating cost-to-charge ratio" equals the hospital's total operating costs, less any applicable operating costs for a psychiatric DPU, divided by the hospital's total charges, less any applicable charges for a psychiatric DPU. The operating cost-to-charge ratio shall be calculated using data from cost reports from hospital fiscal years ending in the state fiscal year used as the base year.

"Outlier adjustment factor" means a fixed factor published annually in the Federal Register by the Health Care Financing Administration. The factor used in this article shall be the one in effect in the base year.

"Outlier cases" means those DRG cases, including transfer cases, in which the hospital's adjusted operating cost for the case exceeds the hospital's operating outlier threshold for the case.

"Outlier operating fixed loss threshold" means a fixed dollar amount applicable to all hospitals that shall be calculated in the base year so as to result in an expenditure for outliers operating payments equal to 5.1% of total operating payments for DRG cases. The threshold shall be updated in subsequent years using the same inflation values applied to hospital rates.

"Per diem cases" means cases subject to per diem payment and ~~include~~ includes (i) covered psychiatric cases in general acute care hospitals and distinct part units (DPUs) of general acute care hospitals (hereinafter "acute care psychiatric cases"), (ii) covered psychiatric cases in freestanding psychiatric facilities licensed as hospitals (hereinafter "freestanding psychiatric cases"), and (iii) rehabilitation cases in general acute care hospitals and rehabilitation hospitals (hereinafter "rehabilitation cases").

"Psychiatric cases" means cases with a principal diagnosis that is a mental disorder as specified in the ~~ICD-9-CM~~ ICD, as defined in 12VAC30-95-5. Not all mental disorders are covered. For coverage information, see Amount, Duration, and Scope of Services, Supplement 1 to Attachment 3.1 A & B (12VAC30-50-95 through 12VAC30-50-310). The limit of coverage of 21 days in a 60-day period for the same or similar diagnosis shall continue to apply to adult psychiatric cases.

"Psychiatric operating cost-to-charge ratio" for the psychiatric DPU of a general acute care hospital means the hospital's operating costs for a psychiatric DPU divided by the hospital's charges for a psychiatric DPU. In the base year, this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from psychiatric DPUs.

"Readmissions" ~~occur~~ means when patients are readmitted to the same hospital for the same or a similar diagnosis within five days of discharge. Such cases shall be considered a

continuation of the same stay and shall not be treated as ~~a~~ new ~~case~~ cases. Similar diagnoses shall be defined as ~~ICD-9-CM~~ ICD diagnosis codes possessing the same first three digits. As used here, the term "ICD" is defined in 12VAC30-95-5.

"Rehabilitation operating cost-to-charge ratio" for a rehabilitation unit or hospital means the provider's operating costs divided by the provider's charges. In the base year, this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from rehabilitation units or hospitals.

"Statewide average labor portion of operating costs" means a fixed percentage applicable to all hospitals. The percentage shall be periodically revised using the most recent reliable data from the Virginia Health Information (VHI), or its successor.

"Transfer cases" means DRG cases involving patients (i) who are transferred from one general acute care hospital to another for related care or (ii) who are discharged from one general acute care hospital and admitted to another for the same or a similar diagnosis within five days of that discharge. Similar diagnoses shall be defined as ~~ICD-9-CM~~ ICD diagnosis codes possessing the same first three digits. As used here, the term "ICD" is defined in 12 VAC 30-95-5.

"Type One" hospitals means those hospitals that were state-owned teaching hospitals on January 1, 1996. "Type Two" hospitals means all other hospitals.

"Ungroupable cases" means cases assigned to DRG 469 (principal diagnosis invalid as discharge diagnosis) and DRG 470 (ungroupable) as determined by the AP-DRG Grouper.

D. The All Patient Diagnosis Related Groups (AP-DRG) Grouper shall be used in the DRG payment system. Until notification of a change is given, Version 14.0 of this grouper shall be used. DMAS shall notify hospitals when updating the system to later grouper versions.

E. The primary data sources used in the development of the DRG payment methodology were the department's hospital computerized claims history file and the cost report file. The claims history file captures available claims data from all enrolled, cost-reporting general acute care hospitals, including Type One hospitals. The cost report file captures audited cost and charge data from all enrolled general acute care hospitals, including Type One hospitals. The following table identifies key data elements that were used to develop the DRG payment methodology and that will be used when the system is recalibrated and rebased.

Data Elements for DRG Payment Methodology	
Data Elements	Source
Total charges for each groupable case	Claims history file
Number of groupable cases in each DRG	Claims history file
Total number of groupable cases	Claims history file
Total charges for each DRG case	Claims history file
Total number of DRG cases	Claims history file
Total charges for each acute care psychiatric case	Claims history file
Total number of acute care psychiatric days for each acute care hospital	Claims history file
Total charges for each freestanding psychiatric case	Medicare cost reports
Total number of psychiatric days for each freestanding psychiatric hospital	Medicare cost reports
Total charges for each rehabilitation case	Claims history file
Total number of rehabilitation days for each acute care and freestanding rehabilitation hospital	Claims history file
Operating cost-to-charge ratio for each hospital	Cost report file
Operating cost-to-charge ratio for each freestanding psychiatric facility licensed as a hospital	Medicare cost reports
Psychiatric operating cost-to-charge ratio for the psychiatric DPU of each general acute care hospital	Cost report file
Rehabilitation cost-to-charge ratio for each rehabilitation unit or hospital	Cost report file
Statewide average labor portion of operating costs	VHI
Medicare wage index for each hospital	Federal Register
Medicare geographic adjustment factor for each hospital	Federal Register
Outlier operating fixed loss threshold	Claims history file
Outlier adjustment factor	Federal Register

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-70)

All Patient Diagnosis Related Groups (AP-DRG) Grouper, DRG and MDC Code Listings, Version 12, January 1995

Health Care Cost Review, Third Quarter 2009, IHS Global Insight

~~International Classification of Diseases (ICD-9-CM) Physician, Volumes 1 and 2, American Medical Association, 2007~~

12VAC30-80-20. Services that are reimbursed on a cost basis.

A. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program with the exception provided for in subdivision D 1 d of this section. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 150 days after the provider's fiscal year end. If a complete cost report is not received within 150 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

2. The provider's trial balance showing adjusting journal entries;

3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;

4. Schedules that reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Depreciation schedule or summary;

6. Home office cost report, if applicable; and

7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. Outpatient hospital services, including rehabilitation hospital outpatient services and excluding laboratory services.

a. Definitions. The following words and terms when used in this regulation shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency department and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse for nonemergency care rendered in emergency departments at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services~~, including those obstetric and pediatric procedures contained in 12VAC30-80-160,~~ rendered in emergency departments that DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology of subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea,

gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ~~ICD-9-CM~~ ICD diagnosis codes and necessary supporting documentation. As used here, the term "ICD" is defined in 12VAC30-95-5.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ~~ICD-9-CM~~ ICD code designations, and the impact on recipients and providers. As used here, the term "ICD" is defined in 12VAC30-95-5.

c. Limitation of allowable cost. Effective for services on and after July 1, 2003, reimbursement of Type Two hospitals for outpatient services shall be at various percentages as noted in subdivisions 1 c (1) and (2) of this subsection of allowable cost, with cost to be determined as provided in subsections A, B, and C of this section. For hospitals with fiscal years that do not begin on July 1, outpatient costs, both operating and capital, for the fiscal year in progress on that date shall be apportioned between the time period before and the time period after that date, based on the number of calendar months in the cost reporting period, falling before and after that date.

(1) Type One hospitals.

(a) Effective July 1, 2003, through June 30, 2010, hospital outpatient operating reimbursement shall be at 94.2% of allowable cost and capital reimbursement shall be at 90% of allowable cost.

(b) Effective July 1, 2010, through September 30, 2010, hospital outpatient operating reimbursement shall be at 91.2% of allowable cost and capital reimbursement shall be at 87% of allowable cost.

(c) Effective October 1, 2010, through June 30, 2011, hospital outpatient operating reimbursement shall be at 94.2% of allowable cost and capital reimbursement shall be at 90% of allowable cost.

(d) Effective July 1, 2011, hospital outpatient operating reimbursement shall be at 90.2% of allowable cost and capital reimbursement shall be at 86% of allowable cost.

(2) Type Two hospitals.

(a) Effective July 1, 2003, through June 30, 2010, hospital outpatient operating and capital reimbursement shall be 80% of allowable cost.

(b) Effective July 1, 2010, through September 30, 2010, hospital outpatient operating and capital reimbursement shall be 77% of allowable cost.

(c) Effective October 1, 2010, through June 30, 2011, hospital outpatient operating and capital reimbursement shall be 80% of allowable cost.

(d) Effective July 1, 2011, hospital outpatient operating and capital reimbursement shall be 76% of allowable cost.

d. Payment for direct medical education costs of nursing schools, paramedical programs and graduate medical education for interns and residents.

(1) Direct medical education costs of nursing schools and paramedical programs shall continue to be paid on an allowable cost basis.

(2) Effective with cost reporting periods beginning on or after July 1, 2002, direct graduate medical education (GME) costs for interns and residents shall be reimbursed on a per-resident prospective basis. See 12VAC30-70-281 for prospective payment methodology for graduate medical education for interns and residents.

2. Rehabilitation agencies or comprehensive outpatient rehabilitation.

a. Effective July 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities that are operated by community services boards or state agencies shall be reimbursed their costs. For reimbursement methodology applicable to all other rehabilitation agencies, see 12VAC30-80-200.

b. Effective October 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities operated by state agencies shall be reimbursed their costs. For reimbursement methodology applicable to all other rehabilitation agencies, see 12VAC30-80-200.

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services. Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public). The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this subdivision 1 shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services~~, including those obstetric and pediatric procedures contained in 12VAC30-80-160,~~ rendered in emergency departments that DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ~~ICD-9-CM~~ ICD diagnosis codes and necessary supporting documentation. As used here, the term "ICD" is defined in 12VAC30-95-5.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ~~ICD-9-CM~~ ICD code designations, and the impact on recipients and providers. As used here, the term "ICD" is defined in 12VAC30-95-5.

2. Dentists' services.

3. Mental health services including: (i) community mental health services~~;~~, (ii) services of a licensed clinical psychologist~~;~~, or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME) and supplies.

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

"DMERC" means the Durable Medical Equipment Regional Carrier rate as published by the Centers for Medicare and Medicaid Services at http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSFeeSched/DMEPOS-Fee-Schedule.html.

"HCPCS" means the Healthcare Common Procedure Coding System, Medicare's National Level II Codes, HCPCS 2006 (Eighteenth edition), as published by Ingenix, as may be periodically updated.

a. Obtaining prior authorization shall not guarantee Medicaid reimbursement for DME.

b. The following shall be the reimbursement method used for DME services:

(1) If the DME item has a DMERC rate, the reimbursement rate shall be the DMERC rate minus 10%.

(2) For DME items with no DMERC rate, the agency shall use the agency fee schedule amount.The reimbursement rates for DME and supplies shall be listed in the DMAS Medicaid Durable Medical Equipment (DME) and Supplies Listing and updated periodically. The agency fee schedule shall be available on the agency website at www.dmas.virginia.gov.

(3) If a DME item has no DMERC rate or agency fee schedule rate, the reimbursement rate shall be the manufacturer's net charge to the provider, less shipping and handling, plus 30%. The manufacturer's net charge to the provider shall be the cost to the provider minus all available discounts to the provider. Additional information specific to how DME providers, including manufacturers who are enrolled as providers, establish and document their cost or costs for DME codes that do not have established rates can be found in the relevant agency guidance document.

c. DMAS shall have the authority to amend the agency fee schedule as it deems appropriate and with notice to providers. DMAS shall have the authority to determine alternate pricing, based on agency research, for any code that does not have a rate.

d. The reimbursement for incontinence supplies shall be by selective contract. Pursuant to § 1915(a)(1)(B) of the Social Security Act and 42 CFR 431.54(d), the Commonwealth assures that adequate services/devices shall be available under such arrangements.

e. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and Medicare rates. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 143% of Medicare rates. This percentage was determined by dividing the total commercial allowed amounts for Type I physicians for at least the top five commercial insurers in CY 2004 by what Medicare would have allowed. The average commercial allowed amount was determined by multiplying the relative value units times the conversion factor for RBRVS procedures and by multiplying the unit cost times anesthesia units for anesthesia procedures for each insurer and practice group with Type I physicians and summing for all insurers and practice groups. The Medicare equivalent amount was determined by multiplying the total commercial relative value units for Type I physicians times the Medicare conversion factor for RBRVS procedures and by multiplying the Medicare unit cost times total commercial anesthesia units for anesthesia procedures for all Type I physicians and summing.

c. Supplemental payments shall be made quarterly.

d. Payment will not be made to the extent that this would duplicate payments based on physician costs covered by the supplemental payments.

17. Supplemental payments for services provided by physicians at Virginia freestanding children's hospitals.

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Virginia freestanding children's hospital physicians providing services at freestanding children's hospitals with greater than 50% Medicaid inpatient utilization in state fiscal year 2009 for furnished services provided on or after July 1, 2011. A freestanding children's hospital physician is a member of a practice group (i) organized by or under control of a qualifying Virginia freestanding children's hospital, or (ii) who has entered into contractual agreements for provision of physician services at the qualifying Virginia freestanding children's hospital and that is designated in writing by the Virginia freestanding children's hospital as a practice plan for the quarter for which the supplemental payment is made subject to DMAS approval. The freestanding children's hospital physicians also must have entered into contractual agreements with the practice plan for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 1, 2011, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 143% of Medicare rates as defined in the supplemental payment calculation for Type I physician services subject to the following reduction. Final payments shall be reduced on a pro-rated basis so that total payments for freestanding children's hospital physician services are $400,000 less annually than would be calculated based on the formula in the previous sentence. Payments shall be made on the same schedule as Type I physicians.

18. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in the regulations, DMAS provides supplemental payments to qualifying nonstate government-owned or operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 18 d of this subsection and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 18 b (1) of this subsection for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision 18 b (2) of this subsection by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit referred to in subdivision 18 b (3) of this subsection, Medicaid payments to nonstate government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12VAC30-80-190 B 2) in regard to the state agency fee schedule for RBRVS. Medicaid

payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

19. Personal Assistance Services (PAS) for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200. These services are reimbursed in accordance with the state agency fee schedule described in 12VAC30-80-190. The state agency fee schedule is published on the ~~Single State Agency Website~~ DMAS website (http://dmasva.dmas.virginia.gov).

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-80)

Approved Drug Products with Therapeutic Equivalence Evaluations, 25th Edition, 2005, U.S. Department of Health and Human Services

International Classification of Diseases, ICD-9-CM 2007 (effective for claims with dates of service through September 30, 2014), Physician, Volumes 1 and 2, 9th Revision-Clinical Modification, American Medical Association

~~Durable Medical Equipment, Prosthetics/Orthotics & Supplies Fee Schedules, Jan. 2012, Centers for Medicare & Medicaid Services, U.S. Department of Health and Human Services~~

Virginia Medicaid Durable Medical Equipment and Supplies Provider Manual, Appendix B (rev. 1/11), Department of Medical Assistance Services

CHAPTER 95
STANDARDS ESTABLISHED AND METHODS USED FOR FEE-FOR-SERVICE REIMBURSEMENT

12VAC30-95-5. General definitions.

The following words and terms when used in 12VAC30 shall have the following meanings unless the context clearly indicates otherwise:

"ASAM" means the American Society of Addiction Medicine.

"ICD" means (i) for claims with dates of service on or prior to September 30, 2014, the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) Volumes 1, 2, and 3, OptumInsight, Inc., and (ii) for claims with dates of service on or after October 1, 2014, the International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM) and Procedure Coding System (ICD-10-PCS) pursuant to 45 CFR 162.1002, OptumInsight, Inc.

Part XIII
Client Medical Management Program

12VAC30-130-800. Definitions.

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

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

"Abuse by recipients" means practices by recipients ~~which~~ that are inconsistent with sound fiscal or medical practices and result in unnecessary costs to the Virginia Medicaid Program.

"Abuse by providers" means practices ~~which~~ that are inconsistent with sound fiscal, business, or medical practices and result in unnecessary costs to the Virginia Medicaid Program or in reimbursement for a level of utilization or pattern of services that is not medically necessary.

"Card-sharing" means the intentional sharing of a recipient eligibility card for use by someone other than the recipient for whom it was issued, or a pattern of repeated unauthorized use of a recipient eligibility card by one or more persons other than the recipient for whom it was issued due to the failure of the recipient to safeguard the card.

"Client Medical Management Program (CMM) for recipients" means the recipients' utilization control program designed to prevent abuse and promote improved and cost efficient medical management of essential health care for noninstitutionalized recipients through restriction to one primary care provider, one pharmacy, and one transportation provider, or any combination of these three designated providers. Referrals may not be made to providers restricted through the Client Medical Management Program, nor may restricted providers serve as covering providers.

"Client Medical Management Program (CMM) for providers" means the providers' utilization control program designed to complement the recipient abuse and utilization control program in promoting improved and cost efficient medical management of essential health care. Restricted providers may not serve as designated providers for restricted recipients. Restricted providers may not serve as referral or covering providers for restricted recipients.

"Contraindicated medical care" means treatment ~~which~~ that is medically improper or undesirable and which results in duplicative or excessive utilization of services.

"Contraindicated use of drugs" means the concomitant use of two or more drugs whose combined pharmacologic action produces an undesirable therapeutic effect or induces an adverse effect by the extended use of a drug with a known potential to produce this effect.

"Covering provider" means a provider designated by the primary provider to render health care services in the temporary absence of the primary provider.

"DMAS" means the Department of Medical Assistance Services.

"Designated provider" means the provider who agrees to be the designated primary physician, designated pharmacy, or designated transportation provider from whom the restricted recipient must first attempt to seek health care services. Other providers may be established as designated providers with the approval of DMAS.

"Diagnostic category" means the broad classification of diseases and injuries found in the ~~International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM)~~ ICD as defined in 12VAC30-95-5, which is commonly used by providers in billing for medical services.

"Drug" means a substance or medication intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease as defined by the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

"Duplicative medical care" means two or more practitioners concurrently treat the same or similar medical problems or conditions falling into the same diagnostic category, excluding confirmation for diagnosis, evaluation, or assessment.

"Duplicative medications" means more than one prescription of the same drug or more than one drug in the same therapeutic class.

"Emergency hospital services" means those hospital services that are necessary to treat a medical emergency. Hospital treatment of a medical emergency necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"EPSDT" means the Early and Periodic Screening, Diagnosis, and Treatment Program, which is federally mandated for eligible individuals under ~~the age of~~ 21 years of age.

"Excessive medical care" means obtaining greater than necessary services such that health risks to the recipient or unnecessary costs to the Virginia Medicaid Program may ensue from the accumulation of services or obtaining duplicative services.

"Excessive medications" means obtaining medication in greater than generally acceptable maximum therapeutic dosage regimens or obtaining duplicative medication from more than one practitioner.

"Excessive transportation services" means obtaining or rendering greater than necessary transportation services such that unnecessary costs to the Virginia Medicaid Program may ensue from the accumulation of services.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state laws.

"Health care" means any covered services, including equipment, supplies, or transportation services, provided by any individual, organization, or entity that participates in the Virginia Medical Assistance Program.

"Medical emergency" means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in (i) placing the client's health in serious jeopardy, (ii) serious impairment of bodily functions, or (iii) serious dysfunction of any bodily organ or part.

"Medical management of essential health care" means a case management approach to health care in which the designated primary physician has responsibility for assessing the needs of the patient and making referrals to other physicians and clinics as needed. The designated pharmacy has responsibility for monitoring the drug regimen of the patient.

"Noncompliance" means failing to follow Client Medical Management Program procedures, or a pattern of utilization ~~which~~ that is inconsistent with sound fiscal or medical practices. Noncompliance includes, but is not limited to, failure to follow a recommended treatment plan or drug regimen; failure to disclose to a provider any treatment or services provided by another provider; requests for medical services or medications ~~which~~ that are not medically necessary; or excessive use of transportation services.

"Not medically necessary" means an item or service ~~which~~ that is not consistent with the diagnosis or treatment of the patient's condition or an item or service ~~which~~ that is duplicative, contraindicated, or excessive.

"Pattern" means duplication or frequent occurrence.

"Practitioner" means a health care provider licensed, registered, or otherwise permitted by law to distribute, dispense, prescribe, and administer drugs or otherwise treat medical conditions.

"Primary care provider" or "PCP" means the designated primary physician responsible for medical management of essential health care for the restricted recipient.

"Provider" means the individual, facility or other entity registered, licensed, or certified, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.

"Psychotropic drugs" means drugs ~~which~~ that alter the mental state. Such drugs include, but are not limited to, morphine, barbiturates, hypnotics, antianxiety agents, antidepressants, and antipsychotics.

"Recipient" means the individual who is eligible, under Title XIX of the Social Security Act, to receive Medicaid covered services.

"Recipient eligibility card" means the document issued to each Medicaid enrollee; an individual document issued to each Medicaid recipient listing the name and Medicaid number (either the identification or billing number) of the eligible individual. This document may be in the form of a plastic card magnetically encoded, allowing electronic access to inquiries for eligibility status.

"Restriction" means an administrative action imposed on a recipient ~~which~~ that limits access to specific types of health care services through a designated primary provider or an administrative action imposed on a provider to prohibit participation as a designated primary provider, referral, or covering provider for restricted recipients.

"Social Security Act" means the Act, enacted by the 74th Congress on August 14, 1935, ~~which~~ that provides for the general welfare by establishing a system of federal old age benefits, and by enabling the states to make more adequate provisions for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws.

"State Plan for Medical Assistance" or "the Plan" means the document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Surveillance and Utilization Review Subsystem (SURS)" or "Automated Exception Analysis (AEA)" means a computer subsystem of the Medicaid Management Information System (MMIS) ~~which~~ that collects claims data and computes statistical profiles of recipient and provider activity and compares them with that of their particular peer group.

"Therapeutic class" means a group of drugs with similar pharmacologic actions and uses.

"Utilization control" means the control of covered health care services to assure the use of cost efficient, medically necessary or appropriate services.

VA.R. Doc. No. R14-3959; Filed April 10, 2014, 4:13 p.m.

◆ ◆

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Withdrawal of Final Regulation

Title of Regulation: **22VAC40-191. Background Checks for Child Welfare Agencies (amending 22VAC40-191-50).**

Statutory Authority: §§ 63.2-217 and 63.2-901.1 of the Code of Virginia.

The State Board of Social Services has WITHDRAWN the final regulatory action for **22VAC40-191, Background Checks for Child Welfare Agencies**, which was published in 30:15 VA.R. 2006-2008 March 24, 2014, with an effective date of April 25, 2014. This regulatory action did not become effective on that date due to the withdrawal of the action.

Agency Contact: Karen Cullen, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7512, or email karen.cullen@dss.virginia.gov.

VA.R. Doc. No. R14-3914; Filed April 14, 2014, 9:08 a.m.

◆ ◆

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Commonwealth Transportation Board will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **24VAC30-170. Rules and Regulations Governing the Use, Operation and Maintenance of State-Owned Fleet Vehicles (repealing 24VAC30-170-10).**

24VAC30-190. Rules and Regulations Governing the Purchase or Lease of Motor Vehicles with Public Funds (repealing 24VAC30-190-10).

Statutory Authority: §§ 33.1-12 and 33.1-407 of the Code of Virginia.

Effective Date: June 4, 2014.

Agency Contact: David L. Roberts, Policy Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-3620, or email david.roberts@vdot.virginia.gov.

Summary:

Regulations concerning the centralized fleet, 24VAC30-170 (Rules and Regulations Governing the Use, Operation and Maintenance of State-Owned Fleet Vehicles) and 24VAC30-190 (Rules and Regulations Governing the Purchase or Lease of Motor Vehicles with Public Funds) are being repealed because the Commonwealth Transportation Board no longer has authority to promulgate these regulations. Chapter 815 of the 2001 Acts of Assembly transferred the regulatory authority from the Commonwealth Transportation Board to the Department of General Services, and Chapter 485 of the 2013 Acts of Assembly authorizes the Director of the

Department of General Services to issue guidance documents concerning management of the centralized fleet.

VA.R. Doc. No. R14-3672; Filed April 15, 2014, 3:17 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 3 of the Code of Virginia, which exempts regulations relating to the location, design, specifications or construction of public buildings or other facilities.

Title of Regulation: **24VAC30-470. Criteria for Transferring Secondary Roads to Primary System (repealing 24VAC30-470-10).**

Statutory Authority: § 33.1-34 of the Code of Virginia.

Effective Date: April 16, 2014.

Agency Contact: David L. Roberts, Policy Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-3620, or email david.roberts@vdot.virginia.gov.

Summary:

Pursuant to the Governor's 2012 Regulatory Reform Initiative, this action repeals a regulation that is no longer necessary as its contents have been reclassified as a guidance document.

VA.R. Doc. No. R14-3670; Filed April 16, 2014, 9:21 a.m.

EXECUTIVE ORDER NUMBER 12 (2014)

Continuing the Governor's Task Force on Improving Mental Health Services and Crisis Response

Importance of the Taskforce

Virginians have experienced tremendous heartache as a result of mental health tragedies. It is incumbent upon us to reevaluate how we can better serve our fellow Virginians with mental health needs and examine ways to improve the system by filling in gaps in services and making impactful investments. Collaborative groups of experts, advocates, policy-makers and others have assessed certain aspects of the system and affected critical changes over the years. In particular, following the tragedy at Virginia Tech, Virginia's leaders drew upon work done by the Virginia Tech Review Panel and the Commission on Mental Health Law Reform to study and investigate the tragedy in order to strengthen the civil commitment process through legislation so that individuals with serious mental illness could receive needed help in a timely manner. The 2008 budget included an infusion of funds to build core community services such as emergency services, case management, and outpatient treatment. Unfortunately, many of these gains were lost as a result of the economic downturn. Last year, targeted investments were made to Virginia's mental health system upon recommendations from the Governor's Taskforce on School and Campus Safety.

While bolstering our ability to respond to mental health crises when they occur, we must continue to seek ways to intervene early and prevent crises from developing. Virginia has crisis prevention services in place, such as outpatient psychiatric consultation, suicide prevention, Program of Assertive Community Treatment (PACT) services, and rehabilitation services. These services are in high demand, and are not consistently available across the Commonwealth.

Virginia's mental health system has moved away from the days of overcrowded state mental institutions toward a community-based system for individuals to receive treatment in their homes and communities. However, the mental health system remains extremely complex and difficult to navigate for families seeking assistance and for workers within the system. Though state law helps guide the process, practices and services are locally developed. This system allows flexibility to implement the policies that work best for particular regions, though the protocols have not always been in writing and variations have existed across the Commonwealth.

The mental health system for emergency services is dependent upon cooperation and communication from a variety of partners, including community services boards, law enforcement, the judicial system and private hospitals. Effective collaboration among these many parties ensures the most favorable outcomes for people in crisis. While emergency mental health services work for most people, it is critical that the mental health safety net responds effectively to all individuals and families in crisis.

Since taking office, my administration and I have been committed to finding and supporting measures to assure the care and safety of persons suffering mental health crises along with their families, neighbors, and members of the community. Lawmakers acted quickly this session to make numerous changes to Virginia's mental health laws. Among the changes is extending the emergency custody order (ECO) period from a maximum of six to a total of eight possible hours. This change will give clinicians more time to locate an available psychiatric bed during the ECO period. Our legislators also extended the temporary detention order period from 48 to 72 hours to help ensure individuals have enough treatment time to stabilize prior to the court hearing which determines involuntary admission to a psychiatric hospital.

To help Virginia improve its mental health crisis response, the Department of Behavioral Health and Developmental Services (DBHDS) has taken steps since the beginning of 2014 to outline clear and specific statewide expectations for securing a private or a state psychiatric bed when an individual qualifies for a temporary detention order. In turn, partners across Virginia's seven DBHDS Partnership Planning Regions, including community services boards and state and private hospitals, have incorporated state guidance into tightened and clarified admission procedures for the regions' private and state psychiatric beds. In addition, in a collaborative effort among DBHDS, Virginia Health Information, the Virginia Hospital and Healthcare Association and the 40 local community services boards, Virginia launched an online psychiatric bed registry to help clinicians locate available beds in an emergency situation. While the changes that have been made in recent months have been critical, more solutions are needed to improve Virginia's complicated and chronically underfunded mental health system. Because the system is multifaceted, the solutions must be as well.

Through this Executive Order, I am calling on leaders in the mental health field, law enforcement communities, the judicial system, private hospitals, and individuals receiving mental health services, to seek and recommend solutions that will improve Virginia's mental health crisis services and help prevent crises from developing.

To accomplish this, in accordance with the authority vested in me by Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the Governor's Task Force on Improving Mental Health Services and Crisis Response.

Governor's Task Force on Improving Mental Health Services and Crisis Response

The Task Force's responsibilities shall include the following:

• Recommend refinements and clarifications of protocols and procedures for community services boards, state hospitals, law enforcement and receiving hospitals.

• Review for possible expansion the programs and services that assure prompt response to individuals in mental health crises and their families such as emergency services teams, law enforcement crisis intervention teams (CIT), secure assessment centers, mobile crisis teams, crisis stabilization centers and mental health first aid.

• Examine extensions or adjustments to the emergency custody order and the temporary detention order period.

• Explore technological resources and capabilities, equipment, training and procedures to maximize the use of telepsychiatry.

• Examine the cooperation that exists among the courts, law enforcement and mental health systems in communities that have incorporated crisis intervention teams and cross systems mapping.

• Identify and examine the availability of and improvements to mental health resources for Virginia's veterans, service members, and their families and children.

• Assess state and private provider capacity for psychiatric inpatient care, the assessment process hospitals use to select which patients are appropriate for such care, and explore whether psychiatric bed registries and/or census management teams improve the process for locating beds.

• Review for possible expansion those services that will provide ongoing support for individuals with mental illness and reduce the frequency and intensity of mental health crises. These services may include rapid, consistent access to outpatient treatment and psychiatric services, as well as co-located primary care and behavioral health services, critical supportive services such as wrap-around stabilizing services, peer support services, PACT services, housing, employment and case management.

• Recommend how families and friends of a loved one facing a mental health crisis can improve the environment and safety of an individual in crisis.

• Examine the mental health workforce capacity and scope of practice and recommend any improvements to ensure an adequate mental health workforce.

Task Force Membership

• The Task Force shall be chaired by the Lieutenant Governor.

• The Task Force shall be co-chaired by the Secretaries of Health and Human Resources and Public Safety and Homeland Security;

Membership shall include the following individuals or their designees:

• The Attorney General of Virginia;

• Secretary of Veterans and Defense Affairs;

• Chief Justice of the Supreme Court of Virginia;

• Commissioner of the Department of Behavioral Health and Developmental Services;

• Commissioner of the Department of Social Services;

• Director of the Department of Medical Assistance Services;

• Superintendent of the Virginia State Police;

• At least three community services board emergency services directors;

• At least three law enforcement officers, including at least one sheriff;

• At least two executive directors of community services boards;

• At least two magistrates;

• At least two private hospital emergency department physicians;

• At least two psychiatrists;

• At least one representative of a state mental health facility;

• At least two representatives from Virginia's private hospital systems;

• At least two individuals receiving mental health services;

• At least one member from a statewide veterans organization;

• At least two family members of individuals receiving services; and

• Two members of the House of Delegates and two members of the Senate of Virginia.

The Governor may appoint other members as he deems necessary.

Task Force Staffing and Funding

Necessary staff support for the Task Force's work during its existence shall be furnished by the Office of the Governor, and the Offices of the Secretary of Health and Human Resources and the Secretary of Public Safety and Homeland Security, as well as other agencies and offices designated by

the Governor. An estimated 750 hours of staff time will be required to support the work of the Task Force.

Necessary funding to support the Commission and its staff shall be provided from federal funds, private contributions, and state funds appropriated for the same purposes as the Task Force, as authorized by § 2.2-135 of the Code of Virginia, as well as any other private sources of funding that may be identified. Estimated direct costs for this Commission are $5,000 per year.

The Task Force shall commence its work promptly and suggest legislative and budgetary proposals that will enable the implementation of identified recommendations. The Task Force shall make recommendations on an ongoing basis and shall provide a final report to the Governor no later than October 1, 2014. The Task Force shall issue such other reports and recommendations as necessary or as requested by the Governor.

Effective Date of the Executive Order

This Executive Order replaces Executive Order No. 68 (2013) issued on December 10, 2013, by Governor Robert F. McDonnell. This Executive Order shall be effective upon signing and, pursuant to §§ 2.2-134 and 2.2-135 of the Code of Virginia, shall remain in force and effect for one year from its signing unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 8th day of April, 2014.

/s/ Terence R. McAuliffe
Governor

STATE AIR POLLUTION CONTROL BOARD

Proposed State Implementation Plan Revision - Revision G13

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 Article 6 (9VAC5-80-1100 et seq., Permits for New and Modified Stationary Sources) of 9VAC5-80 (Permits for Stationary Sources), Revision G13.

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: May 5, 2014, to June 4, 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 by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

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: This amendment revises the definition of "nonroad engine" to be more consistent with a similar federal definition. The definition is expanded to include portable and temporary engines. Federal design standards for internal combustion engines and federal fuel standards are more restrictive than minor new source review (NSR) permit standards for portable and temporary engines used as nonroad engines. Adopting the federal definition of "nonroad engine," which groups portable engines and temporary engines together with other non-mobile engines in that definition, will make it unnecessary to issue minor NSR permits without meaningful additional emission control requirements for those engines. Amending this definition does not increase emissions or otherwise affect air quality.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. 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 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 regulation documents: 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;

2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (276) 676-4800;

3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700;

4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (434) 582-5120;

5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800;

6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020;

7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800; 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) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Total Maximum Daily Load Implementation Plan for Tye River Watershed in Nelson and Amherst Counties

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of a total maximum daily load (TMDL) implementation plan for the Tye River watershed in Nelson and Amherst Counties. The Tye River and its tributaries, Piney River, Hat Creek, and Rucker Run were first listed as impaired on the Virginia's § 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria in 2004 (Hat Creek and Rucker Run), 2006 (Tye River), and 2008 (Piney Creek). The creeks have remained on the § 303(d) list for these impairments since then. The impaired segment of the Tye River extends from its confluence with the Piney River to its confluence with the James River (15.94 miles), while Hat Creek and Rucker Run are designated as impaired from their headwaters to their confluence with the Tye River, 9.58 miles and 18.26 miles respectively. The impaired segment of the Piney River extends 13.3 miles upstream from its confluence with the Tye River.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. In addition, § 62.1-44.19:7 C of the Code of Virginia requires the development of an implementation plan (IP) for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts. Bacteria TMDLs were completed by DEQ for the Tye River and its tributaries in June 2013, and were approved by the Environmental Protection Agency in September 2013. The TMDL report is available for review on the DEQ website at www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx.

Development of the TMDL implementation plan began in November 2013.

The second and final public meeting on the development of this TMDL implementation plan will be held on May 15, 2014, from 7 p.m. to 9 p.m. at the Massie's Mill Ruritan Hall, 5439 Patrick Henry Highway, Roseland, VA. The meeting will include an ice cream social, sponsored by the Thomas Jefferson Soil and Water Conservation District and the Chesapeake Bay Foundation. The implementation plan will be available on the DEQ website the day after the meeting for public comment: http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx.

The public comment period for the implementation plan will end on June 16, 2013. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nesha McRae, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7850 or emailed to nesha.mcrae@deq.virginia.gov.

COMMISSION ON LOCAL GOVERNMENT

Schedule for the Assessment of State and Federal Mandates on Local Governments

Pursuant to the provisions of §§ 2.2-613 and 15.2-2903(6) of the Code of Virginia, the following schedule, established by the Commission on Local Government and approved by the Secretary of Commerce and Trade and Governor McAuliffe, represents the timetable that the listed executive agencies will follow in conducting their assessments of certain state and federal mandates that they administer that are imposed on local governments. Such mandates are either new (in effect for at least 24 months) or newly identified. In conducting these assessments, agencies will follow the process established by Executive Order 58 which became effective October 11, 2007. These mandates are abstracted in the Catalog of State and Federal Mandates on Local Governments published by the Commission on Local Government.

For further information contact J. David Conmy, Senior Policy Analyst, Commission on Local Government, email david.conmy@dhcd.virginia.gov, telephone (804) 371-8010), or visit the Commission's website at www.dhcd.virginia.gov.

STATE AND FEDERAL MANDATES ON LOCAL GOVERNMENTS

Approved Schedule of Assessment Periods – July 2014 through June 2015

For Executive Agency Assessment of Cataloged Mandates

AGENCY Mandate Short Title	**CATALOG NUMBER**	**ASSESSMENT PERIOD**
AGRICULTURE AND CONSUMER SERVICES, DEPARTMENT OF		
Fertilizer Application to Non-Agricultural Lands; Training and Reporting Requirements	SAF.VDACS012	3/1/15 to 5/31/15

EDUCATION, DEPARTMENT OF		
School Transportation	SOE.DOE037	7/1/14 to 8/31/14
School Performance Report Card	SOE.DOE131	7/1/14 to 8/31/14
Hiring of Teachers, Contracts	SOE.DOE133	9/1/14 to 10/31/14
Virginia Index of Performance Recognition	SOE.DOE134	9/1/14 to 10/31/14
College and Career Preparation Planning and Programs	SOE.DOE138	9/1/14 to 10/31/14
ELECTIONS, STATE BOARD OF		
Compensation of Officers; Volunteer Officers	SOA.SBE006	7/1/14 to 8/31/14
Public Notification Requirements for General Registrars	SOA.SBE007	7/1/14 to 8/31/14
GENERAL SERVICES, DEPARTMENT OF		
Standardization of Police Equipment	SOA.DGS005	8/1/14 to 10/31/14
HEALTH, VIRGINIA DEPARTMENT OF		
Medicological Death Investigations	SHHR.VDH031	7/1/14 to 9/30/14
HUMAN RESOURCE MANAGEMENT, DEPARTMENT OF		
Supplemental Salary Payments to State Employees by a Locality	SHHR.DHRM002	10/1/14 to 12/1/14
SOCIAL SERVICES, DEPARTMENT OF		
Annual Credit Checks for Children in Foster Care	SHHR.DSS075	7/1/14 to 9/30/14
TAXATION, DEPARTMENT OF		
Affordable Housing Real Estate Assessments	SFIN.TAX012	7/1/14 to 9/30/14
Real Property Tax Assessment of Wetlands	SFIN.TAX015	8/1/14 to 10/31/14
Local Consumer Utility Tax Exemption for Certain Electricity Generation Facilities	SFIN.TAX016	9/1/14 to 11/30/14
TRANSPORTATION, DEPARTMENT OF		
Removal of Illegal Signs from VDOT Right-of-way	STO.VDOT038	7/1/14 to 9/30/14
Virginia Transportation Infrastructure Bank (VTIB)	STO.VDOT040	7/1/14 to 9/30/14
Corridors of Statewide Significance	STO.VDOT041	4/1/15 to 6/30/15
Local Transportation Plan to be Reviewed by VDOT	STO.VDOT042	7/1/14 to 9/30/14
VETERANS SERVICES, DEPARTMENT OF		
Real Property Tax Exemption for Disabled Veterans	SOVAHS.DVS001	4/1/15 to 6/30/15

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on April 15, 2014. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, VA.

Director's Order Number Three (14)

"Mega Power Grocery Sweepstakes Promotion" Virginia Lottery Final Rules for Game Operation (effective June 1, 2014)

Director's Order Number Forty-Six (14)

Virginia's Instant Game Lottery 1470 "The Venetian" Final Rules for Game Operation (effective March 13, 2014)

Director's Order Number Fifty-Eight (14)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on April 11, 2014:

Game 1301	SIZZLING 7'S
Game 1320	QUEEN OF HEARTS
Game 1328	Jewel 7's
Game 1345	BLACK GOLD
Game 1357	BLACKJACK
Game 1362	HOT CARD
Game 1367	$150,000 GRAND
Game 1370	10X The Money
Game 1381	HIT $500
Game 1382	Electric 7's
Game 1391	MONEY IN THE BANK
Game 1397	20 X The Money
Game 1400	7-11-21
Game 1408	SAFE CRACKER
Game 1425	5 X The Money
Game 1435	ZOMBIES
Game 1436	$25 Grand
Game 1438	TIC TAC SNOW
Game 1461	7 X THE MONEY
Game 1463	$5000 PAY DAY

The last day for lottery retailers to return for credit unsold tickets from any of these games will be **May 30, 2014.** The last day to redeem winning tickets for any of these games will be **October 8, 2014,** 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of October 8, 2014, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

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

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Paula I. Otto
Executive Director
April 9, 2014

STATE WATER CONTROL BOARD

Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality on behalf of the State Water Control Board is conducting a periodic review and small business impact review of **9VAC25-650, Closure Plans and Demonstration of Financial Capability**. The review of this regulation will be guided by the principles in Executive Order 14 (2010).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins May 5, 2014, and ends on May 27, 2014.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Melissa Porterfield, Office of Regulatory Affairs, P.O. Box 1105, Richmond, VA 23218, telephone

(804) 698-4238, FAX (804) 698-4346, or email melissa.porterfield@deq.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Proposed Consent Order for George's Foods, LLC

An enforcement action has been proposed for George's Foods, LLC, for violations in Rockingham County. A proposed consent order describes a settlement to resolve an unpermitted discharge violation from George's Foods' Harrisonburg pretreatment facility. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Steven W. Hetrick will accept comments by email at steven.hetrick@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from May 5, 2014, to June 4, 2014.

Proposed Consent Special Order for Iluka Resources, Inc. at Brink Mine, Greensville County

An enforcement action has been proposed for Iluka Resources, Inc. for alleged violations at Brink Mine, Greensville County, VA. The State Water Control Board proposes to issue a consent special order to Iluka Resources, Inc. to address noncompliance with State Water Control Board law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. 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 May 5, 2014, to June 6, 2014.

Proposed Consent Special Order for Iluka Resources, Inc. at Concord Concentrator, Sussex County

An enforcement action has been proposed for Iluka Resources, Inc. for alleged violations at Concord Concentrator, Sussex County, VA. The State Water Control Board proposes to issue a consent special order to Iluka Resources, Inc. to address noncompliance with State Water Control Board law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. 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 May 5, 2014, to June 6, 2014.

Proposed Enforcement Action for Madera Farm, LLC

An enforcement action has been proposed for Madera Farm, LLC, for violations in Prince William County. The violations include the unauthorized fill of surface waters without a permit. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Sarah Baker will accept comments by email at sarah.baker@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from May 6, 2014, through June 7, 2014.

Proposed Consent Order for Trowbridge Steel Company, Inc.

An enforcement action has been proposed for Trowbridge Steel Company, Inc. for violations of the State Water Control law and regulations in Sterling, Virginia. The consent order describes a settlement to resolve violations associated with VPDES Permit No. VAR050906. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from May 6, 2014, through June 5, 2014.

Proposed Special Order for Yard Works, LLC

An enforcement action has been proposed for Yard Works, LLC for alleged violations at the facility located at 20701 Hull Street Road, Moseley, VA. The enforcement action requires corrective action and payment of 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. Frank Lupini will accept comments by email at frank.lupini@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 May 5, 2014, to June 5, 2014.

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

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: **13VAC5-31. Virginia Amusement Device Regulations.**

Publication: 30:16 VA.R. 2022-2027 April 7, 2014.

Correction to Final Regulation:

Page 2025, 13VAC5-31-75 D, line 5, after "Commonwealth" insert "either a six-month period for small mechanical rides or" and line 6, after "period" insert "for inflatable amusement devices"

VA.R. Doc. No. R12-3160; Filed April 22, 2014, 12:07 p.m.

Title of Regulation: **13VAC5-63. Virginia Uniform Statewide Building Code.**

Publication: 30:16 VA.R. 2071-2232 April 7, 2014.

Correction to Final Regulation:

Page 2172, 13VAC5-63-240 E, inside the bracket, replace subsection E in its entirety with the following:

E. Change Section 903.2.6 to read:

903.2.6 Group I. An automatic sprinkler system shall be provided throughout all buildings with a Group I fire area.

Exceptions:

1. An automatic sprinkler system installed in accordance with Section 903.3.1.2 shall be permitted in Group I-1 Condition 1 facilities.

2. An automatic sprinkler system is not required where Group I-4 day care facilities are at the level of exit discharge and where every room where care is provided has at least one exit door.

3. In buildings where Group I-4 day care is provided on levels other than the level of exit discharge, an automatic sprinkler system in accordance with Section 903.3.1.1 shall be installed on the entire floor where care is provided and all floors between the level of care and the level of exit discharge and all floors below the level of exit discharge, other than areas classified as an open parking garage.

4. An automatic sprinkler system shall not be required for open-sided or chain link-sided buildings and overhangs over exercise yards 200 square feet (18.58 m2) or less in Group I-3 facilities, provided such buildings and overhangs are of noncombustible construction.

VA.R. Doc. No. R12-3159; Filed April 18, 2014, 1:14 p.m.