



VIRGINIA

REGISTER OF REGULATIONS

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Virginia Code Commission

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

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **Gregory D. Habeeb**; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Carlos L. Hopkins**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Timothy Oksman**; **Charles S. Sharp**; **Robert L. Tavenner**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **Karen Perrine**, Assistant Registrar; **Anne Bloomsburg**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

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

July 2014 through August 2015

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
31:22	June 10, 2015	June 29, 2015
31:23	June 24, 2015	July 13, 2015
31:24	July 8, 2015	July 27, 2015
31:25	July 22, 2015	August 10, 2015
31:26	August 5, 2015	August 24, 2015

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Initial Agency Notice

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing.**

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

Name of Petitioner: Patrick Sorensen.

Nature of Petitioner's Request: To accept paramedic hours of clinical experience towards the requirement of 500-hour requirement for licensure as a registered nurse, similar to the 150 hours of credit allowed for persons licensed as practical nurses.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition to amend the regulation was posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov. It has also been filed with the Register of Regulations for publication on July 28, 2014. Comment on the petition from interested parties will be accepted from July 28, 2014, until August 27, 2014. Following receipt of all comments on the petition, the request will be considered by the Board of Nursing at its meeting scheduled for September 16, 2014.

Public Comment Deadline: August 27, 2014.

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

V.A.R. Doc. No. R14-37; Filed July 9, 2014, 8:47 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the Department of General Services. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: **1VAC30-120. Virginia Federal Property Agency - State Plan of Operation.**

Effective Date: July 28, 2014.

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

FORMS (1VAC30-120)

[Exhibit 1 - Distribution Document and Invoice, DGS-43-008 \(undated\)](#)

[Exhibit 2 - State Surplus Property Transfer Document, DGS-44-012 \(undated\)](#)

[Exhibit 3 - Combat-Type Aircraft Conditional Transfer Document \(undated\)](#)

[Exhibit 4 - Non-Combat-Type Aircraft Conditional Transfer Document \(undated\)](#)

[Exhibit 5 - Vessel Conditional Transfer Document \(50 feet or more in length\) \(undated\)](#)

[Exhibit 6 - Nondiscrimination Assurance \(undated\)](#)

[Commonwealth of Virginia Organization of State Government chart \(undated\)](#)

VA.R. Doc. No. R14-4106; Filed July 2, 2014, 3:27 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Final Regulation

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-65, 4VAC15-20-130).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 1, 2014.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) establish a new combined license for persons hunting with a bow and arrow or a crossbow at a cost of \$17 for residents and \$30 for nonresidents; (ii) allow nonresident veterans who are totally and permanently disabled due to a service-connected disability to purchase annual licenses to hunt or fish at a cost equal to one-quarter the fee for the state nonresident hunting or fishing license; (iii) establish a license for hunting foxes on horseback with hounds without firearms, at the cost of the standard hunting license, (iv) make corrections to the license fee table; (v) adopt the updated and modified federal list of endangered and threatened wildlife species; and (vi) remove the slabside pearl mussel from the Virginia List of Endangered and Threatened Species and correct errors in scientific or common names of species on the list.

4VAC15-20-65. Hunting, trapping, and fishing license and permit fees.

In accordance with the authority of the board under subdivision 16 of § 29.1-103 (~~16~~) of the Code of Virginia, the following fees are established for hunting, trapping, and fishing licenses and permits:

Regulations

Virginia Resident Licenses to Hunt			
Type license	Fee	<u>Resident Hunting License for Partially Disabled Veterans</u>	<u>\$11.00</u>
1-year Resident License to Hunt, for licensees 16 years of age or older	\$22.00	Totally and Permanently Disabled Resident Special Lifetime License to Hunt	\$15.00
2-year Resident License to Hunt, for licensees 16 years of age or older	\$43.00	Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and <u>or</u> Freshwater Fish (also listed under Virginia Resident Licenses to Fish)	\$15.00 <u>no fee</u>
3-year Resident License to Hunt, for licensees 16 years of age or older	\$64.00		
4-year Resident License to Hunt, for licensees 16 years of age or older	\$85.00		
County or City Resident License to Hunt in County or City of Residence Only, for licensees 16 years of age or older	\$15.00	Virginia Resident Licenses for Additional Hunting Privileges	
Resident Senior Citizen Annual License to Hunt, for licensees 65 years of age or older	\$8.00	Type license or permit	Fee
Resident Junior License to Hunt, for licensees 12 through 15 years of age, optional for licensees under 12 years of age	\$7.50	Resident Bear, Deer, and Turkey Hunting License, for licensees 16 years of age or older	\$22.00
Resident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	\$15.00	Resident Junior Bear, Deer, and Turkey Hunting License, for licensees under 16 years of age	\$7.50
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with bow and arrow <u>or</u> a <u>crossbow</u> during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters, and to hunt with a crossbow (also listed under Virginia Resident Licenses to Fish)	\$132.00	Resident Archery License to Hunt with bow and arrow <u>or</u> <u>crossbow</u> during archery hunting season	\$17.00
		Resident Crossbow License to Hunt with crossbow during archery hunting season	\$17.00
		Resident Muzzleloading License to Hunt during muzzleloading hunting season	\$17.00
		Resident Bonus Deer Permit	\$17.00
		<u>Resident Fox Hunting License to hunt foxes on horseback with hounds without firearms (not required of an individual holding a general License to Hunt)</u>	<u>\$22.00</u>
Resident Junior Lifetime License to Hunt, for licensees under 12 years of age at the time of purchase	\$255.00	Virginia Nonresident Licenses to Hunt	
Resident Lifetime License to Hunt, for licensees at the time of purchase:		Type license	Fee
through 44 years of age	\$260.00	Nonresident License to Hunt, for licensees 16 years of age or older	\$110.00
45 through 50 years of age	\$210.00	Nonresident Three-Day Trip License to Hunt	\$59.00
51 through 55 years of age	\$160.00	Nonresident Youth License to Hunt, for licensees:	
56 through 60 years of age	\$110.00	under 12 years of age	\$12.00
61 through 64 years of age	\$60.00	12 through 15 years of age	\$15.00
65 years of age and over	\$20.00		

Regulations

Nonresident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	\$30.00	Waterfowl Hunting Floating Blind in Public Waters License	\$40.00
<u>Nonresident Annual Hunting License for Partially Disabled Veterans</u>	\$55.00	Foxhound Training Preserve License	\$17.00
<u>Nonresident Annual Hunting License for Totally and Permanently Disabled Veterans</u>	\$27.50	Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Fish)	\$17.00
Nonresident Lifetime License to Hunt	\$555.00	Virginia Resident and Nonresident Licenses to Trap	
Virginia Nonresident Licenses for Additional Hunting Privileges		Type license	Fee
Type license or permit	Fee	1-year Resident License to Trap, for licensees 16 years of age or older	\$45.00
Nonresident Bear, Deer, and Turkey Hunting License, for licensees:		2-year Resident License to Trap, for licensees 16 years of age or older	\$89.00
16 years of age or older	\$85.00	3-year Resident License to Trap, for licensees 16 years of age or older	\$133.00
12 through 15 years of age	\$15.00	4-year Resident License to Trap, for licensees 16 years of age or older	\$177.00
under 12 years of age	\$12.00	County or City Resident License to Trap in County or City of Residence Only	\$20.00
Nonresident Archery License to Hunt with bow and arrow <u>or crossbow</u> during archery hunting season	\$30.00	Resident Junior License to Trap, for licensees under 16 years of age	\$10.00
Nonresident Crossbow License to Hunt with crossbow during archery hunting season	\$30.00	Resident Senior Citizen License to Trap, for licensees 65 years of age or older	\$8.00
Nonresident Muzzleloading License to Hunt during muzzleloading hunting season	\$30.00	Resident Senior Citizen Lifetime License to Trap, for licensees 65 years of age or older	\$20.00
Nonresident Shooting Preserve License to Hunt within the boundaries of a licensed shooting preserve	\$22.00	Totally and Permanently Disabled Resident Special Lifetime License to Trap	\$15.00
Nonresident Bonus Deer Permit	\$30.00	Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Trap	\$15.00
<u>Nonresident Fox Hunting License to hunt foxes on horseback with hounds without firearms (not required of an individual holding a general License to Hunt)</u>	\$110.00	Nonresident License to Trap	\$205.00
Miscellaneous Licenses or Permits to Hunt		Virginia Resident Licenses to Fish	
Type license or permit	Fee	Type license	Fee
Waterfowl Hunting Stationary Blind in Public Waters License	\$22.50	1-year Resident License to Freshwater Fish	\$22.00
		2-year Resident License to Freshwater Fish	\$43.00
		3-year Resident License to Freshwater Fish	\$64.00
		4-year Resident License to Freshwater Fish	\$85.00

Regulations

County or City Resident License to Freshwater Fish in County or City of Residence Only	\$15.00	Totally and Permanently Disabled Resident Special Lifetime License to Freshwater Fish	\$15.00
Resident License to Freshwater Fish, for licensees 65 years of age or older	\$8.00	Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Hunt)	\$15.00 <u>no fee</u>
Resident License to Fish in Designated Stocked Trout Waters	\$22.00		
Resident License to Freshwater and Saltwater Fish	\$39.00	Virginia Nonresident Licenses to Fish	
Resident License to Freshwater Fish for Five Consecutive Days	\$13.00	Type license	Fee
Resident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$23.00	Nonresident License to Freshwater Fish	\$46.00
		Nonresident License to Freshwater Fish in Designated Stocked Trout Waters	\$46.00
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with bow and arrow <u>or crossbow</u> during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters, and to hunt with a crossbow (also listed under Virginia Resident Licenses to Hunt)	\$132.00	Nonresident License to Freshwater and Saltwater Fish	\$70.00
		<u>Nonresident Fishing License for Partially Disabled Veterans</u>	<u>\$23.00</u>
		<u>Nonresident Annual Fishing License for Totally and Permanently Disabled Veterans</u>	<u>\$11.50</u>
		Nonresident License to Freshwater Fish for One Day	\$7.00
Resident Special Lifetime License to Freshwater Fish, for licensees at the time of purchase:		Nonresident License to Freshwater Fish for Five Consecutive Days	\$20.00
through 44 years of age	\$260.00	Nonresident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$30.00
45 through 50 years of age	\$210.00	Nonresident Special Lifetime License to Freshwater Fish	\$555.00
51 through 55 years of age	\$160.00		
56 through 60 years of age	\$110.00	Nonresident Special Lifetime License to in Fish in Designated Stocked Trout Waters	\$555.00
61 through 64 years of age	\$60.00		
65 years of age and over	\$20.00		
Resident Special Lifetime License to Fish in Designated Stocked Trout Waters, for licensees at the time of purchase:		Miscellaneous Licenses or Permits to Fish	
through 44 years of age	\$260.00	Type license or permit	Fee
45 through 50 years of age	\$210.00	Permit to Fish for One Day at Board-Designated Stocked Trout Fishing Areas with Daily Use Fees	\$7.00
51 through 55 years of age	\$160.00	Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Hunt)	\$17.00
56 through 60 years of age	\$110.00		
61 through 64 years of age	\$60.00	Special Guest Fishing License	\$60.00
65 years of age and over	\$20.00		
<u>Resident Fishing License for Partially Disabled Veterans</u>	<u>\$11.00</u>		

Regulations

4VAC15-20-130. Endangered and threatened species; adoption of federal list; additional species enumerated.

A. The board hereby adopts the Federal Endangered and Threatened Species List, Endangered Species Act of December 28, 1973 (16 USC §§ 1531-1543), as amended as of ~~August 13, 2012~~ [~~February 24~~ May 20], 2014, and declares all species listed thereon to be endangered or threatened species in the Commonwealth. Pursuant to § 29.1-103.12 of the Code of Virginia, the director of the department is hereby delegated authority to propose adoption of modifications and amendments to the Federal Endangered and Threatened Species List in accordance with the procedures of §§ 29.1-501 and 29.1-502 of the Code of Virginia.

B. In addition to the provisions of subsection A of this section, the following species are declared endangered or threatened in this Commonwealth, and are afforded the protection provided by Article 6 (§ 29.1-563 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia:

1. Fish:

Endangered:

Dace, Tennessee	Phoxinus tennesseensis
Darter, sharphead	Etheostoma acuticeps
Darter, variegated	Etheostoma variatum
Sunfish, blackbanded	Enneacanthus chaetodon

Threatened:

Darter, Carolina	Etheostoma collis
Darter, golden	Etheostoma denoncourti
Darter, greenfin	Etheostoma chlorobranchium
Darter, longhead <u>sickle</u>	Percina macrocephala <u>williamsi</u>
Darter, western sand	Ammocrypta clara
Madtom, orangefin	Noturus gilberti
Paddlefish	Polyodon spathula
Shiner, emerald	Notropis atherinoides
Shiner, steelcolor	Cyprinella whipplei
Shiner, whitemouth	Notropis alborus

2. Amphibians:

Endangered:

Salamander, eastern tiger	Ambystoma tigrinum tigrinum
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Threatened:

Salamander, Mabee's	Ambystoma mabeei
Treefrog, barking	Hyla gratiosa

3. Reptiles:

Endangered:

Rattlesnake, canebrake (Coastal Plain population of timber rattlesnake)	Crotalus horridus
Turtle, bog	Glyptemys muhlenbergii
Turtle, eastern chicken	Deirochelys reticularia reticularia

Threatened:

Lizard, eastern glass	Ophisaurus ventralis
Turtle, wood	Glyptemys insculpta

4. Birds:

Endangered:

Plover, Wilson's	Charadrius wilsonia
Rail, black	Laterallus jamaicensis
Wren, Bewick's	Thryomanes bewicki <u>bewickii</u> bewickii

Threatened:

Falcon, peregrine	Falco peregrinus
Sandpiper, upland	Bartramia longicauda
Shrike, loggerhead	Lanius ludovicianus
Sparrow, Bachman's	Aimophila aestivalis
Sparrow, Henslow's	Ammodramus henslowii
Tern, gull-billed	Sterna nilotica

5. Mammals:

Endangered:

Bat, Rafinesque's eastern big-eared	Corynorhinus rafinesquii macrotis
Hare, snowshoe	Lepus americanus

Shrew, American water	Sorex palustris
Vole, rock	Microtus chrotorrhinus

Threatened:

Shrew, Dismal Swamp southeastern	Sorex longirostris fisheri
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6. Molluscs:

Endangered:

Ghostsail, thankless	Holsingeria unthanksensis
Coil, rubble	Helicodiscus lirellus
Coil, shaggy	Helicodiscus diadema
Deertoe	Truncilla truncata
Elephantear	Elliptio crassidens
Elimia, spider	Elimia arachnoidea
Floater, brook	Alasmidonta varicosa
Heelsplitter, Tennessee	Lasmigona holstonia
Lilliput, purple	Toxolasma lividus
Mussel, slippershell	Alasmidonta viridis
Pigtoe, Ohio eordatum	Pleurobema <u>cordatum</u>
Pigtoe, pyramid	Pleurobema rubrum
Springsnail, Appalachian	Fontigens bottimeri
Springsnail (no common name)	Fonitgens morrisoni
Supercoil, spirit	Paravitrea hera

Threatened:

Floater, green	Lasmigona subviridis
Papershell, fragile	Leptodea fragilis
Pearl mussel, slabside	Lexingtonia dolabelloides
Pigtoe, Atlantic	Fusconaia masoni
Pimpleback	Quadrula pustulosa pustulosa
Pistolgrip	Tritogonia verrucosa

Riversnail, spiny	Iofluvialis
Sandshell, black	Ligumia recta
Supercoil, brown	Paravitrea septadens

7. Arthropods:

Threatened:

Amphipod, Madison Cave	Stygobromus stegerorum
Pseudotremia, Ellett Valley	Pseudotremia cavernarum
Xystodesmid, Laurel Creek	Sigmoria whiteheadi

8. Crustaceans:

Endangered:

Crayfish, Big Sandy	Cambarus veteranus
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C. It shall be unlawful to take, transport, process, sell, or offer for sale within the Commonwealth any threatened or endangered species of fish or wildlife except as authorized by law.

VA.R. Doc. No. R14-4038; Filed July 9, 2014, 2:40 a.m.

Final Regulation

Title of Regulation: 4VAC15-30. **Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4VAC15-30-40).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 1, 2014.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) add certain nonnative species of animals currently included on the federal list of endangered and threatened species to the list of predatory and undesirable species; (ii) add the oriental weatherfish to the list of predatory and undesirable species, (iii) update taxonomic references in the list of predatory and undesirable species, and (iv) repeal an exception for certain animals from the requirement that all individuals in possession of animals included on the list of predatory and undesirable species apply for a department permit to exhibit wild animals in Virginia.

Regulations

4VAC15-30-40. Importation requirements, possession and sale of nonnative (exotic) animals.

A. Permit required. A special permit is required and may be issued by the department, if consistent with the department's fish and wildlife management program, to import, possess, or sell those nonnative (exotic) animals listed below and in 4VAC15-20-210 that the board finds and declares to be predatory or undesirable within the meaning and intent of § 29.1-542 of the Code of Virginia, in that their introduction into the Commonwealth will be detrimental to the native fish and wildlife resources of Virginia:

AMPHIBIANS:			
Order	Family	Genus/Species	Common Name
Anura	Bufonidae	Rhinella marina	Cane toad*
	Pipidae	Hymenochirus spp. Pseudohymenochirus merlini	African dwarf frog
		Xenopus spp.	Tongueless or African clawed frog
Caudata	Ambystomatidae	Ambystoma tigrum mavortium <u>All species</u>	Barred tiger salamander <u>All mole salamanders</u>
		A. t. diaboli	Gray tiger salamander
		A. t. melanostictum	Blotched tiger salamander
BIRDS:			
Order	Family	Genus/Species	Common Name
Psittaciformes	Psittacidae	Myiopsitta monachus	Monk parakeet*
Anseriformes	Anatidae	Cygnus olor	Mute swan
FISH:			
Order	Family	Genus/Species	Common Name
Cypriniformes	Catostomidae	<u>Catostomus microps</u>	<u>Modoc sucker</u>
		<u>Catostomus santaanae</u>	<u>Santa Ana sucker</u>
		<u>Catostomus warnerensis</u>	<u>Warner sucker</u>
		Ictiobus bubalus	Smallmouth* buffalo
		I. cyprinellus	Bigmouth* buffalo
		I. niger	Black buffalo*
	Characidae	Pygopristis spp. Pygocentrus spp. Rooseveltiella spp. Serrasalmo spp. Serrasalmus spp. Taddyella spp.	Piranhas
	<u>Cobitidae</u>	<u>Misgurnus anguillicaudatus</u>	<u>Oriental weatherfish</u>
	Cyprinidae	Aristichthys nobilis	Bighead carp*
		<u>Chrosomus saylori</u>	<u>Laurel dace</u>
		Ctenopharyngodon idella	Grass carp or white amur
		<u>Cyprinella caerulea</u>	<u>Blue shiner</u>
		<u>Cyprinella formosa</u>	<u>Beautiful shiner</u>

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		<i>Cyprinella lutrensis</i>	Red shiner
		<i>Hypophthalmichthys molitrix</i>	Silver carp*
		<i>Mylopharyngodon piceus</i>	Black carp*
		<u><i>Notropis albizonatus</i></u>	<u>Palezone shiner</u>
		<u><i>Notropis cahabae</i></u>	<u>Cahaba shiner</u>
		<u><i>Notropis girardi</i></u>	<u>Arkansas River shiner</u>
		<u><i>Notropis mekistocholas</i></u>	<u>Cape Fear shiner</u>
		<u><i>Notropis simus pecosensis</i></u>	<u>Pecos bluntnose shiner</u>
		<u><i>Notropis topeka</i> (= <i>tristis</i>)</u>	<u>Topeka shiner</u>
		<u><i>Phoxinus cumberlandensis</i></u>	<u>Blackside dace</u>
		<u><i>Rhinichthys osculus lethoporus</i></u>	<u>Independence Valley speckled dace</u>
		<u><i>Rhinichthys osculus nevadensis</i></u>	<u>Ash Meadows speckled dace</u>
		<u><i>Rhinichthys osculus oligoporus</i></u>	<u>Clover Valley speckled dace</u>
		<u><i>Rhinichthys osculus</i> ssp.</u>	<u>Foskett speckled dace</u>
		<u><i>Rhinichthys osculus thermalis</i></u>	<u>Kendall Warm Springs dace</u>
		<i>Scardinius erythrophthalmus</i>	Rudd
		<i>Tinca tinca</i>	Tench*
<u>Cyprinodontiformes</u>	<u>Poeciliidae</u>	<u><i>Gambusia gagei</i></u>	<u>Big Bend gambusia</u>
		<u><i>Gambusia georgei</i></u>	<u>San Marcos gambusia</u>
		<u><i>Gambusia heterochir</i></u>	<u>Clear Creek gambusia</u>
		<u><i>Gambusia nobilis</i></u>	<u>Pecos gambusia</u>
		<u><i>Peociliopsis occidentalis</i></u>	<u>Gila topminnow</u>
<u>Gasterosteiformes</u>	<u>Gasterosteidae</u>	<u><i>Gasterosteus aculeatus williamsoni</i></u>	<u>Unarmored threespine stickleback</u>
Gobiesociformes	Gobiidae	<i>Proterorhinus marmoratus</i>	Tubenose goby
		<i>Neogobius melanostomus</i>	Round goby
Perciformes	Channidae	<i>Channa</i> spp. <i>Parachanna</i> spp.	Snakeheads
	Cichlidae	<i>Tilapia</i> spp.	Tilapia
		<i>Gymnocephalus cernuum</i>	Ruffe*
	<u>Elassomatidae</u>	<u><i>Elassoma alabamae</i></u>	<u>Spring pygmy sunfish</u>
	<u>Percidae</u>	<u><i>Crystallaria cincotta</i></u>	<u>Diamond darter</u>
		<u><i>Etheostoma chermocki</i></u>	<u>Vermilion darter</u>
		<u><i>Etheostoma boschungii</i></u>	<u>Slackwater darter</u>
		<u><i>Etheostoma chienense</i></u>	<u>Relict darter</u>
		<u><i>Etheostoma etowahae</i></u>	<u>Etowah darter</u>
<u><i>Etheostoma fonticola</i></u>	<u>Fountain darter</u>		

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		<u>Etheostoma moorei</u>	<u>Yellowcheek darter</u>
		<u>Etheostoma nianguae</u>	<u>Niangua darter</u>
		<u>Etheostoma nuchale</u>	<u>Watercress darter</u>
		<u>Etheostoma okaloosae</u>	<u>Okaloosa darter</u>
		<u>Etheostoma phytophilum</u>	<u>Rush darter</u>
		<u>Etheostoma rubrum</u>	<u>Bayou darter</u>
		<u>Etheostoma scotti</u>	<u>Cherokee darter</u>
		<u>Etheostoma sp.</u>	<u>Bluemask (= jewel) darter</u>
		<u>Etheostoma susanae</u>	<u>Cumberland darter</u>
		<u>Etheostoma wapiti</u>	<u>Boulder darter</u>
		<u>Percina antesella</u>	<u>Amber darter</u>
		<u>Percina aurolineata</u>	<u>Goldline darter</u>
		<u>Percina jenkinsi</u>	<u>Conasauga logperch</u>
		<u>Percina pantherina</u>	<u>Leopard darter</u>
		<u>Percina tanasi</u>	<u>Snail darter</u>
<u>Scorpaeniformes</u>	<u>Cottidae</u>	<u>Cottus sp.</u>	<u>Grotto sculpin</u>
		<u>Cottus paulus (= pygmaeus)</u>	<u>Pygmy sculpin</u>
Siluriformes	<u>Clariidae</u>	All species	Air-breathing catfish
	<u>Ictaluridae</u>	<u>Noturus baileyi</u>	<u>Smoky madtom</u>
		<u>Noturus crypticus</u>	<u>Chucky madtom</u>
		<u>Noturus placidus</u>	<u>Neosho madtom</u>
		<u>Noturus stanauli</u>	<u>Pygmy madtom</u>
<u>Noturus trautmani</u>	<u>Scioto madtom</u>		
<u>Synbranchiformes</u>	<u>Synbranchidae</u>	<u>Monopterus albus</u>	<u>Swamp eel</u>
MAMMALS:			
Order	Family	Genus/Species	Common Name
Artiodactyla	Suidae	All Species	Pigs or Hogs*
	Cervidae	All Species	Deer*
Carnivora	Canidae	All Species	Wild Dogs,* Wolves, Coyotes or Coyote hybrids, Jackals and Foxes
	Ursidae	All Species	Bears*
	Procyonidae	All Species	Raccoons and* Relatives
	Mustelidae	All Species (except <i>Mustela putorius furo</i>)	Weasels, Badgers,* Skunks and Otters Ferret
	Viverridae	All Species	Civets, Genets,* Lingsangs, Mongooses, and Fossas

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	Herpestidae	All Species	Mongoose*
	Hyaenidae	All Species	Hyenas and Aardwolves*
	Felidae	All Species	Cats*
Chiroptera		All Species	Bats*
Lagomorpha	Leporidae	<u>Brachylagus idahoensis</u>	<u>Pygmy rabbit</u>
		Lepus europeaeus	European hare
		Oryctolagus cuniculus	European rabbit
		<u>Sylvilagus bachmani riparius</u>	<u>Riparian brush rabbit</u>
		<u>Sylvilagus palustris hefneri</u>	<u>Lower Keys marsh rabbit</u>
Rodentia		All species native to Africa	All species native to Africa
	<u>Dipodidae</u>	<u>Zapus hudsonius preblei</u>	<u>Preble's meadow jumping mouse</u>
	<u>Muridae</u>	<u>Microtus californicus scirpensis</u>	<u>Amargosa vole</u>
		<u>Microtus mexicanus hualpaiensis</u>	<u>Hualapai Mexican vole</u>
		<u>Microtus pennsylvanicus dukecampbelli</u>	<u>Florida salt marsh vole</u>
		<u>Neotoma floridana smalli</u>	<u>Key Largo woodrat</u>
		<u>Neotoma fuscipes riparia</u>	<u>Riparian (= San Joaquin Valley) woodrat</u>
		<u>Oryzomys palustris natator</u>	<u>Rice rat</u>
		<u>Peromyscus gossypinus allapaticola</u>	<u>Key Largo cotton mouse</u>
		<u>Peromyscus polionotus allophrys</u>	<u>Choctawhatchee beach mouse</u>
		<u>Peromyscus polionotus ammobates</u>	<u>Alabama beach mouse</u>
		<u>Peromyscus polionotus niveiventris</u>	<u>Southeastern beach mouse</u>
		<u>Peromyscus polionotus peninsularis</u>	<u>St. Andrew beach mouse</u>
		<u>Peromyscus polionotus phasma</u>	<u>Anastasia Island beach mouse</u>
		<u>Peromyscus polionotus trissyllepsis</u>	<u>Perdido Key beach mouse</u>
		<u>Reithrodontomys raviventris</u>	<u>Salt marsh harvest mouse</u>
		<u>Heteromyidae</u>	<u>Dipodomys heermanni morroensis</u>
	<u>Dipodomys ingens</u>		<u>Giant kangaroo rat</u>
	<u>Dipodomys merriami parvus</u>		<u>San Bernadino Merriam's kangaroo rat</u>
	<u>Dipodomys nitratoides exilis</u>		<u>Fresno kangaroo rat</u>
	<u>Dipodomys nitratoides nitratoides</u>		<u>Tipton kangaroo rat</u>
	<u>Dipodomys stephensi (including D. cascus)</u>		<u>Stephens' kangaroo rat</u>
	<u>Perognathus longimembris pacificus</u>		<u>Pacific pocket mouse</u>
<u>Sciuridae</u>	Cynomys spp.	Prairie dogs	

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		<u>Spermophilus brunneus brunneus</u>	<u>Northern Idaho ground squirrel</u>
		<u>Tamiasciurus hudsonicus grahamensis</u>	<u>Mount Graham red squirrel</u>
<u>Soricomorpha</u>	<u>Soricidae</u>	<u>Sorex ornatus relictus</u>	<u>Buena Vista Lake ornate shrew</u>
MOLLUSKS:			
Order	Family	Genus/Species	Common Name
Neotaenioglossa	Hydrobiidae	Potamopyrgus antipodarum	New Zealand mudsnail
Veneroida	Dreissenidae	Dreissena bugensis	Quagga mussel
		Dreissena polymorpha	Zebra mussel
REPTILES:			
Order	Family	Genus/Species	Common Name
Squamata <u>Crocodylia</u>	Alligatoridae	All species	Alligators, caimans*
	Colubridae	Boiga irregularis	Brown tree snake*
	Crocodylidae	All species	Crocodiles*
	Gavialidae	All species	Gavials*
<u>Squamata</u>	<u>Colubridae</u>	<u>Boiga irregularis</u>	<u>Brown tree snake*</u>
CRUSTACEANS:			
Order	Family	Genus/Species	Common Name
Decapoda	Cambaridae	<u>Cambarus aculabrum</u>	<u>Cave crayfish</u>
		<u>Cambarus zophonastes</u>	<u>Cave crayfish</u>
		Orconectes rusticus	Rusty crayfish
		<u>Orconectes shoupi</u>	<u>Nashville crayfish</u>
		<u>Pacifastacus fortis</u>	<u>Shasta crayfish</u>
		Procambarus sp.	Marbled crayfish
	Parastacidae	Cherax spp.	Australian crayfish
	Varunidea	Eriocheir sinensis	Chinese mitten crab

B. Temporary possession permit for certain animals. Notwithstanding the permitting requirements of subsection A, a person, company or corporation possessing any nonnative (exotic) animal, designated with an asterisk (*) in subsection A, prior to July 1, 1992, must declare such possession in writing to the department by January 1, 1993. This written declaration shall serve as a permit for possession only, is not transferable, and must be renewed every five years. This written declaration must include species name, common name, number of individuals, date or dates acquired, sex (if possible), estimated age, height or length, and other characteristics such as bands and band numbers, tattoos, registration numbers, coloration, and specific markings. Possession transfer will require a new permit according to the requirements of this subsection.

C. Exception for certain monk parakeets. A permit is not required for monk parakeets (quakers) that have been captive bred and are closed-banded with a seamless band.

D. Exception for parts or products. A permit is not required for parts or products of those nonnative (exotic) animals listed in subsection A that may be used for personal use, in the manufacture of products, or used in scientific research, provided that such parts or products be packaged outside the Commonwealth by any person, company, or corporation duly licensed by the state in which the parts originate. Such packages may be transported into the Commonwealth, consistent with other state laws and regulations, so long as the original package remains unbroken, unopened and intact until its point of destination is reached. Documentation concerning the type and cost of the animal parts ordered, the purpose and

date of the order, point and date of shipping, and date of receiving shall be kept by the person, business or institution ordering such nonnative (exotic) animal parts. Such documentation shall be open to inspection by a representative of the Department of Game and Inland Fisheries.

~~E. Exception for certain mammals. Nonnative (exotic) mammals listed in subsection A, except members of the Cervidae family, African rodents, and prairie dogs, that are imported or possessed by dealers, exhibitors, transporters, and researchers who are licensed or registered by the United States Department of Agriculture under the Animal Welfare Act (7 USC §§ 2131 et seq.) will be deemed to be permitted pursuant to this section, provided that those individuals wanting to import such animals notify the department 24 hours prior to importation with a list of animals to be imported, a schedule of dates and locations where those animals will be housed while in the Commonwealth, and a copy of the current license or licenses or registration or registrations from the U.S. Department of Agriculture, and further provided that such animals shall not be liberated within the Commonwealth.~~

~~F. E. Exception for prairie dogs. The effective date of listing of prairie dogs under subsection A of this section shall be January 1, 1998. Prairie dogs possessed in captivity in Virginia on December 31, 1997, may be maintained in captivity until the animals' deaths, but they may not be sold on or after January 1, 1998, without a permit.~~

~~G. F. Exception for snakehead fish. Anglers may legally harvest snakehead fish of the family Channidea, provided that they immediately kill such fish and that they notify the department, as soon as practicable, of such actions.~~

~~H. G. All other nonnative (exotic) animals. All other nonnative (exotic) animals not listed in subsection A of this section may be possessed, purchased, and sold; provided, that such animals shall be subject to all applicable local, state, and federal laws and regulations, including those that apply to threatened/endangered species, and further provided, that such animals shall not be liberated within the Commonwealth.~~

VA.R. Doc. No. R14-4039; Filed July 9, 2014, 3:05 a.m.

Final Regulation

Title of Regulation: **4VAC15-50. Game: Bear (amending 4VAC15-50-11, 4VAC15-50-71, 4VAC15-50-110, 4VAC15-50-120).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 1, 2014.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

In accordance with legislation enacted in the 2014 Session of the General Assembly, the amendments (i) incorporate hunting on Sundays into the various bear hunting and bear hound training seasons and (ii) allow the use of muzzleloading pistols to hunt bear during muzzleloading gun hunting season.

4VAC15-50-11. Open season; generally.

A. It shall be lawful to hunt bears within:

Location	Season
Accomack County	Closed
Albemarle County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Alleghany County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Amelia County	Monday nearest December 2 and for 5 consecutive hunting days following.
Amherst County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Appomattox County	Monday nearest December 2 and for 5 consecutive hunting days following.
Arlington County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Augusta County (North of US-250)	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Augusta County (South of US-250)	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Bath County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Bedford County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Bland County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Botetourt County	Fourth Monday in November through the first Saturday in January, both dates inclusive.

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Brunswick County	Monday nearest December 2 and for 5 consecutive hunting days following.	Dinwiddie County	Monday nearest December 2 and for 5 consecutive hunting days following.
Buchanan County	First Monday in December through the first Saturday in January, both dates inclusive.	Essex County	Monday nearest December 2 and for 5 consecutive hunting days following.
Buckingham County	Monday nearest December 2 and for 5 consecutive hunting days following.	Fairfax County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Campbell County	Monday nearest December 2 and for 5 consecutive hunting days following.	Fauquier County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Caroline County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Floyd County	First Monday in December and for 17 consecutive hunting <u>19</u> days following.
Carroll County	First Monday in December and for 17 consecutive hunting <u>19</u> days following.	Fluvanna County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Charles City County	Monday nearest December 2 and for 5 consecutive hunting days following.	Franklin County	First Monday in December and for 17 consecutive hunting <u>19</u> days following.
Charlotte County	Monday nearest December 2 and for 5 consecutive hunting days following.	Frederick County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Chesapeake (City of)	October 1 through the first Saturday in January, both dates inclusive.	Giles County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Chesterfield County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Gloucester County	Monday nearest December 2 and for 5 consecutive hunting days following.
Clarke County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Goochland County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Craig County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Grayson County	First Monday in December and for 17 consecutive hunting <u>19</u> days following.
Culpeper County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Greene County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Cumberland County	Monday nearest December 2 and for 5 consecutive hunting days following.	Greensville County	Monday nearest December 2 and for 5 consecutive hunting days following.
Dickenson County	First Monday in December through the first Saturday in January, both dates inclusive.	Halifax County	Monday nearest December 2 and for 5 consecutive hunting days following.

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Hanover County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Mathews County	Monday nearest December 2 and for 5 consecutive hunting days following.
Henrico County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Mecklenburg County	Monday nearest December 2 and for 5 consecutive hunting days following.
Henry County	First Monday in December and for 17 consecutive hunting <u>19</u> days following.	Middlesex County	Monday nearest December 2 and for 5 consecutive hunting days following.
Highland County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Montgomery County (southeast of I-81)	First Monday in December and for 17 consecutive hunting <u>19</u> days following.
Isle of Wight County	Monday nearest December 2 and for 5 consecutive hunting days following.	Montgomery County (northwest of I-81)	Fourth Monday in November through the first Saturday in January, both dates inclusive.
James City County	Monday nearest December 2 and for 5 consecutive hunting days following.	Nelson County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
King and Queen County	Monday nearest December 2 and for 5 consecutive hunting days following.	New Kent County	Monday nearest December 2 and for 5 consecutive hunting days following.
King George County	Monday nearest December 2 and for 5 consecutive hunting days following.	Northampton County	Closed
King William County	Monday nearest December 2 and for 5 consecutive hunting days following.	Northumberland County	Monday nearest December 2 and for 5 consecutive hunting days following.
Lancaster County	Monday nearest December 2 and for 5 consecutive hunting days following.	Nottoway County	Monday nearest December 2 and for 5 consecutive hunting days following.
Lee County	First Monday in December through the first Saturday in January, both dates inclusive.	Orange County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Loudoun County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Page County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Louisa County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Patrick County	First Monday in December and for 17 consecutive hunting <u>19</u> days following.
Lunenburg County	Monday nearest December 2 and for 5 consecutive hunting days following.	Pittsylvania County	Monday nearest December 2 and for 5 consecutive hunting days following.
Madison County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Powhatan County	Fourth Monday in November through the first Saturday in January, both dates inclusive.

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Prince Edward County	Monday nearest December 2 and for 5 consecutive hunting days following.	Smyth County (southeast of I-81)	First Monday in December and for 17 consecutive hunting <u>19</u> days following.
Prince George County	Monday nearest December 2 and for 5 consecutive hunting days following.	Smyth County (northwest of I-81)	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Prince William County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Southampton County	Monday nearest December 2 and for 5 consecutive hunting days following.
Pulaski County (southeast of I-81)	First Monday in December and for 17 consecutive hunting <u>19</u> days following.	Spotsylvania County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Pulaski County (northwest of I-81)	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Stafford County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Rappahannock County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Suffolk (City of)	October 1 through the first Saturday in January, both dates inclusive.
Richmond County	Monday nearest December 2 and for 5 consecutive hunting days following.	Surry County	Monday nearest December 2 and for 5 consecutive hunting days following.
Roanoke County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Sussex County	Monday nearest December 2 and for 5 consecutive hunting days following.
Rockbridge County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Tazewell County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Rockingham County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Virginia Beach (City of)	October 1 through the first Saturday in January, both dates inclusive.
Russell County (except on the Channels State Forest and Clinch Mountain WMA)	First Monday in December through the first Saturday in January, both dates inclusive.	Warren County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Russell County (on the Channels State Forest and Clinch Mountain WMA)	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Washington County (southeast of I-81)	First Monday in December and for 17 consecutive hunting <u>19</u> days following.
Scott County	First Monday in December through the first Saturday in January, both dates inclusive.	Washington County (northwest of I-81 and east of Route 19)	First Monday in December through the first Saturday in January, both dates inclusive.
Shenandoah County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Washington County (northwest of I-81 and west of Route 19)	First Monday in December and for 17 consecutive hunting <u>19</u> days following.
		Westmoreland County	Monday nearest December 2 and for 5 consecutive hunting days following.

Wise County	First Monday in December through the first Saturday in January, both dates inclusive.
Wythe County (southeast of I-81)	First Monday in December and for 17 consecutive hunting 19 days following.
Wythe County (northwest of I-81)	Fourth Monday in November through the first Saturday in January, both dates inclusive.
York County	Monday nearest December 2 and for 5 consecutive hunting days following.

B. Except as provided in the subsection A of this section, bears may be hunted from the Saturday prior to the fourth Monday in November through the first Saturday in January, both dates inclusive, within the incorporated limits of any city that allows bear hunting.

4VAC15-50-71. Muzzleloading gun hunting.

A. It shall be lawful to hunt bear during the special muzzleloading season with muzzleloading guns from the Saturday prior to the second Monday in November through the Friday prior to the third Monday in November, both dates inclusive, except in the cities of Chesapeake, Suffolk, and Virginia Beach.

B. It shall be unlawful to hunt bear with dogs during any special season for hunting with muzzleloading guns, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

C. A muzzleloading gun, for the purpose of this section, means a single shot weapon, ~~excluding muzzleloading pistols,~~ .45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent or smokeless powder).

D. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

4VAC15-50-110. Use of dogs in hunting bear.

A. It shall be unlawful to use dogs for the hunting of bear during the open season for hunting deer in the counties west of the Blue Ridge Mountains and in the counties of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, and Nelson (west of Route 151); and within the boundaries of the national forests, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

B. It shall be unlawful to use dogs for the hunting of bear during the first ~~12 hunting~~ 14 days of the open season for hunting deer in the counties of Greene and Madison, except

that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

C. It shall be unlawful to use dogs for the hunting of bear in the counties of Campbell (west of Norfolk Southern Railroad), Carroll (east of the New River), Fairfax, Floyd, Franklin, Grayson (east of the New River), Henry, Loudoun, Montgomery (south of Interstate 81), Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski (south of Interstate 81), Roanoke (south of Interstate 81), Wythe (southeast of the New River or that part bounded by Route 21 on the west, Interstate 81 on the north, the county line on the east, the New River on the southeast and Cripple Creek on the south); in the city of Lynchburg; and on Amelia, Chester F. Phelps, G. Richard Thompson, and Pettigrew wildlife management areas, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

4VAC15-50-120. Bear hound training season.

A. It shall be lawful to chase black bear with dogs, without capturing or taking, from the second Saturday in August through the last Saturday in September, both dates inclusive, in all counties and cities or in the portions in which bear hunting is permitted except in the counties of Accomack, Amelia, Appomattox, Brunswick, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesterfield, Clarke, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Gloucester, Goochland, Grayson, Greenville, Halifax, Hanover, Henrico, Henry, Isle of Wight, James City, King & Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Montgomery (south of Interstate 81), New Kent, Northampton, Northumberland, Nottoway, Orange, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski (south of Interstate 81), Richmond, Roanoke (south of Interstate 81), Smyth (south of Interstate 81), Southampton, Spotsylvania, Stafford, Surry, Sussex, Washington (south of Interstate 81), Westmoreland, Wythe (south of Interstate 81), and York, and in the cities of Hampton, Newport News and Norfolk.

B. It shall be lawful to chase black bear with dogs, without capturing or taking, from the Saturday prior to the third Monday in November and for ~~12 consecutive hunting~~ 14 days following, both dates inclusive, in the counties of Amelia, Appomattox, Buckingham, Brunswick, Campbell (east of the Norfolk Southern Railroad), Charles City, Charlotte, Cumberland, Essex, Gloucester, Greenville, Halifax, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lunenburg, Mathews, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Pittsylvania (east of the Norfolk Southern Railroad), Prince Edward, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York.

C. It shall be lawful to chase black bears with dogs, without capturing or taking, in the counties of Brunswick, Greenville, Lunenburg, and Mecklenburg from the first

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Saturday in September through the third Saturday in September, both dates inclusive.

D. It shall be unlawful to have in possession a firearm, bow, crossbow or any weapon capable of taking a black bear while participating in the bear hound training season. The meaning of "possession" for the purpose of this section shall include, but not be limited to, having a firearm, bow, crossbow or any weapon capable of taking a black bear in or on one's person, vehicle, or conveyance.

VA.R. Doc. No. R14-4040; Filed July 9, 2014, 3:15 a.m.

Final Regulation

Title of Regulation: 4VAC15-80. **Game:** Crow (amending 4VAC15-80-10).

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 1, 2014.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) remove Mondays and add Sundays as days on which it is legal to hunt crows during crow open season and (ii) adjust the ending day of the season so as to keep the total number of available crow hunting days constant.

4VAC15-80-10. Open season.

It shall be lawful to hunt crow on ~~Monday~~, Wednesday, Friday ~~and~~, Saturday, and Sunday of each week from the third Saturday in August through the third ~~Saturday~~ Friday in March, both dates inclusive.

VA.R. Doc. No. R14-4041; Filed July 9, 2014, 3:19 a.m.

Final Regulation

Title of Regulation: 4VAC15-90. **Game:** Deer (amending 4VAC15-90-10, 4VAC15-90-70, 4VAC15-90-80, 4VAC15-90-91, 4VAC15-90-260, 4VAC15-90-293).

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 1, 2014.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendments incorporate hunting on Sundays into the various deer hunting seasons and allow the use of muzzleloading pistols to hunt deer during muzzleloading gun hunting season, pursuant to legislation enacted in the 2014 Session of the General Assembly. The proposed amendments also correct inadvertent omissions from amendments adopted by the board in 2013 that (i) adjust

the days either-sex deer may be taken with muzzleloading guns in Shenandoah County, (ii) prohibit the importation of any cervid carcass or part, with certain exceptions, from an enclosure intended to confine deer or elk, and (iii) allow the importation of skulls or skull plates with or without antlers.

4VAC15-90-10. Open season; generally.

A. It shall be lawful to hunt deer in the following localities, including the cities and towns therein, during the following seasons, all dates inclusive.

Locality	Season
Accomack County	Saturday prior to the third Monday in November through the first Saturday in January
Albemarle County	Saturday prior to the third Monday in November through the first Saturday in January
Alleghany County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following
Amelia County	Saturday prior to the third Monday in November through the first Saturday in January
Amherst County (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River)	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following
Amherst County (east of Business U.S. 29, as defined above)	Saturday prior to the third Monday in November through the first Saturday in January
Appomattox County	Saturday prior to the third Monday in November through the first Saturday in January
Arlington County	Saturday prior to the third Monday in November through the first Saturday in January
Arlington County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Monday Sunday following the first Saturday in January through the last Saturday Sunday in March

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Augusta County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following	Chesterfield County	Saturday prior to the third Monday in November through the first Saturday in January
Bath County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following	Clarke County	Saturday prior to the third Monday in November through the first Saturday in January
Bedford County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following	Craig County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following
Bland County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following	Culpeper County (except Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November through the first Saturday in January
Botetourt County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following	Culpeper County (Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following
Brunswick County	Saturday prior to the third Monday in November through the first Saturday in January	Cumberland County	Saturday prior to the third Monday in November through the first Saturday in January
Buchanan County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following	Dickenson County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following
Buckingham County	Saturday prior to the third Monday in November through the first Saturday in January	Dinwiddie County	Saturday prior to the third Monday in November through the first Saturday in January
Campbell County	Saturday prior to the third Monday in November through the first Saturday in January	Essex County	Saturday prior to the third Monday in November through the first Saturday in January
Caroline County	Saturday prior to the third Monday in November through the first Saturday in January	Fairfax County	Saturday prior to the third Monday in November through the first Saturday in January
Carroll County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following	Fairfax County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Monday <u>Sunday</u> following the first Saturday in January through the last Saturday <u>Sunday</u> in March
Charles City County	Saturday prior to the third Monday in November through the first Saturday in January	Fauquier County (except Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November through the first Saturday in January
Charlotte County	Saturday prior to the third Monday in November through the first Saturday in January		
Chesapeake (City of)	October 1 through November 30		

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Fauquier County (Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November and for 12 <u>14</u> consecutive hunting days following	Henrico County	Saturday prior to the third Monday in November through the first Saturday in January
Floyd County	Saturday prior to the third Monday in November and for 24 <u>28</u> consecutive hunting days following	Henry County	Saturday prior to the third Monday in November and for 24 <u>28</u> consecutive hunting days following
Fluvanna County	Saturday prior to the third Monday in November through the first Saturday in January	Highland County	Saturday prior to the third Monday in November and for 12 <u>14</u> consecutive hunting days following
Franklin County	Saturday prior to the third Monday in November and for 24 <u>28</u> consecutive hunting days following	Isle of Wight County	Saturday prior to the third Monday in November through the first Saturday in January
Frederick County (non-national forest lands)	Saturday prior to the third Monday in November through the first Saturday in January	James City County	Saturday prior to the third Monday in November through the first Saturday in January
Frederick County (national forest lands)	Saturday prior to the third Monday in November and for 12 <u>14</u> consecutive hunting days following	King and Queen County	Saturday prior to the third Monday in November through the first Saturday in January
Giles County	Saturday prior to the third Monday in November and for 12 <u>14</u> consecutive hunting days following	King George County	Saturday prior to the third Monday in November through the first Saturday in January
Gloucester County	Saturday prior to the third Monday in November through the first Saturday in January	King William County	Saturday prior to the third Monday in November through the first Saturday in January
Goochland County	Saturday prior to the third Monday in November through the first Saturday in January	Lancaster County	Saturday prior to the third Monday in November through the first Saturday in January
Grayson County	Saturday prior to the third Monday in November and for 12 <u>14</u> consecutive hunting days following	Lee County	Saturday prior to the third Monday in November and for 12 <u>14</u> consecutive hunting days following
Greene County	Saturday prior to the third Monday in November through the first Saturday in January	Loudoun County	Saturday prior to the third Monday in November through the first Saturday in January
Greensville County	Saturday prior to the third Monday in November through the first Saturday in January	Loudoun County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Monday <u>Sunday</u> following the first Saturday in January through the last Saturday <u>Sunday</u> in March
Halifax County	Saturday prior to the third Monday in November through the first Saturday in January	Louisa County	Saturday prior to the third Monday in November through the first Saturday in January
Hanover County	Saturday prior to the third Monday in November through the first Saturday in January		

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Lunenburg County	Saturday prior to the third Monday in November through the first Saturday in January	Patrick County	Saturday prior to the third Monday in November and for 24 <u>28</u> consecutive hunting days following
Madison County	Saturday prior to the third Monday in November through the first Saturday in January	Pittsylvania County	Saturday prior to the third Monday in November through the first Saturday in January
Mathews County	Saturday prior to the third Monday in November through the first Saturday in January	Powhatan County	Saturday prior to the third Monday in November through the first Saturday in January
Mecklenburg County	Saturday prior to the third Monday in November through the first Saturday in January	Prince Edward County	Saturday prior to the third Monday in November through the first Saturday in January
Middlesex County	Saturday prior to the third Monday in November through the first Saturday in January	Prince George County	Saturday prior to the third Monday in November through the first Saturday in January
Montgomery County	Saturday prior to the third Monday in November and for 12 <u>14</u> consecutive hunting days following	Prince William County	Saturday prior to the third Monday in November through the first Saturday in January
Nelson County (west of Route 151)	Saturday prior to the third Monday in November and for 12 <u>14</u> consecutive hunting days following	Prince William County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Monday <u>Sunday</u> following the first Saturday in January through the last Saturday <u>Sunday</u> in March
Nelson County (east of Route 151)	Saturday prior to the third Monday in November through the first Saturday in January	Pulaski County (except on New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin)	Saturday prior to the third Monday in November and for 12 <u>14</u> consecutive hunting days following
New Kent County	Saturday prior to the third Monday in November through the first Saturday in January	Pulaski County (New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin)	Saturday prior to the second Monday in November through the first Saturday in January
Northampton County	Saturday prior to the third Monday in November through the first Saturday in January	Rappahannock County	Saturday prior to the third Monday in November through the first Saturday in January
Northumberland County	Saturday prior to the third Monday in November through the first Saturday in January	Richmond County	Saturday prior to the third Monday in November through the first Saturday in January
Nottoway County	Saturday prior to the third Monday in November through the first Saturday in January	Roanoke County	Saturday prior to the third Monday in November and for 12 <u>14</u> consecutive hunting days following
Orange County	Saturday prior to the third Monday in November through the first Saturday in January		
Page County	Saturday prior to the third Monday in November and for 12 <u>14</u> consecutive hunting days following		

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Rockbridge County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following	Tazewell County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following
Rockingham County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following	Virginia Beach (City of)	October 1 through November 30
Russell County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following	Warren County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following
Scott County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following	Washington County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following
Shenandoah County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following	Westmoreland County	Saturday prior to the third Monday in November through the first Saturday in January
Smyth County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following	Wise County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following
Southampton County	Saturday prior to the third Monday in November through the first Saturday in January	Wythe County	Saturday prior to the third Monday in November and for 12 14 consecutive hunting days following
Spotsylvania County	Saturday prior to the third Monday in November through the first Saturday in January	York County	Saturday prior to the third Monday in November through the first Saturday in January
Stafford County	Saturday prior to the third Monday in November through the first Saturday in January		
Suffolk (City of) (east of Dismal Swamp Line)	October 1 through November 30		
Suffolk (City of) (west of Dismal Swamp Line)	Saturday prior to the third Monday in November through the first Saturday in January		
Surry County	Saturday prior to the third Monday in November through the first Saturday in January		
Sussex County	Saturday prior to the third Monday in November through the first Saturday in January		

B. Except as provided in subsection A of this section, east of the Blue Ridge Mountains deer may be hunted from the Saturday prior to the third Monday in November through the first Saturday in January, both dates inclusive, within the incorporated limits of any city or town that allows deer hunting.

C. Except as provided in subsection A of this section, west of the Blue Ridge Mountains deer may be hunted from the Saturday prior to the third Monday in November and for ~~12~~ 14 consecutive ~~hunting~~ days following within the incorporated limits of any city or town that allows deer hunting.

4VAC15-90-70. Bow and arrow hunting.

A. It shall be lawful to hunt deer during the early special archery season with bow and arrow from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive.

B. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer during the late special archery season with bow and arrow from the ~~Monday~~ Sunday following the close of the general firearms season on deer through the first Saturday in January, both dates inclusive, in

all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County) and in the counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Franklin, Henry, Nelson (west of Route 151), Patrick and on the Chester F. Phelps Wildlife Management Area and on national forest lands in Frederick County and from December 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

C. Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section (except on PALS (Public Access Lands) in Dickenson County where it shall be unlawful to take antlerless deer during the special archery seasons provided for in subsections A and B of this section).

D. It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-90-80, may be in the possession of a properly licensed muzzleloading gun hunter when and where a special archery deer season overlaps a special muzzleloading deer season.

E. Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

F. It shall be unlawful to use dogs when hunting with bow and arrow during any special archery season, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

G. For the purpose of the application of subsections A through I to this section, the phrase "bow and arrow" includes crossbows.

H. It shall be lawful to hunt antlerless deer during the special urban archery season with bow and arrow from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, and from the ~~Monday~~ Sunday following the first Saturday in January through the last ~~Saturday~~ Sunday in March, both dates inclusive, within the incorporated limits of any city or town in the Commonwealth (except on national forest and department-owned lands) and counties with a human population density of 300 persons per square mile or more (except on national forest and department-owned lands), provided that its governing body submits by certified letter to the department prior to April 1, its intent to participate in the special urban archery season. Any city, town, or county no longer participating in this season shall submit by certified letter to the department prior to April 1 notice of its intent not to participate in the special urban archery season.

I. It shall be lawful to hunt antlerless deer during the special antlerless archery season with a bow and arrow from the Monday following the last ~~Saturday~~ Sunday in March through the last ~~Saturday~~ Sunday in April, both dates inclusive, in Arlington, Fairfax, Loudoun, and Prince William counties (including the cities and towns within).

4VAC15-90-80. Muzzleloading gun hunting.

A. It shall be lawful to hunt deer during the early special muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in all cities, towns, and counties where deer hunting with a rifle or muzzleloading gun is permitted, except in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

B. It shall be lawful to hunt deer during the late special muzzleloading season with muzzleloading guns starting ~~18~~ 21 consecutive ~~hunting~~ days immediately prior to and ~~inclusive of~~ on the first Saturday in January, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County) and on non-national forest lands in Frederick County), and east of the Blue Ridge Mountains in the counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Franklin, Henry, Nelson (west of Route 151), Patrick and on national forest lands in Frederick County and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

C. Deer of either sex may be taken during the entire early special muzzleloading season east of the Blue Ridge Mountains unless otherwise noted below:

- Deer of either sex may be taken on the second Saturday only of the early special muzzleloading season on state forest lands, state park lands (except Occoneechee State Park), department-owned lands and Philpott Reservoir.
- Antlered bucks only—no either sex deer hunting days during the early special muzzleloading season on national forest lands in Amherst, Bedford, and Nelson counties.

D. Deer of either sex may be taken on the second Saturday only during the early special muzzleloading season west of the Blue Ridge Mountains unless otherwise noted below:

- Deer of either sex may be taken during the entire early special muzzleloading season in Clarke and Floyd counties and on private lands in Carroll, Frederick, Grayson, Montgomery, Roanoke, Shenandoah, and Warren counties.
- Antlered bucks only—no either sex deer hunting days during the early special muzzleloading season in Buchanan, Dickenson, Lee, Russell, Smyth, Tazewell, Washington, and Wise counties and on national forest lands in Alleghany, Botetourt, Frederick, Grayson, Page, Rockingham, Scott, Shenandoah, Warren, and on national

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forest and department-owned lands in Augusta, Bath, Highland, and Rockbridge counties and on Grayson Highlands State Park and on private lands west of Routes 613 and 731 in Rockingham County.

E. Deer of either sex may be taken during the last six days of the late special muzzleloading season unless otherwise listed below:

- Deer of either sex may be taken full season during the entire late special muzzleloading season in the counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River, except on national forest lands), Bedford (except on national forest lands), Floyd, Franklin, Henry, Nelson (west of Route 151, except on national forest lands), and Patrick and on private lands in Carroll, Grayson, Montgomery, Roanoke, Shenandoah, and Warren counties and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

- Deer of either sex may be taken the last day only during the late special muzzleloading season in Alleghany, Bath, Dickenson (north of Route 83), Highland, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wise counties and on national forest lands in Amherst, Bedford, Botetourt, Frederick, Grayson, Nelson, Page, Rockingham, Shenandoah, and Warren counties, and on national forest and department-owned lands in Augusta and Rockbridge counties and on private lands west of Routes 613 and 731 in Rockingham County and Grayson Highlands State Park.

- Antlered bucks only—no either-sex deer hunting days during the late special muzzleloading season in Buchanan and Dickenson (south of Route 83).

F. Deer of either sex may be taken full season during the special muzzleloading seasons within the incorporated limits of any city or town in the Commonwealth that allows deer hunting except in the counties of Buchanan, Dickenson, and Wise.

G. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

H. A muzzleloading gun, for the purpose of this section, means a single shot weapon, ~~excluding muzzleloading pistols~~, .45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent or smokeless powder).

I. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

4VAC15-90-91. General firearms season either-sex deer hunting days.

A. During the general firearms deer season, deer of either sex may be taken within:

Accomack County: the second, third, and fourth Saturdays and the last ~~24 hunting~~ 27 days.

Albemarle County: full season.

Alleghany County: the second Saturday and the last ~~hunting~~ day.

-National forest lands: the last ~~hunting~~ day.

Amelia County: the second and third Saturdays and the last ~~12 hunting~~ 13 days.

-Amelia WMA: the second and third Saturdays and the last six ~~hunting~~ days.

Amherst County (east of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): the second, third, and fourth Saturdays and the last ~~24 hunting~~ 27 days.

Amherst County (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): full season.

-National forest lands: the last ~~hunting~~ day.

Appomattox County: the second and third Saturdays and the last ~~12 hunting~~ 13 days.

-Appomattox-Buckingham State Forest: the second and third Saturdays.

-Featherfin WMA: the second, third, and fourth Saturdays and the last ~~24 hunting~~ 27 days.

Arlington County: full season.

Augusta County: the second Saturday and the last six ~~hunting~~ days.

-National forest and department-owned lands: the last ~~hunting~~ day.

Bath County: the second Saturday and the last ~~hunting~~ day.

-National forest and department-owned lands: the last ~~hunting~~ day.

Bedford County: full season.

-National forest lands: the last ~~hunting~~ day.

Bland County: the second Saturday and the last two ~~hunting~~ days.

-National forest lands: the second Saturday and the last ~~hunting~~ day.

Botetourt County: full season.

-National forest lands: the last ~~hunting~~ day.

Brunswick County: the second and third Saturdays and the last ~~12 hunting~~ 13 days.

Buchanan County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Buckingham County: the second and third Saturdays and the last ~~12~~ 13 hunting days.

-Horsepen Lake WMA: the second and third Saturdays and the last six ~~hunting~~ days.

-Appomattox-Buckingham State Forest: the second and third Saturdays.

-Featherfin WMA: the second, third, and fourth Saturdays and the last ~~24~~ 27 hunting days.

Campbell County: the second, third, and fourth Saturdays and the last ~~24~~ 27 hunting days.

Caroline County: the second, third, and fourth Saturdays and the last ~~24~~ 27 hunting days.

-Mattaponi WMA: the second and third Saturdays and the last six ~~hunting~~ days.

Carroll County: full season.

-National forest and department-owned lands: the second Saturday and the last ~~hunting~~ day.

Charles City County: full season.

-Chickahominy WMA: the second Saturday after Thanksgiving.

Charlotte County: the second and third Saturdays and the last ~~12~~ 13 hunting days.

Chesapeake (City of): full season.

Chesterfield County: the second and third Saturdays and the last ~~12~~ 13 hunting days.

Clarke County: full season.

Craig County: full season.

-National forest lands: the second Saturday and the last ~~hunting~~ day.

Culpeper County: full season.

-Chester F. Phelps WMA: the second Saturday and the last ~~hunting~~ day.

Cumberland County: the second and third Saturdays and the last ~~12~~ 13 hunting days.

-Cumberland State Forest: the second and third Saturdays.

Dickenson County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Dinwiddie County: the second and third Saturdays and the last ~~12~~ 13 hunting days.

Essex County: the second, third, and fourth Saturdays and the last ~~24~~ 27 hunting days.

Fairfax County: full season (restricted to certain parcels of land by special permit).

Fauquier County: full season.

-G. Richard Thompson WMA: the second Saturday and the last ~~hunting~~ day.

-Chester F. Phelps WMA: the second Saturday and the last ~~hunting~~ day.

Floyd County: full season.

Fluvanna County: second and third Saturdays and the last ~~12~~ 13 hunting days.

Franklin County: full season.

-Philpott Reservoir: the second Saturday and the last six ~~hunting~~ days.

-Turkeycock Mountain WMA: the second Saturday and the last six ~~hunting~~ days.

Frederick County: full season.

-National forest lands: the last ~~hunting~~ day.

Giles County: full season.

-National forest lands: the second Saturday and the last ~~hunting~~ day.

Gloucester County: the second, third, and fourth Saturdays and the last ~~24~~ 27 hunting days.

Goochland County: the second, third, and fourth Saturdays and the last ~~24~~ 27 hunting days.

Grayson County: full season.

-National forest lands and Grayson Highlands State Park: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Greene County: full season.

Greensville County: full season.

Halifax County: full season.

Hanover County: full season.

Henrico County: full season.

Henry County: the second and third Saturdays and the last ~~12~~ 13 hunting days.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six ~~hunting~~ days.

-Turkeycock Mountain WMA: the second Saturday and the last six ~~hunting~~ days.

Highland County: the second Saturday and the last ~~hunting~~ day.

-National forest and department-owned lands: the last ~~hunting~~ day.

Isle of Wight County: full season.

-Ragged Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

James City County: full season.

King and Queen County: the second, third, and fourth Saturdays and the last ~~24~~ 27 hunting days.

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King George County: the second, third, and fourth Saturdays and the last ~~24 hunting~~ 27 days.

King William County: the second, third, and fourth Saturdays and the last ~~24 hunting~~ 27 days.

Lancaster County: full season.

Lee County: the second Saturday and the last two ~~hunting~~ days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Loudoun County: full season.

Louisa County: the second, third, and fourth Saturdays and the last ~~24 hunting~~ 27 days.

Lunenburg County: the second and third Saturdays and the last ~~12 hunting~~ 13 days.

Madison County: full season.

-Rapidan WMA: the second, third, and fourth Saturdays and the last ~~24 hunting~~ 27 days.

Mathews County: the second, third, and fourth Saturdays and last ~~24 hunting~~ 27 days.

Mecklenburg County: the second and third Saturdays and the last ~~12 hunting~~ 13 days.

-Dick Cross WMA: the second and third Saturdays and the last six ~~hunting~~ days.

Middlesex County: the second, third, and fourth Saturdays and last ~~24 hunting~~ 27 days.

Montgomery County: full season.

-National forest lands: the second Saturday and the last ~~hunting~~ day.

Nelson County (east of Route 151): the second, third, and fourth Saturdays and the last ~~24 hunting~~ 27 days.

-James River WMA: the second Saturday and the last six ~~hunting~~ days.

Nelson County (west of Route 151): full season.

-National forest lands: the last ~~hunting~~ day.

New Kent County: full season.

Northampton County: the second, third, and fourth Saturdays and the last ~~24 hunting~~ 27 days.

Northumberland County: full season.

Nottoway County: the second and third Saturdays and the last ~~12 hunting~~ 13 days.

Orange County: full season.

Page County: the second Saturday and the last two ~~hunting~~ days.

-National forest lands: the last ~~hunting~~ day.

Patrick County: the second and third Saturdays and the last ~~12 hunting~~ 13 days.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six ~~hunting~~ days.

Pittsylvania County: the second, third, and fourth Saturdays and the last ~~24 hunting~~ 27 days.

-White Oak Mountain WMA: the second Saturday and the last ~~hunting~~ day.

Powhatan County: the second and third Saturdays and the last ~~12 hunting~~ 13 days.

-Powhatan WMA: the second and third Saturdays and the last six ~~hunting~~ days.

Prince Edward County: the second and third Saturdays and the last ~~12 hunting~~ 13 days.

-Briery Creek WMA: the second and third Saturdays and the last six ~~hunting~~ days.

-Featherfin WMA: the second, third, and fourth Saturdays and the last ~~24 hunting~~ 27 days.

-Prince Edward State Forest: the second and third Saturdays.

Prince George County: full season.

Prince William County: full season.

Pulaski County: full season.

-National forest lands: the second Saturday and the last ~~hunting~~ day.

Rappahannock County: full season.

Richmond County: full season.

Roanoke County: full season.

-National forest and department-owned lands: the second Saturday and the last ~~hunting~~ day.

Rockbridge County: the second Saturday and the last two ~~hunting~~ days.

-National forest and department-owned lands: the last ~~hunting~~ day.

Rockingham County: the second Saturday and the last six ~~hunting~~ days.

-National forest lands and private lands west of Routes 613 and 731: the last ~~hunting~~ day.

Russell County: the second Saturday and the last two ~~hunting~~ days.

-Clinch Mountain WMA, Hidden Valley WMA, and the Channels State Forest: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Scott County: the second Saturday and the last six ~~hunting~~ days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Shenandoah County: full season.

-National forest lands: the last ~~hunting~~ day.

Smyth County: the second Saturday and the last six ~~hunting~~ days.

-National forest lands, Clinch Mountain WMA, and Hungry Mother State Park: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Southampton County: full season.

Spotsylvania County: the second, third, and fourth Saturdays and the last ~~24 hunting~~ 27 days.

Stafford County: full season.

Suffolk (City of): full season.

Surry County: full season.

-Carlisle Tract of the Hog Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Sussex County: full season.

Tazewell County: the second Saturday and the last two ~~hunting~~ days.

-National forest lands, ~~and~~ Clinch Mountain WMA, ~~and~~ Hidden Valley WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Virginia Beach (City of): full season.

Warren County: full season.

-National forest lands: the last ~~hunting~~ day.

Washington County: the second Saturday and the last six ~~hunting~~ days.

-National forest lands, Clinch Mountain WMA, Hidden Valley WMA, and the Channels State Forest: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Westmoreland County: full season.

Wise County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Wythe County: full season.

-National forest lands and Big Survey WMA: the second Saturday and the last ~~hunting~~ day.

York County: full season.

B. Except as provided in the subsection A of this section, deer of either sex may be taken full season during the general firearms deer season within the incorporated limits of any city or town, state park, national wildlife refuge, or military installation that allows deer hunting.

4VAC15-90-260. Hunting with dogs prohibited in certain counties and areas.

A. Generally. It shall be unlawful to hunt deer with dogs in the counties of Amherst (west of Business U.S. 29 from the

James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Campbell (west of Norfolk Southern Railroad, and in the City of Lynchburg), Fairfax, Franklin, Henry, Loudoun, Nelson (west of Route 151), Northampton, Patrick and Pittsylvania (west of Norfolk Southern Railroad); and on the Amelia, Chester F. Phelps, G. Richard Thompson and Pettigrew Wildlife Management Areas, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

B. Special provision for Greene and Madison counties. It shall be unlawful to hunt deer with dogs during the first ~~12 hunting~~ 14 days in the counties of Greene and Madison, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

4VAC15-90-293. Chronic Wasting Disease deer carcass movement restrictions.

A. For the purposes of this section and in 4VAC15-40-285 and 4VAC15-90-294:

"Cervid" means any member of the deer family Cervidae, including but not limited to white-tailed deer, fallow deer, sika deer, elk, and reindeer.

B. No person shall import or possess any carcass or part of a carcass of any member of the family Cervidae (deer) originating from an enclosure intended to confine deer or elk or from any area designated by the department as a carcass-restriction zone in or adjacent to a state or Canadian province in which Chronic Wasting Disease has been found in free-ranging or captive deer, except that the following carcass parts may be imported and possessed:

1. Boned-out meat that is cut and wrapped;
2. Quarters or other portions of meat with no part of the spinal column or skull attached;
3. Hides or capes with no skull attached;
4. Clean (no meat or tissue attached) skulls or skull plates with or without antlers attached;
5. Antlers (with no meat or tissue attached);
6. Upper canine teeth (buglers, whistlers, or ivories); and
7. Finished taxidermy products.

A legible label shall be affixed to packages or containers containing the allowed carcass parts bearing the following information: the species of animal, the state or province from where the animal originated, and the name and address of the person who killed or owned the animal.

C. Any person who imports into Virginia any deer carcass or parts described in subsection A of this section and is notified that the animal has tested positive for Chronic Wasting Disease must report the test results to the department within 72 hours of receiving the notification. In order to facilitate the proper disposal of any infected material, the department may take into possession any imported carcass or carcass part of

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an animal if the animal has tested positive for Chronic Wasting Disease.

D. No person shall transport any carcass or part of a carcass of any cervid out of any area designated by the department as a disease containment area, except that the carcass parts enumerated in subsection B of this section may be transported, and carcasses or parts may be transported directly to locations designated by the department, provided that such carcasses or parts are transported without unnecessary delay and secured within a vehicle or vehicles during transit. Provisions of this section shall not apply to employees of the department or another government agency working in an official disease investigation capacity.

VA.R. Doc. No. R14-4042; Filed July 9, 2014, 3:23 a.m.

Final Regulation

Title of Regulation: **4VAC15-240. Game: Turkey (amending 4VAC15-240-10, 4VAC15-240-20, 4VAC15-240-31, 4VAC15-240-40).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 1, 2014.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendments incorporate hunting on Sundays into the turkey hunting seasons pursuant to legislation enacted in the 2014 Session of the General Assembly.

4VAC15-240-10. Open season; generally.

Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to hunt turkeys from the Saturday prior to the last Monday in October and for ~~11 consecutive hunting~~ 13 days following; on Thanksgiving Day; ~~and~~ on the Monday nearest December 2 through the last Saturday in December, both dates inclusive; and on the second Saturday in January and for ~~12 consecutive hunting~~ 14 days following.

4VAC15-240-20. Open season; certain counties and areas; Saturday prior to the last Monday in October and for ~~11 hunting~~ 13 days following, and on Thanksgiving Day.

It shall be lawful to hunt turkeys on the Saturday prior to the last Monday in October and for ~~11 consecutive hunting~~ 13 days following, and on Thanksgiving Day in the counties of Albemarle, Alleghany, Augusta, Bath, Greene, Highland, Madison, Page, Orange, Rockingham, and Warren.

4VAC15-240-31. Open season; certain counties and areas; Saturday prior to the last Monday in October and for ~~11 hunting~~ 13 days following, on Thanksgiving Day, and on the Monday closest to December 2 and for ~~11 hunting~~ 12 days following.

It shall be lawful to hunt turkeys on the Saturday prior to the last Monday in October and for ~~11 consecutive hunting~~ 13 days following, on Thanksgiving Day, and on the Monday closest to December 2 and for ~~11 hunting~~ 12 days following in the counties of Accomack, Buchanan, Charles City, Gloucester, Isle of Wight, James City, King George, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, York (except on Camp Peary), and the City of Suffolk.

4VAC15-240-40. Open season; spring season for bearded turkeys.

A. Except as otherwise provided in this section, it shall be lawful to hunt bearded turkeys from the second Saturday in April and for ~~30 consecutive hunting~~ 35 days following, both dates inclusive, from 1/2 hour before sunrise to 12:00 noon prevailing time during the first ~~19 hunting~~ 23 days and from 1/2 hour before sunrise to sunset during the last ~~12 hunting~~ 13 days of the spring season.

B. Turkey hunters 15 years of age and ~~under~~ younger and holders of an apprentice hunting license may hunt on the first Saturday in April from 1/2 hour before sunrise to sunset, when in compliance with applicable license requirements and when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or an adult ~~that~~ who is exempt from purchasing a hunting license. Adult hunters accompanying youth hunters or apprentice license holders on this day may assist with calling but they shall not carry or discharge weapons.

C. Bearded turkeys may be hunted by calling.

D. It shall be unlawful to use dogs or organized drives for the purpose of hunting.

E. It shall be unlawful to use or have in possession any shot larger than number 2 fine shot when hunting turkeys with a shotgun.

VA.R. Doc. No. R14-4043; Filed July 9, 2014, 3:26 a.m.

MARINE RESOURCES COMMISSION

<p><u>REGISTRAR'S NOTICE:</u> The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.</p>
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Final Regulation

Title of Regulation: **4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-30, 4VAC20-270-40, 4VAC20-270-51, 4VAC20-270-55).**

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

Effective Date: July 1, 2014.

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

Summary:

The amendments (i) establish lawful seasons for the commercial harvest of crabs by crab pot as March 17 through November 30 and lawful seasons for the commercial harvest of crabs by all other commercial gear as March 17, 2014, through September 15, 2014, and May 1, 2015, through November 30, 2015; (ii) make it unlawful to place, set, fish, or leave any hard crab pot in any tidal waters of Virginia from December 1, 2014, through March 16, 2015, and to place, set, fish, or leave any lawful commercial gear used to harvest crabs, except any hard crab pot, in any tidal waters of Virginia from September 16, 2014, through April 30, 2015; (iii) establish bushel and seasons limits by crab pot license category for July 5, 2014, through November 15, 2014, and April 1, 2015, through July 4, 2015; (iv) establish bushel and seasons limits by crab pot license category for November 16, 2014, through November 30, 2014, and March 17, 2015, through March 31, 2015; (v) establish that from July 16 through November 30, it is unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs per bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/2 inches across the shell from tip to tip of the longest spikes; and (vi) establish that from July 16 through November 30, it shall be unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs per bushel, or 5.0% of peeler crabs in any other container, that are harvested from waters on the ocean side of Accomack and Northampton counties and measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes.

4VAC20-270-30. Daily time limits.

A. It shall be unlawful for any person licensed to catch and sell crabs taken by crab pot or peeler pot to take and harvest crabs from any crab pot or peeler pot, or to retrieve, bait, or set any crab pot or peeler pot, except during the lawful daily time periods described in subsections A, B, C, and D of this section. The lawful daily time periods for the commercial harvesting of crabs by crab pot or peeler pot shall be from 6 a.m. to 2 p.m. ~~from March 17 through April 30 in 2013 and 2014, September 1 through December 15, 2013, and September 1 through November 30, 2014~~ during the lawful seasons, as described in 4VAC20-270-40 A, except as described in subsections B, C, and D of this section. The lawful daily time periods for the commercial harvesting of crabs by crab pot or peeler pot shall be from 5 a.m. to 1 p.m. during the months of May, June, July, and August ~~in 2013~~

~~and 2014~~, as described in 4VAC20-270-40 A, except as specified in subsections B, C, and D of this section. Crab pots or peeler pots already on board a boat at the end of the lawful daily time period, as defined in subsections A, B, and C of this section, may be set immediately following the end of lawful daily time period to one hour after the lawful daily time period ends.

B. Any licensed crab pot or peeler pot fisherman who provides an opinion and supporting documentation from an attending physician to the commissioner of an existing medical condition that prevents him from adhering to the daily time limit established in subsection A of this section may be permitted by the commissioner or his designee to take and harvest crabs from his crab pot or peeler pot, or to retrieve, bait, or set his crab pot or peeler pot during an alternate eight-hour daily time limit. That alternative eight-hour daily time limit will be prescribed by the commissioner or his designee in accordance with the medical condition that forms a basis for the exception to the daily time limit as described in subsection A of this section.

Nothing in this regulation shall prohibit any licensed crab pot or peeler pot fisherman, who has been granted an exception to the eight-hour work schedule, on a medical basis, from using another licensed crab pot or peeler pot fisherman as a mate; provided, however, during the designated alternate work hours, only the crab pots or peeler pots of the fisherman receiving the exception shall be fished. Further, it shall be unlawful for the licensed crab fisherman, who has been granted an exception, or his mate, who is a licensed crab pot or peeler pot fisherman, to fish, set, retrieve, or bait, during the alternate work hours, any crab pot or peeler pot that is not owned and licensed by the fisherman granted the exception.

C. Any licensed crab pot or peeler pot fisherman who requests and obtains an alternate eight-hour daily time limit permit shall be authorized to take and harvest crabs from his crab pot or peeler pot or to retrieve, bait, or set his crab pot or peeler pot one hour earlier than described in subsection A of this section, only for the months of June, July, August, and September. During the months of March, April, May, October, and November, ~~and from December 1 through December 15, 2013~~, the lawful daily time period described in subsection A of this section applies to any crab pot or peeler pot licensee. The alternate lawful daily time periods for the commercial harvesting of crabs by crab pot or peeler pot shall be from 4 a.m. to 12 noon from June 1 through August 31 and from 5 a.m. to 1 p.m. from September 1 through September 30. Individuals must apply for this permit on an annual basis and shall adhere to the alternate daily time limit from the day the permit is issued through September 30, as well as subdivisions 1, 2, and 3 of this subsection.

1. It shall be unlawful for two or more licensed crab pot or peeler pot fishermen, or their agents, to crab aboard the

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same vessel if their authorized eight-hour daily time limits are not identical.

2. After January 1, 2012, requests for an alternate eight-hour time limit permit shall be submitted to the Marine Resources Commission annually and prior to May 15. Requests submitted on or after May 15 will not be considered.

3. Once any legal crab pot or peeler pot licensee obtains an alternate eight-hour daily time limit permit, that permittee shall be legally bound by the alternate eight-hour daily time limit as described in this subsection.

D. The lawful daily time periods for the commercial harvest of crabs by crab pot or peeler pot may be rescinded by the Commissioner of Marine Resources when he determines that a pending weather event is sufficient cause for the removal of crab pots from the tidal waters of the Commonwealth.

4VAC20-270-40. Season limits.

A. ~~The In 2014 and 2015, the~~ lawful seasons for the commercial harvest of ~~male~~ crabs by crab pot shall be March 17 through December 15, 2013, and March 17 through November 30, 2014. ~~The For all other lawful commercial gear used to harvest crabs, as described in 4VAC20-1040, the~~ lawful seasons for the harvest of ~~female~~ crabs shall be March 17 through December 15, 2013, and March 17 through November 30, 2014 September 15 in 2014 and May 1 through November 30 in 2015.

B. It shall be unlawful for any person to harvest crabs or to possess crabs on board a vessel, except during the lawful season, as described in subsection A of this section.

C. It shall be unlawful for any person knowingly to place, set, fish or leave any hard crab pot ~~or peeler crab pot~~ in any tidal waters of Virginia from December 16, 2013 1, 2014, through March 16, 2014 2015. It shall be unlawful for any person knowingly to place, set, fish, or leave any lawful commercial gear used to harvest crabs, except any hard crab pot, in any tidal waters of Virginia from September 16, 2014, through April 30, 2015.

D. It shall be unlawful for any person knowingly to place, set, fish or leave any fish pot in any tidal waters from March 11 through March 16, 2014, except as provided in subdivisions 1 and 2 of this subsection.

1. It shall be lawful for any person to place, set, or fish any fish pot in those Virginia waters located upriver of the following boundary lines:

a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.

b. In the York River the boundary lines shall be the Route 33 bridges at West Point.

c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.

d. In the Potomac River the boundary line shall be the Route 301 bridge that extends from Newberg, Maryland to Dahlgren, Virginia.

2. This subsection shall not apply to lawful eel pots as described in 4VAC20-500-50.

4VAC20-270-51. Daily commercial harvester, vessel, and harvest and possession limits.

A. Any barrel used by a harvester to contain or possess any amount of crabs will be equivalent in volume to no more than 3 bushels of crabs.

~~B. From March 16, 2013, through November 30, 2013, any Commercial Fisherman Registration Licensee legally licensed for any crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits, for any of the following crab pot license categories:~~

~~1. 27 bushels, or 9 barrels, of crabs, if licensed for up to 85 crab pots.~~

~~2. 32 bushels, or 10 barrels and 2 bushels, of crabs, if licensed for up to 127 crab pots.~~

~~3. 38 bushels, or 12 barrels and 2 bushels, of crabs, if licensed for up to 170 crab pots.~~

~~4. 45 bushels, or 15 barrels, of crabs, if licensed for up to 255 crab pots.~~

~~5. 55 bushels, or 18 barrels and 1 bushel, of crabs, if licensed for up to 425 crab pots.~~

~~C. B. From December 1 through December 15, 2013, and March 17 July 5, 2014, through November 30, 2014 November 15, 2014, and April 1, 2015, through July 4, 2015, any Commercial Fisherman Registration Licensee legally licensed for any crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits, for any of the following crab pot license categories:~~

~~1. 46 10 bushels, or 5 3 barrels and 1 bushel, of crabs, if licensed for up to 85 crab pots.~~

~~2. 24 14 bushels, or 7 4 barrels and 2 bushels, of crabs, if licensed for up to 127 crab pots.~~

~~3. 27 18 bushels, or 9 6 barrels, of crabs, if licensed for up to 170 crab pots.~~

~~4. 43 29 bushels, or 14 9 barrels and 1 bushel 2 bushels, of crabs, if licensed for up to 255 crab pots.~~

~~5. 55 47 bushels, or 18 15 barrels and 1 bushel 2 bushels, of crabs, if licensed for up to 425 crab pots.~~

~~C. From November 16, 2014, through November 30, 2014, and March 17, 2015, through March 31, 2015, any Commercial Fisherman Registration Licensee legally licensed for any crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits, for any of the following crab pot license categories:~~

1. 8 bushels, or 2 barrels and 2 bushels, of crabs, if licensed for up to 85 crab pots.

2. 10 bushels, or 3 barrels and 1 bushel, of crabs, if licensed for up to 127 crab pots.

3. 13 bushels, or 4 barrels and 1 bushel, of crabs, if licensed for up to 170 crab pots.

4. 21 bushels, or 7 barrels of crabs, if licensed for up to 255 crab pots.

5. 27 bushels, or 9 barrels of crabs, if licensed for up to 425 crab pots.

D. When a single harvester or multiple harvesters are on board any vessel, that vessel's daily harvest and possession limit shall be equal to only one daily harvest and possession limit, as described in subsections B and C of this section, and that daily limit shall correspond to the highest harvest and possession limit of only one licensee on board that vessel.

E. When transporting or selling one or more legal crab pot licensee's crab harvest in bushels or barrels, any agent shall possess either the crab pot license of that one or more crab pot licensees or a bill of lading indicating each crab pot licensee's name, address, Commercial Fisherman Registration License number, date, and amount of bushels or barrels of crabs to be sold.

F. If any police officer finds crabs in excess of any lawful daily bushel, barrel, or vessel limit, as described in this section, that excess quantity of crabs shall be returned immediately to the water by the licensee or licensees who possess that excess over lawful daily harvest or possession limit. The refusal to return crabs, in excess of any lawful daily harvest or possession limit, to the water shall constitute a separate violation of this chapter.

4VAC20-270-55. Minimum size limits.

A. From March 16 through July 15, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes. From ~~July 16 through December 15, 2013, and~~ July 16 through November 30, 2014, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/2 inches across the shell from tip to tip of the longest spikes, except as described in subsections B and C of this section.

B. From ~~July 16 through December 15, 2013, and~~ July 16 through November 30, 2014, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that are harvested from waters on the ocean side of Accomack and Northampton counties and measure less than 3-1/4 inches across the shell

from tip to tip of the longest spikes, except as described in subsection C of this section.

C. In the enforcement of these peeler crab minimum size limits aboard a vessel, the marine police officer shall select a single container of peeler crabs of his choosing to determine if the contents of that container violate the minimum size and tolerance described in this section. If the officer determines the contents of the container are in violation, then the officer shall return all peeler crabs on board the vessel to the water alive.

D. It shall be unlawful for any person to take, catch, harvest, possess, sell or offer for sale, or to destroy in any manner, any soft crab that measures less than 3-1/2 inches across the shell from tip to tip of the longest spikes.

VA.R. Doc. No. R14-4078; Filed June 27, 2014, 2:30 p.m.

Final Regulation

Title of Regulation: **4VAC20-910. Pertaining to Scup (Porgy) (amending 4VAC20-910-45).**

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

Effective Date: July 1, 2014.

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

Summary:

The amendments lower the recreational possession limit for scup to 30 fish per person.

4VAC20-910-45. Possession limits and harvest quotas.

A. During the period January 1 through April 30 of each year, it shall be unlawful for any person to do any of the following:

1. Possess aboard any vessel in Virginia more than 50,000 pounds of scup.
2. Land in Virginia more than a total of 50,000 pounds of scup during each consecutive seven-day landing period, with the first seven-day period beginning on January 1.

B. When it is projected and announced that 80% of the coastwide quota for this period has been attained, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than a total of 1,000 pounds of scup.

C. During the period November 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 8,000 pounds of scup.

D. During the period May 1 through October 31 of each year, the commercial harvest and landing of scup in Virginia shall be limited to 14,105 pounds.

E. For each of the time periods set forth in this section, the Marine Resources Commission will give timely notice to the industry of calculated poundage possession limits and quotas

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and any adjustments thereto. It shall be unlawful for any person to possess or to land any scup for commercial purposes after any winter period coastwide quota or summer period Virginia quota has been attained and announced as such.

F. It shall be unlawful for any buyer of seafood to receive any scup after any commercial harvest or landing quota has been attained and announced as such.

G. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig, or other recreational gear to possess more than ~~50~~ 30 scup. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by ~~50~~ 30. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any scup taken after the possession limit has been reached shall be returned to the water immediately.

V.A.R. Doc. No. R14-4079; Filed June 30, 2014, 8:18 a.m.

Final Regulation

Title of Regulation: **4VAC20-1140. Prohibition of Crab Dredging in Virginia Waters (amending 4VAC20-1140-20).**

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

Effective Date: November 1, 2014.

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

Summary:

The amendment closes the crab dredging season from December 1, 2014, through March 31, 2015.

4VAC20-1140-20. Crab dredging prohibited.

In accordance with the provisions of § 28.2-707 of the Code of Virginia, the crab dredging season of December 1, ~~2014~~ 2014, through March 31, ~~2013~~ 2015, is closed, and it shall be unlawful to use a dredge for catching crabs from the waters of the Commonwealth during that season.

V.A.R. Doc. No. R14-4091; Filed June 30, 2014, 8:33 a.m.



TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Final Regulation

REGISTRAR'S NOTICE: The Criminal Justice Services 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 or the appropriation act where no agency discretion is involved. The Criminal Justice Services Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **6VAC20-171. Regulations Relating to Private Security Services (amending 6VAC20-171-20, 6VAC20-171-300, 6VAC20-171-445, 6VAC20-171-450, 6VAC20-171-470).**

Statutory Authority: § 9.1-141 of the Code of Virginia.

Effective Date: August 27, 2014.

Agency Contact: Lisa McGee, Regulatory Manager, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 371-2419, FAX (804) 786-6344, or email lisa.mcgee@dcjs.virginia.gov.

Summary:

The amendments conform to changes in the Code of Virginia by Chapter 32 of the 2014 Acts of Assembly. Specifically, the amendments provide that the Department of Criminal Justice Services may grant a full exemption from compulsory training for certain persons employed by private security services businesses if such persons have already received training that meets or exceeds the minimum standards approved by the department. Currently, the department may only grant a partial exemption from compulsory training.

Part II

Application Fees

6VAC20-171-20. Fees.

A. Schedule of fees. The fees listed below reflect the costs of handling, issuance, and production associated with administering and processing applications for licensing, registration, certification and other administrative requests for services relating to private security services.

CATEGORIES	FEES
CRIMINAL HISTORY RECORDS CHECK	
Fingerprint Processing Application	\$50
Initial business license	
1 Year License	\$550

2 Year License	\$800
Business license renewal (2 Year License)	\$500
Business license category fee	\$50
CERTIFICATIONS	
Initial compliance agent certification	\$50
Compliance agent certification renewal	\$25
Initial training school	\$800
Training school renewal	\$500
Training school category fee	\$50
Initial instructor certification	\$50
Instructor certification renewal	\$25
Instructor certification category fee	\$10
Initial Detector Canine Handler Examiner certification	\$50
Detector Canine Handler Examiner Certification renewal	\$25
REGISTRATION	
Initial registration	\$25
Registration renewal	\$20
Additional registration category form	\$20
Replacement registration card	\$20
TRAINING RELATED	
Firearm Endorsement	\$10
Entry-level partial training <u>training</u> exemption	\$25
In Service Training Alternative Credit Evaluation	\$25
Regulatory Compliance entry-level training	\$75
Regulatory Compliance In-service training	\$50
Training completion roster form	\$30

B. Reinstatement fee.

1. The department shall collect a reinstatement fee for registration, license, or certification renewal applications not received on or before the expiration date of the expiring registration, license, or certification pursuant to 6VAC20-171-180.
2. The reinstatement fee shall be 50% above and beyond the renewal fee of the registration, license, certification, or any other credential issued by the department wherein a fee is established and renewal is required.

C. Dishonor of fee payment due to insufficient funds.

1. The department may suspend the registration, license, certification, or authority it has granted any person who submits a check or similar instrument for payment of a fee required by statute or regulation ~~which~~ that is not honored by the financial institution upon which the check or similar instrument is drawn.
2. The suspension shall become effective upon receipt of written notice of the dishonored payment. Upon notification of the suspension, the person, registrant or licensee may request that the suspended registration, license, certification, or authority be reinstated, provided payment of the dishonored amount plus any penalties or fees required under the statute or regulation accompanies the request. Suspension under this provision shall be exempt from the Administrative Process Act.

D. Manual processing service fee. The department shall collect a \$5.00 service fee for any applications under this chapter that are submitted to the department by other means than the available electronic methods established by the department.

6VAC20-171-300. Private security services training session.

A. Training sessions will be conducted in accordance with requirements established in this chapter. Adherence to the administrative requirements, attendance and standards of conduct are the responsibility of the training school, training school director and instructor of the training session.

B. Administrative requirements.

1. In a manner approved by the department, a notification to conduct a training session shall be submitted to the department. All notifications shall be received by the department, or postmarked if mailed, no less than seven calendar days prior to the beginning of each training session to include the date, time, instructors and location of the training session. The department may allow a session to be conducted with less than seven calendar days of notification with prior approval. Session notifications require no fee from the training school. A notification to conduct a training session shall be deemed to be in compliance unless the training school director is notified by the department to the contrary.
2. Notification of any changes to the dates, times, location or cancellation of a future training session must be submitted to the department in writing and received by the department at least 24 hours in advance of the scheduled starting time of the class. In the event that a session must be cancelled on the scheduled date, the department must be notified immediately followed by a cancellation in writing as soon as practical.
3. Course outline and training objectives must be approved by the department prior to offering a course of instruction for enrollment.

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4. The training school director shall issue an original training completion form provided by the department to each student who satisfactorily completes a training session no later than five business days following the training completion date.

5. In a manner approved by the department, the training school director shall submit an original training completion roster to the department affirming each student's successful completion of the session. The training completion roster shall be received by the department within seven calendar days, or postmarked if mailed, no later than five business days following the training completion date and must be accompanied by the applicable, nonrefundable processing fee.

6. A written examination shall be administered at the conclusion of each entry level training session. The examination shall be based on the applicable learning objectives. The student must attain a minimum grade of 70% for all entry-level training examinations and pass any applicable practical exercises, to satisfactorily complete the training session.

7. Firearms classroom training shall be separately tested and graded. Individuals must achieve a minimum score of 70% on the firearms classroom training examination.

8. Failure to achieve a minimum score of 70% on the firearms classroom written examination will exclude the individual from the firearms range training.

9. To successfully complete the handgun or shotgun firearms range training, the individual must achieve a minimum qualification score of 75% of the scoring value of the target.

10. To successfully complete the advanced firearms range training, the individual must achieve a minimum qualification score of 92% of the scoring value of the target.

11. To successfully complete the patrol rifle firearms range training, the individual must achieve a minimum qualification score of 85% of the scoring value of the target.

C. Attendance.

1. Private security services business personnel enrolled in an approved training session are required to be present for the hours required for each training session unless they have been granted a ~~partial~~ partial exemption to training from the department.

2. Tardiness and absenteeism will not be permitted. Individuals violating these provisions will be required to make up any training missed. All training must be completed within the 12 months prior to application of a registration or certification. Individuals not completing the required training within this period are required to complete the entire training session.

3. Individuals who do not successfully complete the compulsory minimum training standards of the training session shall not be issued a training completion form or training certificate.

4. Each individual attending an approved training session shall comply with the regulations promulgated by the board and any other rules within the authority of the training school. If the training school director or instructor considers a violation of the rules detrimental to the training of other students or to involve cheating on examinations, the training school director or instructor may expel the individual from the school. Notification of such action shall immediately be reported to the employing firms and the department.

D. Standards of conduct.

1. The training school, training school director and instructor shall at all times conform to the application requirements, administrative requirements and standards of conduct established for certification as a training school and instructor.

2. Training sessions will be conducted by certified instructors or other individuals authorized to provide instruction pursuant to this chapter and each of whom must be present for all periods of instruction unless otherwise authorized by the department.

3. Training sessions will be conducted utilizing lesson plans developed including at a minimum the compulsory minimum training standards established pursuant to this chapter.

4. Instruction shall be provided in no less than 50-minute classes.

5. Training sessions shall not exceed nine hours of classroom instruction per day. Range qualification and practical exercises shall not be considered classroom instruction; however, total training, including the maximum allotment of nine hours classroom instruction and applicable range qualification and practical exercises, shall not exceed 12 hours per day. This does not include time allotted for breaks, meals and testing.

6. All audio-visual training aids must be accompanied by a period of instruction where the instructor reviews the content of the presentation and the students are provided the opportunity to ask questions regarding the content.

7. A training session must adhere to the minimum compulsory training standards and must be presented in its entirety. Training school directors may require additional hours of instruction, testing or evaluation procedures.

8. A training session must provide accurate and current information to the students.

9. Mandated training that is not conducted in accordance with the Code of Virginia and this chapter is null and void.

10. A duplicate set of instructor course materials, including all student materials, shall be made available to any department inspector during the training session, if requested.

11. Certifiable in-service training may include a maximum of one hour of instruction dedicated to the review of regulations unless otherwise authorized by the department.

12. Live ammunition, pyrotechnics, and explosives are not to be utilized or present in any firearms training environment except on a firing range approved by the department.

Article 3
Training Exemptions

6VAC20-171-445. Training exemptions.

Persons who meet the statutory requirements as set forth in § 9.1-141 of the Code of Virginia may apply for a ~~partial~~ an exemption from the compulsory training standards. Individuals requesting such ~~partial~~ exemption shall file an application furnished by the department and include the applicable, nonrefundable application fee. The department may issue such ~~partial~~ exemption on the basis of individual qualifications as supported by required documentation. Those applying for and receiving exemptions must comply with all regulations promulgated by the board. Each person receiving a ~~partial~~ an exemption for entry-level training must apply to the department for registration within 12 months from the date of issuance, otherwise the ~~partial~~ exemption shall become null and void.

6VAC20-171-450. Entry level training exemption.

A. Persons previously employed as law-enforcement officers who have not terminated or been terminated from said employment more than five years prior to the application date must submit official documentation of the following with the application for ~~partial~~ exemption:

1. Completion of law-enforcement entry level training; and
2. Five continuous years of law-enforcement employment provided such employment as a law-enforcement officer was not terminated due to misconduct or incompetence.

B. Persons having previous training or employment in any of the classifications defined in § 9.1-138 of the Code of Virginia must submit official documentation of the following with the application for ~~partial~~ exemption:

1. Completion of previous private security training, which has been approved by the department and which meets or exceeds the compulsory minimum training standards promulgated by the board; or
2. Five years continuous employment in the category for which ~~partial~~ exemption is sought, provided such employment was not terminated due to misconduct or incompetence and such employment ended within five years of the date of application.

6VAC20-171-470. Prior firearms training exemption.

Persons having previous department-approved firearms training may be authorized credit for such training ~~which that~~ meets or exceeds the compulsory minimum training standards for private security services business personnel, provided such training has been completed within the 12 months preceding the date of application. Official documentation of the following must accompany the application for ~~partial~~ training credit:

1. Completion of department-approved firearms training; and
2. Qualification at a Virginia criminal justice agency, academy or correctional department.

VA.R. Doc. No. R14-4090; Filed June 26, 2014, 3:20 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

REGISTRAR'S NOTICE: The Virginia Waste Management Board is claiming an exclusion 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 Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC20-60. Virginia Hazardous Waste Management Regulations (amending 9VAC20-60-262, 9VAC20-60-315, 9VAC20-60-420, 9VAC20-60-440, 9VAC20-60-480, 9VAC20-60-490, 9VAC20-60-1260, 9VAC20-60-1270, 9VAC20-60-1283, 9VAC20-60-1285; repealing 9VAC20-60-450).**

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6921 et seq.; 40 CFR Parts 260 through 272.

Effective Date: August 27, 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 action conforms the regulation to changes in the Code of Virginia enacted by Chapter 139 of the 2014 Acts of Assembly. The amendments remove the requirement that hazardous waste transporters obtain a hazardous waste transporter permit from the Commonwealth of Virginia; clarify that a federal Environmental Protection Agency identification number, obtained either from the EPA or

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authorized state, is required; and make other associated changes.

9VAC20-60-262. Adoption of 40 CFR Part 262 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 262 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 262 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 262 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 262.42(a)(2), the words "for the Region in which the generator is located" is deleted from the incorporated text and is not a part of these regulations.

2. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56 and 40 CFR 262.57, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

3. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56 and 40 CFR 262.57, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. For accumulation areas established before March 1, 1988, a generator who is not otherwise exempted by 40 CFR 261.5 shall notify the department of each location where he accumulates hazardous waste in accordance with 40 CFR 262.34 by March 1, 1988. For accumulation areas established after March 1, 1988, he shall notify the department and document in the operating record that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34 prior to or immediately upon the establishment of each accumulation area. In the case of a new generator who creates such accumulation areas after March 1, 1988, he shall notify the department at the time the generator files the Notification of Hazardous Waste Activity that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34. This notification shall specify the exact location of the accumulation area at the site.

5. In addition to the requirements in 40 CFR Part 262, management of hazardous wastes is required to comply with the Regulations Governing the Transportation of Hazardous Materials (9VAC20-110), including packaging and labeling for transport.

6. A generator shall not offer his hazardous waste to a transporter that has not received an EPA identification

number or to a facility that has not received a permit and an EPA identification number.

7. In 40 CFR Part 262, Subpart H, the terms "EPA" and "Environmental Protection Agency" shall mean the United States Environmental Protection Agency.

8. In addition to the requirements of this section, large quantity generators are required to pay an annual fee. The fee schedule and fee regulations are contained in Part XII (9VAC20-60-1260 through 9VAC20-60-1285) of this chapter.

9VAC20-60-315. Notification.

A. Any person that notified the EPA of hazardous waste management activities as referenced in 9VAC20-60-305 B shall provide a copy of that notification to the department.

B. Any person involved in hazardous waste management activities that did not comply with the notification requirements of the EPA as referenced in 9VAC20-60-305 B but is subject to those requirements shall notify the department in writing of their hazardous waste management activities by the effective date of this chapter. Notification shall be accomplished by the use of EPA Form 8700-12.

C. Any person who initiated a hazardous waste management activity subsequent to the preliminary notification period of 42 USC § 6930 but prior to the effective date of this chapter shall notify the department of the initiation of such activities by the effective date of this chapter. Notification shall be accomplished by the use of EPA Form 8700-12.

D. Anyone who becomes a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record. Any large quantity generator who ceases to be a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record.

E. Transporters shall provide only one notification form for all transportation activities.

F. One notification form is required for each generator site.

G. A notification form is required for each storage, treatment, disposal, or other facility. However, if one geographic site includes more than one storage, treatment or disposal activity, only one notification form for the entire facility site is required.

H. New generators, transporters, treaters, storers, and disposers (those initiating activities subsequent to the assumption of the hazardous waste management program by the Commonwealth) shall comply with the requirements of 9VAC20-60-262, 9VAC20-60-263, and 9VAC20-60-264, as applicable, to obtain an EPA identification number from the administrator or the department.

Part VII

Regulations Applicable to Transporters of Hazardous Waste

9VAC20-60-420. General.

A. This chapter applies to all persons who transport a hazardous waste as defined in this chapter and applies to all shipments of hazardous waste that originate within the Commonwealth or that terminate in the Commonwealth but originate in another state or foreign country. However, this chapter does not apply to the shipment of a hazardous waste on the site of a hazardous waste generator, nor on the site of a permitted hazardous waste management facility. Nothing in this part (9VAC20-60-420 et seq.) shall be construed as imposing any requirement on transporters of or the transportation of universal waste not otherwise imposed in 9VAC20-60-273.

B. Transporters of hazardous waste shipments originating outside the Commonwealth and terminating in another state shall comply with 9VAC20-60-490 and applicable requirements of 9VAC20-60-263 while in transit through the Commonwealth.

C. All transporters of hazardous waste shall comply with the applicable portions of the Regulations Governing the Transportation of Hazardous Materials (9VAC20-110) and Parts III (9VAC20-60-124 et seq.), IV (9VAC20-60-305 et seq.), and VII (9VAC20-60-420 et seq.) of this chapter.

D. A transporter is a generator if he:

1. Transports hazardous waste into the Commonwealth from a foreign country; or
2. Mixes hazardous wastes of different shipping descriptions specified in Regulations Governing the Transportation of Hazardous Materials by placing them into a single container.

~~E. All transporters of hazardous waste shipments originating or terminating or both in the Commonwealth are required to obtain a permit from the director in accordance with 9VAC20-60-450.~~

~~F. E.~~ Transporters of materials that are used in a manner that constitutes disposal are subject to the requirements of Parts III, IV, and VII.

~~G. F.~~ Transporters of hazardous waste fuel are subject to the applicable requirements of 9VAC20-60-266.

9VAC20-60-440. Identification number.

A. All persons who transport hazardous waste within, out of or into the Commonwealth shall apply for and receive from the department an EPA identification number prior to such transport.

B. An EPA identification number shall be obtained from the department EPA or authorized state by submitting an application on EPA Form 8700-12.

C. The EPA identification number issued to the transporter shall be included at all times on:

1. All correspondence related to the transport of hazardous waste ~~and shall be displayed in the format as follows:~~

~~Hazardous Waste Transporter ID Number~~
=====;

~~Virginia Hazardous Waste Transporter Permit Number~~
=====;

2. The manifest provided by the generator of a hazardous waste and utilized in the transport of hazardous waste; and

3. All documents related to the reporting of a discharge or accident.

D. The EPA identification number ~~and permit number~~ shall remain unique to the applicant as long as the applicant continues to do business as a transporter of hazardous waste ~~in the Commonwealth of Virginia~~. The EPA identification number may not be transferred without the approval of EPA ~~or an authorized state~~. ~~The permit number may not be transferred without the approval of the director.~~

E. Provisional EPA identification number. If an emergency or other unusual incident occurs ~~which that~~ causes a necessity for the rapid transport of a hazardous waste to an authorized HWM facility, the transporter involved in such a circumstance can telephone the Department of Environmental Quality (804-698-4000) and obtain a provisional EPA identification number. Applicants receiving such a number will be mailed a blank EPA Form 8700-12, which shall be completed and returned to the department within 10 calendar days.

9VAC20-60-450. Transporter permit. (Repealed.)

~~A. This chapter applies to all persons who transport a hazardous waste, except as otherwise provided in Part VII (9VAC20-60-420 et seq.) of this chapter.~~

~~B. The transporter permit required under 9VAC20-60-450 applies only to those transporters who transport hazardous waste shipments which originate or terminate or both in the Commonwealth. Transporters who transport hazardous waste only through the Commonwealth are not required to obtain a transporter permit.~~

~~C. Permit issuance. Upon receipt of a complete application, Form 7.1, accompanied by the appropriate permit application fee as specified in Part XII (9VAC20-60-1260 et seq.) of this chapter, the director shall either:~~

~~1. Issue a permit, provided conditions of 9VAC20-60-440 are met; or~~

~~2. Deny the permit when it can be demonstrated that the transporter has violated regulations of the Commonwealth, another state or the federal government, so as to pose substantial present or potential hazard to health or environment. The procedure for denying a permit shall be consistent with the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).~~

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~~D. The term of the transporter permit shall be 10 years. A permit shall remain in effect until one or more of the following conditions are met:~~

- ~~1. The transporter ceases business operation;~~
- ~~2. The transporter requests, in writing, that the permit be terminated;~~
- ~~3. The permit is revoked;~~
- ~~4. The director determines that an emergency exists and that summary termination of a permit is necessary to prevent the creation or continuance, or both, of an immediate and present threat to human health or critical damage to the environment;~~
- ~~5. Upon the expiration date of the permit, unless reapplication for a new permit has been received by the department 30 days prior to such date.~~

~~E. Revocation of permit:~~

- ~~1. Revocation for cause. The director may revoke a transporter's permit when it can be demonstrated that a transporter has violated this chapter so as to pose substantial present or potential hazard to health or environment. The procedure for revoking a permit shall be consistent with the Administrative Process Act of the Commonwealth.~~
- ~~2. Revocation and reissuance. Whenever the transporter changes his corporate name, ownership or the EPA identification number, he shall notify the director within 30 days of such a change. Upon receiving such a notification the department will revoke the old permit and reissue it reflecting the appropriate changes. The reissued permit will remain valid for the unexpired duration of the revoked permit.~~
- ~~3. Within 30 days of the receipt of the notice of revocation, the original copy of the permit shall be returned to the department.~~

~~F. The transporter permit number shall appear at all times on:~~

- ~~1. All correspondence to the Commonwealth;~~
- ~~2. All documents related to the reporting of a discharge or accident.~~

~~G. Temporary transporter permit. If a provisional identification number is issued by the department pursuant to the provisions of 9VAC20-60-440 E the applicant may obtain a temporary transporter permit by calling the department at 804-698-4000. The permit will be valid only for the duration of the activity that required the provisional EPA identification number. The applicant shall submit a permit application conforming with 9VAC20-60-450 C within 10 calendar days.~~

~~H. Emergency transporter permit. In the event of a determination by the Commonwealth that circumstances dictate expedient action to protect human health and environmental quality, provisions of 9VAC20-60-260, 9VAC20-60-262, and Part VII of this chapter may be waived~~

~~by the director or his designee. Such waiver will be considered as an emergency transporter permit valid for the duration of an emergency only.~~

9VAC20-60-480. Acceptance, shipment and delivery of hazardous waste.

A. A transporter shall not accept for shipment any hazardous waste for transport without determining that requirements of 9VAC20-60-263 have been complied with.

B. If a manifest is required by 9VAC20-60-263, the generator shall sign and date the manifest and release the hazardous waste shipment to the transporter.

C. The transporter who is subject to 9VAC20-60-480 B shall sign and date the manifest and accept the hazardous waste for shipment.

D. The transporter shall not accept any hazardous waste for shipment unless the generator has met all applicable labeling, container and packaging requirements of this chapter.

E. If the transporter ships the hazardous waste to a treatment, storage or disposal facility or transfers the hazardous waste to another transporter, such acts shall be in accordance with the following:

1. The receiving treatment, storage or disposal facility or transporter shall have an EPA identification number issued by the EPA or authorized state;
2. The manifest shall be signed over to the receiving treatment, storage or disposal facility or transporter with the prior transporter retaining a copy of the manifest.

F. The transporter shall maintain the labeling required by the Regulations Governing the Transportation of Hazardous Materials (9VAC20-110) during the shipment of the hazardous waste.

G. 1. The transporter shall deliver the entire quantity of hazardous waste that he accepted for shipment from a generator or a previous transporter to:

- a. The designated facility listed on the manifest;
- b. The next designated transporter; or
- c. The place outside the United States designated by the generator.

2. If the hazardous waste shipment cannot be delivered in accordance with 9VAC20-60-480 G 1, the transporter must contact the generator for further directions concerning an alternate facility for delivery and must revise the manifest according to the generator's instructions.

H. If the hazardous waste shipment will terminate within the Commonwealth of Virginia, the transporter shall deliver the shipment to a storage, treatment, disposal, or other facility permitted by the Commonwealth of Virginia under the provisions of this chapter or a facility permitted by the EPA or which qualifies for interim status.

I. If the shipment of hazardous waste is transported out of the Commonwealth, the transporter shall deliver the shipment

to a designated facility permitted by that state under an approved program or by EPA or which qualifies for interim status in the opinion of the applicable aforementioned authority.

J. If the shipment of hazardous waste is shipped out of the United States, the transporter shall handle the manifest in accordance with 9VAC20-60-263.

K. If the transporter mixes hazardous wastes of different shipping descriptions specified in Regulations Governing the Transportation of Hazardous Materials by placing them into a single container, such transporter shall also comply with 9VAC20-60-262.

L. All transporters shipping a hazardous waste to a destination within the Commonwealth from another state shall comply with all provisions of this chapter including obtaining ~~a transporter permit from the director and an EPA~~ identification number from the EPA or authorized state.

M. A transporter that imports a hazardous waste from a foreign country into the Commonwealth shall comply with the provisions of 9VAC20-60-262 and ~~shall obtain a transporter permit from the director and~~ obtain an ~~ID~~ EPA identification number from the EPA or authorized state.

9VAC20-60-490. Discharges.

A. The transporter shall comply with all federal and Commonwealth requirements relative to discharges.

B. 1. In the event of a discharge or spill of hazardous wastes, the transporter shall take appropriate emergency actions to protect human life, health, and the environment and shall notify appropriate local authorities. Upon arrival on the scene of state or local emergency or law-enforcement personnel, the transporter shall carry out such actions as required of him.

2. The transporter shall clean up any hazardous waste discharge that occurs during transportation and shall take such action as is required by the federal government, the Virginia Department of Emergency Management, the director, or local officials, so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

~~3. If the discharge of hazardous waste occurs during transportation and the director or his designee determines that immediate removal of the waste is necessary to protect human health or the environment, an emergency transporter permit may be issued in accordance with 9VAC20-60-450 H.~~

4. ~~3.~~ The disposal of the discharged materials shall be done in a manner consistent with this chapter and other applicable Virginia and federal regulations.

C. Discharges by air, rail, highway, or water (nonbulk) transporters.

1. In addition to requirements contained in preceding parts, an air, rail, highway or water (nonbulk) transporter who has discharged hazardous waste shall give notice at the

earliest practicable moment to agencies indicated in 9VAC20-60-490 C 2 after each incident that occurs during the course of transportation (including loading, unloading, and temporary storage) in which as a direct result of the discharge of the hazardous wastes:

- a. A person is killed;
- b. A person receives injuries requiring his hospitalization;
- c. Estimated carrier or other property damage exceeds \$50,000;
- d. Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material;
- e. Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or
- f. A situation exists of such a nature that, in the judgment of the transporter, it should be reported in accordance with 9VAC20-60-490 C 2 even though it does not meet the above criteria (e.g., continuing danger of life exists at the scene of the incident), or as required by 49 CFR 171.15.

2. The notice required by 9VAC20-60-490 C 1 shall be given to:

- a. The National Response Center, U.S. Coast Guard, at 800-424-8802 (toll free) or at 202-267-2675 (toll call); and
- b. The Virginia Department of Emergency Management at 800-468-8892 (toll free) or 804-674-2400 (Richmond local area). In a case of discharges affecting state waters, the notice shall also be given to the Pollution Response Program (PreP) Coordinator in the appropriate regional office of the department.

3. When notifying as required in 9VAC20-60-490 C 1, the notifier shall provide the following information:

- a. Name of person reporting the discharge and his role in the discharge;
- b. Name, telephone number and address of the transporter;
- c. Name, telephone number and address of the generator;
- d. Telephone number where the notifier can be contacted;
- e. Date, time and location of the discharge;
- f. Type of incident, nature of hazardous waste involvement, and whether a continuing danger to life exists at the scene;
- g. Classification, name and quantity of hazardous waste involved; and
- h. The extent of injuries, if any.

4. Within 15 calendar days of the discharge of any quantity of hazardous waste, the transporter shall send a written report on DOT Form F5800.1 in duplicate to the Chief, Information System Division, Transportation Programs

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Bureau, Department of Transportation, Washington, D.C. 20590. Two copies of this report will also be filed with the Department of Environmental Quality, Post Office Box 1105, 629 East Main Street, Richmond, Virginia 23218.

5. In reporting discharges of hazardous waste as required in 9VAC20-60-490 C 4, the following information shall be furnished in Part H of the DOT Form F5800.1 in addition to information normally required:

- a. An estimate of the quantity of the waste removed from the scene;
- b. The name and address of the facility to which it was taken; and
- c. The manner of disposition of any unremoved waste.

A copy of the hazardous waste manifest shall be attached to the report.

D. Discharges by water (bulk) transporters.

1. A water (bulk) transporter shall, as soon as he has knowledge of any discharge of hazardous waste from the vessel, notify, by telephone, radio telecommunication or a similar means of rapid communication, the office designated in 9VAC20-60-490 C 2.

2. If notice as required in 9VAC20-60-490 D 1 is impractical, the following offices may be notified in the order of priority:

- a. The government official predesignated in the regional contingency plan as the on-scene coordinator. Such regional contingency plan for Virginia is available at the office of the 5th U.S. Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705;
- b. Commanding officer or officer-in-charge of any U.S. Coast Guard unit in the vicinity of the discharge; or
- c. Commander of the 5th U.S. Coast Guard District.

3. When notifying, the notifier shall provide the following information:

- a. Name of person reporting the discharge and his role in the discharge;
- b. Name, telephone number and address of the transporter;
- c. Name, telephone number and address of the generator;
- d. Telephone number so the notifier can be contacted;
- e. Date, time, location of the discharge;
- f. Type of incident and nature of hazardous waste involvement and whether a continuing danger to life exists at the scene;
- g. Classification, name and quantity of hazardous waste involved; and
- h. The extent of injuries, if any.

E. Discharges at fixed facilities. Any transporter (i) responsible for the release of a hazardous material (as defined in Part I (9VAC20-60-12 et seq.) of this chapter) from a fixed

facility (e.g., transfer facility) ~~which that~~ poses an immediate or imminent threat to public health and (ii) who is required by law to notify the National Response Center shall notify the chief administrative officers (or their designees) of the local governments of the jurisdictions in which the release occurs as well as the department.

Part XII

Permit Application And Annual Fees

9VAC20-60-1260. Purpose, scope, and applicability.

A. The purpose of this part is to establish a schedule of fees collected by the department in the support of its programs required by Parts III (9VAC20-60-270 et seq.), IV (9VAC20-60-305 et seq.) and VII (9VAC20-60-420 et seq.) of this chapter.

B. Part XII (9VAC20-60-1260 et seq.) of this chapter applies to all persons required to submit a permit application ("applicants") under 9VAC20-60-270 ~~and 9VAC20-60-420 E~~ unless specifically exempt under subsection G of this section, to facilities operating under interim status, to facilities subject to an order or agreement, and to all large quantity generators. The fees shall be assessed in accordance with 9VAC20-60-1270 through 9VAC20-60-1286.

C. When the director finds it necessary to modify any permit under 9VAC20-60-270, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9VAC20-60-1270 ~~D C~~ even if the director shall have initiated the modification action.

D. When the director finds it necessary to revoke and reissue any permit in accordance with 9VAC20-60-270, the holder of that permit shall be considered an applicant for a new permit and shall be assessed a fee in accordance with 9VAC20-60-1270 ~~E B~~.

E. If the director finds it necessary either to revoke and reissue a permit or to perform a minor modification of a permit in accordance with 9VAC20-60-270, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9VAC20-60-1270 ~~E D~~. The holder of a permit shall not be assessed a permit modification fee for minor modifications.

F. When the director finds it necessary to issue an emergency treatment, storage, or disposal permit in accordance with 9VAC20-60-270, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9VAC20-60-1270 ~~F E~~. ~~No permit application fee will be assessed to the holders of the emergency transportation permits issued in accordance with 9VAC20-60-450 H.~~

G. Exemptions.

1. The owners and operators of HWM treatment, storage, and disposal facilities who have submitted Part A of their application and who have qualified for interim status in accordance with 9VAC20-60-270 are exempt from the requirements of 9VAC20-60-1270 until a Part B

application for the entire facility or a portion of the facility has been requested or voluntarily submitted. The owner and operator of a HWM facility submitting a Part B application will be considered an applicant for a new permit.

2. The owners and operators of HWM facilities that are deemed to possess a permit by rule in accordance with 9VAC20-60-270 are exempt from the requirements of 9VAC20-60-1270.

3. Hazardous waste generators that accumulate wastes ~~on-site~~ on site in accordance with 40 CFR 262.34 are not subject to regulations contained in 9VAC20-60-1270 since HWM permits are not required for such accumulations.

9VAC20-60-1270. Determination of application fee amount.

A. General.

1. Each application for a new or renewed permit and each application for a modification to a permit is a separate action and shall be assessed a separate fee. The amount of such fees is determined on the basis of this section.

2. The amount of the permit application fee is based on the costs directly associated with the permitting program required by Parts III (9VAC20-60-270 et seq.) and VII (9VAC20-60-420 et seq.) of this chapter and includes costs for personnel and contractual effort and the prorated costs of supplies, equipment, communications and office space. The fee schedules are shown in 9VAC20-60-1285.

~~B. Transporter fees.~~

~~1. Application fees for the transporter permits are shown in 9VAC20-60-1285 A. Based on the greater regulatory effort associated with the issuance of permits to the transporters without terminals or other facilities in the Commonwealth, the out-of-state transporters are charged higher fees.~~

~~2. Since Part VII of this chapter does not provide for a modification procedure, all transporter permit applications are considered to be for new permits.~~

~~C. B. New HWM facility permits.~~

1. All applicants for new or renewed hazardous waste treatment, storage, and disposal facility permits are assessed a base fee shown in 9VAC20-60-1285 ~~B~~ A.

2. Applicants for a facility permit ~~which that~~ includes one or more of the hazardous waste treatment, storage or disposal units or processes that require ~~ground-water~~ groundwater protection or corrective action for solid waste management units in accordance with Subpart F of 40 CFR Part 264, Subpart K of 40 CFR Part 264, Subpart L of 40 CFR Part 264, Subpart M of 40 CFR Part 264, and Subpart N of 40 CFR Part 264, as applicable, ("land-based TSD units") are assessed a supplementary fee shown in 9VAC20-60-1285 ~~B~~ A, in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate.

3. Applicants for a facility permit ~~which that~~ includes one or more hazardous waste incineration, boiler, or industrial furnace units or processes regulated in accordance with Subpart O of 40 CFR Part 264 are assessed a supplementary fee shown in 9VAC20-60-1285 ~~B~~ A, in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate.

4. Applicants for a facility permit for storage of hazardous wastes in containers, tanks or drip pads, or both, subject to Subpart I of 40 CFR Part 264, Subpart J of 40 CFR Part 264, and Subpart W of 40 CFR Part 264 will not be assessed any supplementary fees unless required to close and perform post-closure care as landfills as provided for in 40 CFR 264.197(b) and 40 CFR 264.571(b).

~~5. The transporter permits are separate permits and require a separate administrative action. Applicants for new treatment, storage, and disposal facility permits who also apply for a transporter permit will be assessed separate fees in accordance with subsection B of this section.~~

~~D. C. Modifications to existing HWM facility permits.~~

1. Except as provided for in subsection E of this section, all applicants for a modification of an existing HWM facility permit are assessed a modification base fee shown in 9VAC20-60-1285 ~~C~~ B.

2. Applicants for a modification that includes or involves the addition of hazardous wastes not currently in the permit are assessed a supplementary modification fee shown in 9VAC20-60-1285 ~~C~~ B, in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate.

3. Applicants for a major (Class 3) modification that includes or involves corrective action for solid waste management units under 40 CFR 264.101 and Title 40, Subpart S shall be assessed a supplementary modification fee shown in 9VAC20-60-1285 ~~C~~ B in addition to supplementary fees specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate.

4. Applicants for a major (Class 3) modification that includes or involves the addition of one or more new hazardous waste land-based TSD units or processes, or requires a substantive change in the design of the existing land-based TSD units or processes, are assessed a supplementary modification fee shown in 9VAC20-60-1285 ~~C~~ B in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate. For the purpose of this subsection, it will be deemed that a major change is required whenever a change in the design of the ~~ground-water~~ groundwater protection system or whenever a new land treatment demonstration permit specified in 9VAC20-60-270 is necessary.

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5. Applicants for a major (Class 3) modification that includes or involves the addition of one or more hazardous waste incineration units or processes, or requires a substantive change in the design of an existing incineration unit or process, are assessed a supplementary modification fee shown in 9VAC20-60-1285 ~~€ B~~, in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate. For the purposes of this subsection, it will be deemed that a major change is required whenever a change occurs that necessitates the performance of a trial burn in accordance with 9VAC20-60-270.

6. Applicants for a major (Class 3) modification ~~which that~~ includes or involves new treatment, storage or disposal units, processes or areas, or requires a substantive change in the design of any existing hazardous waste treatment, storage or disposal units, processes or areas, neither of which is a hazardous waste land-based TSD or incineration unit, are assessed a supplementary modification fee shown in 9VAC20-60-1285 ~~€ B~~, in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate. For the purposes of this subsection, expansion of an existing container storage facility is not considered to be a major change.

7. Applicants for a modification that is not a minor modification and is a substantive (Class 2) as specified in 9VAC20-60-270 and that is not subject to the requirements of subdivisions 2 through 6 of this subsection are assessed a supplementary modification fee shown in 9VAC20-60-1285 ~~€ B~~, in addition to the base fee specified in subdivision 1 of this subsection.

8. Applicants for numerous modifications subject to several supplementary fees will not be assessed a permit application fee in excess to the one required for a new permit for a comparable HWM facility.

~~€ D~~. Minor modifications of existing HWM facility permits. All applicants for minor (Class 1) modification of an existing HWM facility permit provided for in 9VAC20-60-270 are not assessed a fee.

~~€ E~~. Emergency permits. Applicants for an emergency hazardous waste treatment, storage or disposal permit as provided for in 9VAC20-60-270 are assessed a fee shown in 9VAC20-60-1285 ~~€ D~~, unless the director shall determine that a lesser fee is appropriate at the time the permit is issued. No permit fee will be assessed for emergency treatment, storage, or disposal necessary for the remediation of abandoned or orphaned hazardous waste by the U.S. Environmental Protection Agency, the Virginia Department of Environmental Quality, the Virginia Department of Emergency Management, the Virginia State Police, the Virginia Department of Transportation, a U.S. Department of Defense Explosive Ordnance Disposal Team, a U.S. Army Technical Escort Unit or other federal government entities

trained in explosive or munitions emergency response. No permit fee will be assessed for emergency treatment, storage, or disposal when a determination has been made by the Commonwealth that circumstances dictate expedient action to protect human health and environmental quality.

9VAC20-60-1283. Determination of annual fee amount.

A. Each operator of a hazardous waste treatment, storage, or disposal facility shall be assessed an annual fee as shown in 9VAC20-60-1285 ~~€ E~~ to be paid in accordance with 9VAC20-60-1284.

B. Each large quantity generator of hazardous waste shall be assessed an annual fee as shown in 9VAC20-60-1285 ~~€ E~~ to be paid in accordance with 9VAC20-60-1284.

C. A hazardous waste treatment, storage, or disposal facility operating under interim status and a facility subject to an order or agreement operate by accession and shall be assessed an annual fee as described in 9VAC20-60-1285 ~~€ E~~ to be paid in accordance with 9VAC20-60-1284.

An order or agreement may be issued to the operator of a facility, a generator, or a person who is both a facility operator and a generator. If a person is issued an order or agreement whose terms ~~allows~~ allow that person to conduct an activity that is by these regulations reserved for persons operating a facility under a permit or interim status, that person shall be considered to be operating a facility subject to an order or agreement. If the order or agreement is issued to a generator and the terms of the order do not allow that person to conduct any activity that is by these regulations reserved for persons operating a facility under a permit or interim status and the person is not otherwise operating a facility at the site of generation, that person shall not be considered to be operating a facility subject to an order or agreement.

D. Annual fees are separate and accumulative. However, a facility that is assessed an annual fee as a facility shall not also be assessed a second annual fee as a large quantity generator for hazardous waste generated at that facility.

E. Anyone who operates a facility (including those described in subsections A and C of this section) or who is a large quantity generator at any time during the year shall be assessed the full annual fee amount no matter how short the period the facility is operated or how briefly the generator is a large quantity generator. A generator who is a large quantity generator episodically or provisionally (having received a provisional EPA Identification Number) shall be assessed the full annual fee for any year in which the generator was a large quantity generator. For the evaluation of facility status or of generator status, the annual year shall be considered to be from January 1 to December 31.

F. No annual fee as a facility or large quantity generator will be assessed for emergency treatment, storage, or disposal necessary for the remediation of abandoned or orphaned hazardous waste by the U.S. Environmental Protection Agency, the Virginia Department of Environmental Quality,

the Virginia Department of Emergency Management, the Virginia State Police, the Virginia Department of Transportation, a U.S. Department of Defense Explosive Ordnance Disposal Team, a U.S. Army Technical Escort Unit or other federal government entities trained in explosive or munitions emergency response. No annual fee will be assessed for emergency treatment, storage, or disposal when a determination has been made by the Commonwealth that circumstances dictate expedient action to protect human health and environmental quality.

Persons who are remediating a brownfield as defined in the Brownfield Restoration and Land Renewal Act (§ 10.1-1230 et seq. of the Code of Virginia) shall not be assessed an annual fee as a large quantity generator with regard to hazardous waste management activities at a waste management unit and that result from the remediation of the brownfield.

G. Discounted annual fees may be offered based on the criteria listed in 9VAC20-60-1286. An operator of a facility or a large quantity generator will be notified by the department if discounted annual fees are applicable.

9VAC20-60-1285. Permit application fee and annual fee schedules.

(The effective date of this fee schedule is July 1, 2004.)

Table 1. Permit Application Fees.

A. Transporter fees	
Type of application	
Transporters with terminals or other facilities within the Commonwealth.	\$140
Other transporters.	\$210
B. A. New or renewed TSD facility fees.	
Elements of applications	
Base fee for all facilities, including corrective action for solid waste management units.	\$16,900
Supplementary fee for one or more land-based TSD units, including corrective action for solid waste management units.	\$39,280
Supplementary fee for one or more incineration, boiler, or industrial furnace units (BIF).	\$25,200
C. B. Major (Class 3) Permit modification fees.	
Elements of Applications for Major Permit Modifications	

Base fee for all major (Class 3) modifications, including major changes related to corrective action for solid waste management unit.	\$90
Addition of new wastes.	\$2,310
Addition of or major (Class 3) change to one or more land-based TSD units, including major change related to corrective action for land-based solid waste management units.	\$45,070
Addition of or major (Class 3) change to one or more incineration, boiler, or industrial furnace units.	\$33,790
Addition of or major (Class 3) change to other treatment, storage or disposal units, processes or areas and major change related to corrective action for solid waste management units that are not land based.	\$14,050
Substantive changes (Class 2).	\$2,310
D. C. Minor (Class 1) permit modification fees.	
Type of application	
Minor (Class 1) permit modification fee.	\$0
E. D. Emergency Permit fee.	
Type of application	
Emergency Permit fee.	\$2,310

Table 2. Annual Fees.

F. E. Facilities fees.	
Permitted treatment, storage, and disposal facility.	\$2,800
Interim status treatment, storage, and disposal facility.	\$2,800
Facility subject to an order or agreement.	\$2,800
G. F. Large quantity generator fees.	
Large quantity generators.	\$1,000

Illustrative Examples

Example 1.

The applicant is submitting a Part B application for a HWM permit for a facility consisting of several surface impoundments, a land treatment process and an ancillary tank and container storage facility. The required fee is calculated as follows:

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Base fee	+
Supplementary fee for land-based TSD units	+
Tank storage facility (see 9VAC20-60-1270 € B 4)	=
Total fee	

FORMS (9VAC20-60)

~~Application for a Transporter Permit, Form 7.1 (rev. 12/01).~~
[Hazardous Materials Incident Report, Form DOT F 5800.1 \(rev. 01/04\)](#)

[RCRA Subtitle C Site Identification Form, EPA Form 8700-12 \(OMB#: 2050-0024\) \(rev. 12/11\)](#)

VA.R. Doc. No. R14-4022; Filed June 30, 2014, 3:59 p.m.

Example 2.

After a HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to change the manufacturing process and apply for a modification to allow for an addition of several new hazardous streams to be treated in two new incinerators. The required modification fee is calculated from subsection € B of this section as follows:

Base fee	+
Addition of new wastes	+
Addition of new incineration units	=
Total modification fee	

The fee for a comparable new permit calculated on the basis of subsection B A of this section is as follows:

Base fee	+
Supplementary fee for land-based units	+
Supplementary fee for incineration units	+
Storage facility	=
Total fee	

Example 3.

After a HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to expand their container storage facility for a storage of additional new waste streams, and apply for a permit modification. The required modification fee is calculated from subsection € B of this section as follows:

Base fee	+
Addition of a new waste	+
Fee for nonsubstantive change	=
Total modification fee	

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.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Waste Management Board is claiming an exemption from Article 2 (§ 2.2-4006 et seq. of the Code of Virginia) of the Administrative Process Act in accordance with the second enactment of Chapter 366 of the 2014 Acts of Assembly, which exempts the board's adoption of regulations necessary to implement the fee provisions of subdivision A 5 of § 10.1-1232 of the Code of Virginia, as amended by Chapter 366, provided that the Department of Environmental Quality utilizes a regulatory advisory panel to assist in the development of the regulations and provides an opportunity for public comment on the regulations.

Title of Regulation: **9VAC20-160. Voluntary Remediation Regulations (amending 9VAC20-160-10, 9VAC20-160-60, 9VAC20-160-100, 9VAC20-160-110; adding 9VAC20-160-55, 9VAC20-160-65).**

Statutory Authority: § 10.1-1232 of the Code of Virginia.

Effective Date: July 1, 2014.

Agency Contact: Gary E. Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, TTY (804) 698-4021, or email gary.graham@deq.virginia.gov.

Summary:

The amendments remove the registration fee cap; implement a three-phase registration fee structure for applications received on or after July 1, 2014; and establish (i) provisions for managing the fee structures in place prior to July 1, 2014, and the fee structure implemented on and after July 1, 2014; (ii) action resulting from nonpayment of registration fees; (iii) registration fees for any changes to applications and eligibility that require additional program staff review; and (iv) registration fees for amending previously issued certificates. The amendments to this regulation conform to changes in the Code of Virginia enacted by Chapter 366 of the 2014 Acts of Assembly.

9VAC20-160-10. Definitions.

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

"Applicant" means a person who has applied to the program but is not a participant.

"Authorized agent" means any person who is authorized in writing to fulfill the requirements of this program.

"Carcinogen" means a chemical classification for the purpose of risk assessment as an agent that is known or suspected to cause cancer in humans, including but not limited to a known or likely human carcinogen or a probable or possible human carcinogen under an EPA weight-of-evidence classification system.

"Certificate" means a written certification of satisfactory completion of remediation issued by the department pursuant to § 10.1-1232 of the Code of Virginia.

"Completion" means fulfillment of the commitment agreed to by the participant as part of this program.

"Contaminant" means any man-made or man-induced alteration of the chemical, physical or biological integrity of soils, sediments, air and surface water or groundwater including, but not limited to, such alterations caused by any hazardous substance (as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601(14)), hazardous waste (as defined in 9VAC20-60), solid waste (as defined in 9VAC20-81), petroleum (as defined in Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.)) of the Virginia State Water Control Law, or natural gas.

"Cost of remediation" means all costs incurred by the participant pursuant to activities necessary for completion of voluntary remediation at the site, based on an estimate of the net present value (NPV) of the combined costs of the site investigation, report development, remedial system installation, operation and maintenance, and all other costs associated with participating in the program and addressing the contaminants of concern at the site.

"Department" means the Department of Environmental Quality of the Commonwealth of Virginia or its successor agency.

"Engineering controls" means physical modification to a site or facility to reduce or eliminate potential for exposure to contaminants. These include, but are not limited to, stormwater conveyance systems, pump and treat systems, slurry walls, vapor mitigation systems, liner systems, caps, monitoring systems, and leachate collection systems.

"Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations pursuant to the Uniform Environmental Covenants Act (§ 10.1-1238 et seq. of the Code of Virginia).

"Hazard index (HI)" means the sum of more than one hazard quotient for multiple contaminants or multiple exposure pathways or both. The HI is calculated separately for chronic, subchronic, and shorter duration exposures.

"Hazard quotient" means the ratio of a single contaminant exposure level over a specified time period to a reference dose for that contaminant derived from a similar period.

"Incremental upper-bound lifetime cancer risk" means a conservative estimate of the incremental probability of an individual developing cancer over a lifetime as a result of exposure to the potential carcinogen. Upper-bound lifetime cancer risk is likely to overestimate "true risk."

"Institutional controls" means legal or contractual restrictions on property use that remain effective after remediation is completed and are used to reduce or eliminate the potential for exposure to contaminants. The term may include, but is not limited to, deed, land use, and water use restrictions and environmental covenants.

"Land use controls" means legal or physical restrictions on the use of, or access to, a site to reduce or eliminate potential for exposure to contaminants or prevent activities that could interfere with the effectiveness of remediation. Land use controls include but are not limited to engineering and institutional controls.

"Monitored natural attenuation" means a remediation process that monitors the natural or enhanced attenuation process.

"Natural attenuation" means the processes by which contaminants break down naturally in the environment. Natural attenuation processes include a variety of physical, chemical, or biological processes that, under favorable conditions, act without human intervention to reduce the mass, toxicity, mobility, volume, or concentrations of contaminants in soil or groundwater.

"Noncarcinogen" means a chemical classification for the purposes of risk assessment as an agent for which there is either inadequate toxicological data or is not likely to be a carcinogen based on an EPA weight-of-evidence classification system.

"Owner" means any person currently owning or holding legal or equitable title or possessory interest in a property, including the Commonwealth of Virginia, or a political subdivision thereof, including title or control of a property conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means.

"Participant" means a person who has received confirmation of eligibility and has remitted payment of the phase 2 registration fee.

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

"Post-certificate monitoring" means monitoring of environmental or site conditions stipulated as a condition of issuance of the certificate.

"Program" means the Virginia Voluntary Remediation Program.

"Property" means a parcel of land defined by the boundaries in the deed.

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"Reference dose" means an estimate of a daily exposure level for the human population, including sensitive subpopulations, that is likely to be without an appreciable risk of deleterious effects during a lifetime.

"Registration fee" means the ~~fee fees~~ paid to apply for, obtain eligibility for, enroll in, and participate in the Voluntary Remediation Program, based on 1.0% of the total cost of remediation at a site, not to exceed the statutory maximum.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any contaminant into the environment.

"Remediation" means actions taken to clean up, mitigate, correct, abate, minimize, eliminate, control, contain, or prevent a release of a contaminant into the environment in order to protect human health and the environment. Remediation may include, when appropriate and approved by the department, land use controls, natural attenuation, and monitored natural attenuation.

"Remediation level" means the concentration of a contaminant with applicable land use controls that is protective of human health and the environment.

"Restricted use" means any use other than residential.

"Risk" means the probability that a contaminant will cause an adverse effect in exposed humans or to the environment.

"Risk assessment" means the process used to determine the risk posed by contaminants released into the environment. Elements include identification of the contaminants present in the environmental media, assessment of exposure and exposure pathways, assessment of the toxicity of the contaminants present at the site, characterization of human health risks, and characterization of the impacts or risks to the environment.

"Site" means any property or portion thereof, as agreed to and defined by the participant and the department, which contains or may contain contaminants being addressed under this program.

"Termination" means the formal discontinuation of participation in the Voluntary Remediation Program without obtaining a certificate.

"Unrestricted use" means the designation of acceptable future use for a site at which the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site in all media.

9VAC20-160-55. Registration fees for applications received prior to January 29, 2014.

A. For applicants that submitted an application that was received by the department prior to January 29, 2014, the registration fee submitted and any registration fee refund sought shall be in accordance with the requirements of this section. On and after July 1, 2014, any addition of acreage to

a site participating in the program based upon an application subject to registration fees under this section shall require a new application for the additional acreage, which shall be subject to registration fees pursuant to the requirements of 9VAC20-160-65.

B. The registration fee shall be at least 1.0% of the actual cost of the remediation at the site, not to exceed \$5000. To determine the appropriate registration fee, the applicant shall provide an estimate of the anticipated total cost of remediation and remit that amount. As an alternative to providing an estimate, the applicant may elect to pay the maximum registration fee.

C. If the participant did not elect to remit the maximum registration fee, the participant shall provide the department with the actual total cost of the remediation prior to issuance of a certificate. The department shall calculate any balance adjustment to be made to the initial registration fee. Any negative balance owed to the department shall be paid by the participant prior to the issuance of a certificate. Any overpayment to be refunded to the participant shall be remitted by the department with issuance of the certificate.

D. If the participant elected to remit the maximum registration fee and an overpayment has been made, the department shall refund any balance owed to the participant after receiving the actual total cost of remediation. If no remedial cost summary is provided to the department within 60 days of the participant's receipt of the certificate, the participant will have waived the right to a refund.

9VAC20-160-60. Registration fee fees for applications received on or after January 29, 2014, and prior to July 1, 2014.

A. In accordance with § 10.1-1232 A 5 of the Code of Virginia, the applicant shall submit a registration fee to defray the cost of the program. For applicants submitting an application that is received by the department on or after January 29, 2014, and prior to July 1, 2014, the registration fee submitted and any registration fee refund sought shall be in accordance with the requirements of this section. On and after July 1, 2014, any addition of acreage to a site participating in the program based upon an application subject to registration fees under this section shall require a new application for the additional acreage, which shall be subject to registration fees pursuant to the requirements of 9VAC20-160-65.

B. The preliminary registration fee shall be \$5,000. Payment shall be required after eligibility has been verified by the department and prior to technical review of submittals pursuant to 9VAC20-160-80. Payment shall be made payable to the Commonwealth of Virginia and remitted to Virginia Department of Environmental Quality, P.O. Box 1104, Receipts Control, Richmond, VA 23218.

C. Failure to remit the required registration fee within 90 days of the date of eligibility determination shall result in the loss of eligibility status of the applicant. The applicant must

reestablish his eligibility for participation in the program and the eligibility of the site, unless the department agrees to extend the period for remitting the registration fee. Once eligibility is lost for failure to remit the registration fee pursuant to this subsection, the applicant shall submit a new application in order to reestablish his eligibility for participation in the program and the eligibility of the site and shall be subject to the registration fees under the provisions of 9VAC20-160-65.

D. Upon completion of remediation and issuance of the certificate pursuant to 9VAC20-160-110, the participant whose final cost of remediation is less than \$500,000 may seek a refund of a portion of the preliminary registration fee. The refund amount shall be reconciled as the difference between the preliminary registration fee and the final registration fee amounts.

1. In order to receive a refund, the participant shall provide the department with a summary of the final cost of remediation within 60 days of issuance of a certificate. The final registration fee amount for such projects shall be calculated as 1.0% of the final cost of remediation. The department shall review the summary, calculate the refund amount due, and issue a refund to the participant.

2. If no summary of the final cost of remediation is provided to the department within 60 days of issuance of the certificate, the final registration fee amount shall be equal to the preliminary registration fee amount, and no portion of the preliminary registration fee shall be refunded.

3. Concurrence with the summary of the final cost of remediation does not constitute department verification of the actual cost incurred.

E. No portion of the preliminary registration fee will be refunded if participation is terminated pursuant to the provisions of 9VAC20-160-100.

9VAC20-160-65. Registration fees for applications received on or after July 1, 2014.

A. In accordance with § 10.1-1232 A 5 of the Code of Virginia, the applicant shall submit a registration fee to defray the cost of the program. For applications received by the department on and after July 1, 2014, the registration fee shall be remitted in three phases as required by this section.

B. Phase 1 of the registration fee shall be an application fee in the amount of \$2,000.

1. Payment of the phase 1 registration fee is required for each application received by the department on or after July 1, 2014.

2. The phase 1 registration fee is due when the application is submitted and shall be made payable to the Treasurer of Virginia.

3. The phase 1 registration fee shall be submitted separately from the application package and remitted to

Virginia Department of Environmental Quality, P.O. Box 1104, Receipts Control, Richmond, VA 23218.

4. An application is not administratively complete until the phase 1 registration fee is received by the department. Review of an application for eligibility in accordance with 9VAC20-160-30 and 9VAC20-160-40 shall not commence until the application is administratively complete.

C. Phase 2 of the registration fee shall be an eligibility fee in the amount of \$7,500.

1. Payment of the phase 2 registration fee shall be required after eligibility has been verified by the department and prior to technical review of submittals pursuant to 9VAC20-160-80. Upon receipt of the phase 2 registration fee the site and applicant shall be considered by the department to be participating in the program.

a. A phase 2 registration fee shall be required from the applicant for each site that has been determined to be eligible for participation in the program based upon an application received by the department on or after July 1, 2014.

b. A separate phase 2 registration fee is required for each section of a phased remediation project that requires a separate eligibility determination or requires a separate certificate issued for that section pursuant to 9VAC20-160-110.

c. No phase 2 registration fee shall be required for a site that has been determined to be eligible for participation in the program based upon an application received by the department prior to July 1, 2014.

2. Payments of phase 2 registration fees shall (i) be made payable to the Treasurer of Virginia, (ii) include the Voluntary Remediation Program (VRP) ID number assigned by the department, and (iii) be remitted to Virginia Department of Environmental Quality, P.O. Box 1104, Receipts Control, Richmond, VA 23218. The phase 2 registration fees shall be remitted to the department within 90 days after date of the eligibility determination unless the department agrees to extend the period for remitting the phase 2 registration fee.

3. Failure to remit the required phase 2 registration fee in accordance with subdivision 2 of this subsection within 90 days after the date of eligibility determination shall result in the loss of eligibility status of the applicant and the site. After such loss of eligibility, the applicant must reestablish eligibility in order to participate in the program.

a. The department shall mail notification of nonpayment of the phase 2 registration fee and pending loss of eligibility at least 30 days prior to loss of the applicant's and the site's eligibility.

b. If eligibility is lost as a result of failure to remit a phase 2 registration fee, the applicant shall pay new phase 1 and phase 2 registration fees as part of reestablishing eligibility.

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D. Phase 3 of the registration fee shall be an annual program cost defrayment fee in the amount of \$4,500. If a site has been determined to be eligible for participation in the Voluntary Remediation Program based upon an application received by the department on or after July 1, 2014, and is participating in the Voluntary Remediation Program, a phase 3 registration fee shall be assessed for that site as follows:

1. On November 1 of each calendar year, any site participating in the program on that day shall be assessed a phase 3 registration fee if the application on which the eligibility determination was based was received by the department in a calendar year prior to that year. For example:

a. Any site participating in the program on November 1, 2015, based upon an application that had been received by the department in calendar year 2014 (on or after July 1, 2014) will be assessed a phase 3 registration fee and will be billed for that assessment on March 1, 2016.

b. Any eligible site participating in the program on November 1, 2017, based upon an application that had been received by the department in calendar year 2014 (on or after July 1, 2014), 2015, or 2016 will be assessed a phase 3 registration fee to be billed on March 1, 2018.

c. Sites that are not participating in the program, including sites that have not yet been determined to be eligible to participate in the program; sites that have had a certificate issued pursuant to 9VAC20-160-110 prior to November 1; and sites that have been terminated from participation in the program pursuant to 9VAC20-160-100 prior to November 1 are not subject to a phase 3 registration fee assessment for that calendar year and will not be billed on March 1 of the following year.

2. The phase 3 registration fee is not prorated for participation in the program for portions of calendar years.

3. The phase 3 registration fee assessed for an eligible site shall be billed to the applicant on March 1 of the calendar year following the November 1 assessment.

4. The assessed phase 3 registration fee is due on April 1 of the billing year and shall (i) be made payable to the Treasurer of Virginia, (ii) include the VRP ID number assigned by the department, and (iii) be remitted to Virginia Department of Environmental Quality, P.O. Box 1104, Receipts Control, Richmond, VA 23218.

5. The phase 3 registration fees shall be remitted to the department by the due date specified in subdivision 4 of this subsection unless extended by the department.

a. Failure to remit a required phase 3 registration fee within 30 days of the due date shall be cause for termination from the program in accordance with 9VAC20-160-100 A 4.

b. The department shall mail notification of nonpayment of the phase 3 registration fee and intent to terminate

participation in accordance with 9VAC20-160-100 to the participant at least 30 days prior to termination.

6. No phase 3 registration fee shall be assessed for a site participating in the program based upon an application received by the department prior to July 1, 2014.

7. Any assessed phase 3 fees shall be remitted to the department before a certificate is issued.

E. The total amount of fees collected by the board shall defray the actual reasonable costs of the program. The director shall take whatever action is necessary to ensure that this limit is not exceeded.

F. No portion of Voluntary Remediation Program registration fees collected pursuant to this section shall be refunded.

G. If a site has been terminated from the program in accordance with 9VAC20-160-100, a new application shall be submitted before the site will be considered for a new eligibility determination and reenrollment into the program. The applicant shall also remit new phase 1 and phase 2 registration fees in accordance with this section and no monetary credit will be given for any fees submitted prior to termination.

H. Amendments to a site's certificate or the associated declaration of restrictive covenants issued by the department pursuant to 9VAC20-160-110 shall be subject to registration fees based on the amendments requested. The land owner shall submit a certificate amendment request to the department describing the changes being requested. The department will review the request and notify the land owner of any additional information required and the amount of the registration fee to be remitted as follows:

1. For amendments to the certificate or the associated declaration of restrictive covenants not requiring a technical review by the department, only a phase 1 registration fee shall be required.

2. For amendment requests that require technical review by the department, no phase 1 registration fee shall be required, but a reduced phase 2 registration fee in the amount of \$4,500 shall be required. In the event that the amendment request also meets the phase 3 registration fee criteria in subsection D of this section based upon the date that the department received the amendment request being the date of the application for such purpose, phase 3 registration fees shall also be billed and remitted.

I. For a site that has been determined to be eligible for participation in the program based upon an application received by the department prior to July 1, 2014, a request to change the participant for such site received by the department on or after July 1, 2014, or the department making such change, will not in and of itself subject the site to the fees under this section.

9VAC20-160-100. Termination.

A. Participation in the program shall be terminated:

1. When evaluation of new information obtained during participation in the program results in a determination by the department that the site is ineligible or that a participant has taken an action to render the site ineligible for participation in the program. If such a determination is made, the department shall notify the participant that participation has been terminated and provide an explanation of the reasons for the determination. Within 30 days, the participant may submit additional information, or accept the department's determination.

2. Upon 30 days written notice of withdrawal by the participant.

3. Upon the participant's failure to make reasonable progress towards completion of the program, as determined by the department, and the participant's subsequent failure to respond appropriately within 30 days to the department's written request for an update of program-related activities and a projected timeline to fulfill the program requirements.

4. Upon failure to submit required registration fees in accordance with 9VAC20-160-55 (for applications received prior to January 29, 2014), 9VAC20-160-60 (for applications received on or after January 29, 2014, and prior to July 1, 2014), or 9VAC20-160-65 (for applications received on or after July 1, 2014). The department shall mail notification of the department's intent to terminate participation in the program to the participant at least 30 days prior to terminating the site's participation in the program. If the participant fails to remit the required fee within 30 days of the date of such notification, the site's participation in the program shall be terminated. The department reserves the right to collect unpaid fees due to the department pursuant to 9VAC20-160-65.

B. The department shall be entitled to receive and use, upon request, copies of any and all information developed by or on behalf of the participant as a result of work performed pursuant to participation in the program, after application has been made to the program whether the program is satisfactorily completed or terminated.

9VAC20-160-110. Certification of satisfactory completion of remediation.

A. The department shall issue a certificate when:

1. The participant has demonstrated that migration of contamination has been stabilized;

2. The participant has demonstrated that the site has met the applicable remediation levels and will continue to meet the applicable remediation levels in the future for both onsite and offsite receptors;

3. All provisions of the approved remedial action plan as applicable have been completed;

4. All applicable requirements of the regulations have been completed; ~~and~~

5. The department accepts all work submitted, as set forth in 9VAC20-160-70; ~~and~~

6. All registration fees due to the department pursuant to 9VAC20-160-55, 9VAC20-160-60, and 9VAC20-160-65 have been received by the department.

B. The issuance of the certificate shall constitute immunity to an enforcement action under the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia), or other applicable Virginia law for the releases described in the certificate.

C. A site shall be deemed to have met the requirements for unrestricted use if the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site and in all media. Attainment of these levels will allow the site to be given an unrestricted use classification. No remediation techniques or land use controls that require ongoing management may be employed to achieve this classification.

D. For sites that do not achieve the unrestricted use classification, land use controls may be proffered in order to develop remediation levels based on restricted use. The restrictions imposed upon a site may be media-specific, may vary according to site-specific conditions, and may be applied to limit present and future use. All controls necessary to attain the restricted use classification shall be described in the certificate as provided in this section. Land use controls accepted by the department for use at the site are considered remediation for the purposes of this chapter.

E. If a use restriction is specified in the certificate, the participant shall cause the certificate to be recorded among the land records in the office of the clerk of the circuit court for the jurisdiction in which the site is located within 90 days of execution of the certificate by the department, unless a longer period is specified in the certificate. If the certificate does not include any use restriction, recordation of the certificate is at the option of the participant. The immunity accorded by the certificate shall apply to the participant and shall run with the land identified as the site.

F. The immunity granted by issuance of the certificate shall be limited to the known releases as described in the certificate. The immunity is further conditioned upon satisfactory performance by the participant of all obligations required by the department under the program and upon the veracity, accuracy, and completeness of the information submitted to the department by the participant relating to the site. Specific limitations of the certificate shall be enumerated in the certificate. The immunity granted by the certificate shall be dependent upon the identification of the nature and extent of

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contamination as presented in the Voluntary Remediation Report.

G. The certificate shall specify the conditions for which immunity is being accorded, including, but not limited to:

1. A summary of the information that was considered;
2. Any restrictions on future use;
3. Any local land use controls on surrounding properties that were taken into account;
4. Any proffered land use controls; and
5. Any post-certificate monitoring.

H. The certificate may be revoked by the department in any of the following situations, provided that (i) the department has given the owner written notice of the deficiency and (ii) the owner has failed to cure the deficiency within 60 days of the date of the written notice or some longer period granted by the department.

1. In the event that conditions at the site, unknown at the time of issuance of the certificate, pose a risk to human health or the environment;
2. In the event that the certificate was based on information that was false, inaccurate, or misleading; or
3. In the event that the conditions of the certificate have not been met or maintained.

I. The certificate is not and shall not be interpreted to be a permit or a modification of an existing permit or administrative order issued pursuant to state law, nor shall it in any way relieve the participant of its obligation to comply with any other federal or state law, regulation or administrative order. Any new permit or administrative order, or modification of an existing permit or administrative order, must be accomplished in accordance with applicable federal and state laws and regulations.

J. The issuance of the certificate shall not preclude the department from taking any action authorized by law for failure to meet a requirement of the program or for liability

arising from future activities at the site that result in the release of contaminants.

K. The issuance of the certificate by the department shall not constitute a waiver of the Commonwealth's sovereign immunity unless otherwise provided by law.

V.A.R. Doc. No. R14-4023; Filed June 27, 2014, 11:28 a.m.

STATE WATER 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 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, 9VAC25-720-90).**

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

Effective Date: August 27, 2014.

Agency Contact: Elizabeth McKercher, Department of Environmental Quality, 625 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4116, TTY (804) 698-4021, or email elizabeth.mckercher@deq.virginia.gov.

Summary:

The amendments add one total maximum daily load wasteload allocation for the James River Basin and two total maximum daily load wasteload allocations for the Tennessee-Big Sandy 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 James River Basins	Augusta	I32R	Organic Solids	2,814.00	LB/YR
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	Rockbridge	132R	Sediment	30.4	T/YR

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		River, Rockbridge County, Virginia					
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
<u>14.</u>	<u>Colliers Creek</u>	<u>Bacteria TMDL Development for Colliers Creek, North Fork Buffalo Creek, South Fork Buffalo Creek, Buffalo Creek, Maury River, and Cedar Creek and a Sediment TMDL Development for Colliers Creek</u>	<u>Rockbridge</u>	<u>138R</u>	<u>Sediment</u>	<u>103.4</u>	<u>T/YR</u>

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.

9VAC25-720-90. Tennessee-Big Sandy River Basin.

A. Total ~~Maximum Daily Load~~ total maximum daily load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Guest River	Guest River Total Maximum Load Report	Wise	P11R	Sediment	317.92	LB/YR
2.	Cedar Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	1,789.93	LB/YR

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3.	Hall/Byers Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	57,533.49	LB/YR
4.	Hutton Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	91.32	LB/YR
5.	Clinch River	Total Maximum Daily Load Development for the Upper Clinch River Watershed	Tazewell	P01R	Sediment	206,636	LB/YR
6.	Lewis Creek	Total Maximum Daily Load Development for the Lewis Creek Watershed	Russell	P04R	Sediment	40,008	LB/YR
7.	Black Creek	General Standard Total Maximum Daily Load Development for Black Creek, Wise County, Virginia	Wise	P17R	Manganese	2,127	KG/YR
8.	Dumps Creek	General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia	Russell	P08R	Total Dissolved Solids	1,631,575	KG/YR
9.	Dumps Creek	General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia	Russell	P08R	Total Suspended Solids	316,523	KG/YR
10.	Beaver Creek	Total Maximum Daily Load Development for the Beaver Creek Watershed	Washington	O07R	Sediment	784,036	LB/YR
11.	Stock Creek	General Standard (Benthic) Total Maximum Daily Load Development for Stock Creek	Scott	P13R	Sediment	0	T/YR
12.	Lick Creek	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	63	T/YR
13.	Cigarette Hollow	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	0.4	T/YR
14.	Laurel Branch	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	3.9	T/YR

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15.	Right Fork	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	1.3	T/YR
16.	Middle Fork Holston River	Bacteria and Benthic Total Maximum Daily Load Development for Middle Fork Holston River	Washington, Smyth	O05R	Sediment	100.4	T/YR
17.	Wolf Creek	Bacteria and Benthic Total Maximum Daily Load Development for Wolf Creek	Washington	O06R	Sediment	301.6	T/YR
18.	North Fork Holston River	Mercury Total Maximum Daily Load Development for the North Fork Holston River, Virginia	Scott, Washington, Smyth, Bland, Tazewell, Russell	O10R	Total Mercury	11.9	G/YR
<u>19.</u>	<u>Laurel Creek</u>	<u>Bacteria and Sediment TMDL Development Lower Clinch River Watershed, VA</u>	<u>Russell, Tazewell</u>	<u>P05R</u>	<u>Sediment</u>	<u>0.26</u>	<u>T/YR</u>
<u>20.</u>	<u>Thompson Creek</u>	<u>Bacteria and Sediment TMDL Development Lower Clinch River Watershed, VA</u>	<u>Russell</u>	<u>P07R</u>	<u>Sediment</u>	<u>0.22</u>	<u>T/YR</u>

B. Non-TMDL ~~waste load~~ wasteload allocations.

Water Body	Permit No.	Facility Name	Receiving Stream	River Mile	Outfall No.	Parameter Description	WLA	Units WLA
VAS-Q13R	VA0061913	Pound WWTP	Pound River	33.26	001	CBOD ₅ , JUN-NOV	28	KG/D
						CBOD ₅ , DEC-MAY	47	KG/D
						TKN, JUN-NOV	28	KG/D
VAS-Q14R	VA0026565	Clintwood WWTP	Cranes Nest River	9.77	001	BOD ₅	30	KG/D
VAS-O06R	VA0026531	Wolf Creek Water Reclamation Facility	Wolf Creek	7.26	001	CBOD ₅	249.8	KG/D
VAS-P01R	VA0026298	Tazewell WWTP	Clinch River	346.26	001	CBOD ₅ , JUN-NOV	76	KG/D
VAS-P03R	VA0021199	Richlands Regional WWTF	Clinch River	317.45	001	BOD ₅ , JUN-NOV	273	KG/D
VAS-P06R	VA0020745	Lebanon WWTP	Big Cedar Creek	5.22	001	BOD ₅	91	KG/D

VAS-P11R	VA0077828	Coeburn Norton Wise Regional WWTP	Guest River	7.56	001	CBOD ₅ , JUN-NOV	303	KG/D
						CBOD ₅ , DEC-MAY	379	KG/D
VAS-P15R	VA0029564	Duffield Industrial Park WWTP	North Fork Clinch River	21.02	001	BOD ₅	36	KG/D
VAS-P17R	VA0020940	Big Stone Gap Regional WWTP	Powell River	177.38	001	CBOD ₅ , JUN-NOV	110	KG/D

V.A.R. Doc. No. R14-4100; Filed July 1, 2014, 10:16 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act pursuant to the second enactment of Chapters 303 and 598 of the 2014 Acts of Assembly, which provides that amendments to regulations of the board necessary to implement the provisions of the acts are exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), provided that there is a public comment period of at least 30 days on the proposed amendments prior to adoption by the board.

Title of Regulation: 9VAC25-830. Chesapeake Bay Preservation Area Designation and Management Regulations (amending 9VAC25-830-130).

Statutory Authority: §§ 62.1-15:69 and 62.1-44.15:72 of the Code of Virginia.

Effective Date: August 27, 2014.

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

Summary:

The amendments incorporate statutory changes made to § 62.1-44.15:34 of the Code of Virginia by Chapters 303 and 598 of the 2014 Acts of Assembly related to the general performance criteria for localities subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia) and the regulation of Chesapeake Bay Preservation Act land-disturbing activities in accordance with § 62.1-44.15:28 of the Code of Virginia.

9VAC25-830-130. General performance criteria.

Through their applicable land use ordinances, regulations and enforcement mechanisms, local governments shall require that any use, development or redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance criteria:

1. No more land shall be disturbed than is necessary to provide for the proposed use or development.

2. Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development proposed.

3. All development exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development review process consistent with § 15.2-2286 A 8 of the Code of Virginia and subdivision 1 e of 9VAC25-830-240.

4. Land development shall minimize impervious cover consistent with the proposed use or development.

5. Any land disturbing activity that exceeds an area of 2,500 square feet (including construction of all single family houses, septic tanks and drainfields, but otherwise as defined in § 62.1-44.15:51 of the Code of Virginia) shall comply with the requirements of the local erosion and sediment control ordinance. Enforcement for noncompliance with the erosion and sediment control requirements referenced in this criterion shall be conducted under the provisions of the Erosion and Sediment Control Law and attendant regulations.

6. Any Chesapeake Bay Preservation Act land-disturbing activity as defined in § 62.1-44.15:24 of the Code of Virginia shall comply with the requirements of 9VAC25-870-51 and 9VAC25-870-103.

7. Onsite sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:
 - a. Have pump-out accomplished for all such systems at least once every five years.

- (1) If deemed appropriate by the local health department and subject to conditions the local health department may set, local governments may offer to the owners of such systems, as an alternative to the mandatory pump-out, the option of having a plastic filter installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter should satisfy standards established in the Sewage Handling and Disposal Regulations

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(12VAC5-610) administered by the Virginia Department of Health.

(2) Furthermore, in lieu of requiring proof of septic tank pump-out every five years, local governments may allow owners of ~~on-site~~ onsite sewage treatment systems to submit documentation every five years, certified by ~~a sewage handler permitted by the Virginia Department of Health~~ an operator or onsite soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia as being qualified to operate, maintain, or design onsite sewage systems, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.

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

(1) Each of the two alternating drainfields in the system shall have, at a minimum, an area not less than 50% of the area that would otherwise be required if a single primary drainfield were constructed.

(2) An area equaling 50% of the area that would otherwise be required for the primary drainfield site must be reserved for subsurface absorption systems that utilize a flow diversion device, in order to provide for future replacement or repair to meet the requirements for a sewage disposal system. Expansion of the primary system will require an expansion of this reserve area.

(3) The two alternating drainfields shall be connected by a diversion valve, approved by the local health department, located in the pipe between the septic (aerobic) tank and the distribution boxes. The diversion valve shall be used to alternate the direction of effluent flow to one drainfield or the other at a time. However, diversion valves shall not be used for the following types of treatment systems:

- (a) Sand mounds;
- (b) Low-pressure distribution systems;

(c) Repair situations when installation of a valve is not feasible; and

(d) Any other approved system for which the use of a valve would adversely affect the design of the system, as determined by the local health department.

(4) The diversion valve shall be a three-port, two-way valve of approved materials (i.e., resistant to sewage and leakproof and designed so that the effluent from the tank can be directed to flow into either one of the two distribution boxes).

(5) There shall be a conduit from the top of the valve to the ground surface with an appropriate cover to be level with or above the ground surface.

(6) The valve shall not be located in driveways, recreational courts, parking lots, or beneath sheds or other structures.

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

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

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

~~7.~~ 8. Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and, where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Act and this chapter.

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

respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

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

(2) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (~~4VAC5-15~~) (4VAC50-85).

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

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

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

~~8.~~ 9. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the Fifth Edition (March 2011) of "Virginia's Forestry Best Management Practices for Water Quality Technical Manual." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.

~~9.~~ 10. Local governments shall require evidence of all wetlands permits required by law prior to authorizing grading or other ~~on-site~~ onsite activities to begin.

VA.R. Doc. No. R14-4016; Filed June 27, 2014, 3:14 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act pursuant to the second enactment of Chapters 303 and 598 of the 2014 Acts of Assembly, which provides that amendments to regulations of the board necessary to implement the provisions of the acts are exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), provided that there is a public comment period of at least 30 days on the proposed amendments prior to adoption by the board.

Title of Regulation: **9VAC25-840. Erosion and Sediment Control Regulations (amending 9VAC25-840-65).**

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

Effective Date: July 1, 2014.

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

Summary:

The amendment incorporates changes to § 62.1-44.15:34 of the Code of Virginia enacted by Chapters 303 and 598 of the 2014 Acts of Assembly related to the schedule for reporting of approvals pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:52 et seq. of the Code of Virginia) to begin land disturbance of one acre or greater to the Department of Environmental Quality at least monthly.

9VAC25-840-65. Reporting.

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

VA.R. Doc. No. R14-4025; Filed June 27, 2014, 12:53 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act pursuant to the second enactment of Chapters 303 and 598 of the 2014 Acts of Assembly, which provides that amendments to regulations of the board necessary to implement the provisions of the acts are exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), provided that there is a public comment period of at least 30 days on the proposed amendments prior to adoption by the board.

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Title of Regulation: 9VAC25-870. Virginia Stormwater Management Program (VSMP) Regulation (amending 9VAC25-870-10, 9VAC25-870-51, 9VAC25-870-55, 9VAC25-870-59, 9VAC25-870-65, 9VAC25-870-66, 9VAC25-870-103, 9VAC25-870-118, 9VAC25-870-150, 9VAC25-870-820, 9VAC25-870-825, 9VAC25-870-830).

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

Effective Date: July 1, 2014.

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

Summary:

The amendments incorporate changes to the Code of Virginia enacted by Chapters 303 and 598 of the 2014 Acts of Assembly related to the Virginia Stormwater Management Program (VSMP) Regulations. The amendments (i) provide for the use of an "agreement in lieu of a stormwater management plan"; (ii) clarify the roles and responsibilities of the VSMP authority, the locality, and the department; (iv) clarify the requirements for "single-family detached residences"; and (v) provide for technical changes to accommodate these revisions.

Part I

Definitions, Purpose, and Applicability

9VAC25-870-10. Definitions.

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

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

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

"Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

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

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

"Approval authority" means the State Water Control Board or its designee.

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

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

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

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

"Board" means the State Water Control Board.

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

"Channel" means a natural or manmade waterway.

"Chesapeake Bay Preservation Act" means Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830) adopted pursuant to the Chesapeake Bay Preservation Act.

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

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

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

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

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

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

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

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

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

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

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

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

"Department" means the Department of Environmental Quality.

"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation,

transportation, or utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The regulation of discharges from development, for purposes of ~~these regulations~~ this chapter, does not include the exemptions found in 9VAC25-870-300.

"Direct discharge" means the discharge of a pollutant.

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

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

"Discharge of a pollutant" means:

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

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

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

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

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

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

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

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

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

"ESC" means erosion and sediment control.

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

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

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

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

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

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

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

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

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

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

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

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order

National Watershed Boundary Dataset unless specifically identified as another order.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or state permit (other than the state permit for discharges from the municipal separate storm sewer), discharges resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-870-400 D 2 c (3).

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

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

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

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

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

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

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

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

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in § 62.1-44.15:34 of the Code of Virginia.

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

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

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

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

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i)

the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; (iii) highway construction projects; (iv) construction of stormwater channels and stream restoration activities; and (v) water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

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

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

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

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

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

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

"Manmade" means constructed by man.

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

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

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

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1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G);

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

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

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

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

"Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls that are technologically available and economically practicable.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing state permit before its expiration for the reasons listed at 40 CFR 122.63 and as specified in 9VAC25-870-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor state permit modification or amendment does not substantially alter state permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the

capacity of the facility to protect human health or the environment.

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

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

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 9VAC25-870-380 A 1.

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

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

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

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

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

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

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

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

"New permit" means, for the purposes of this chapter, a state permit issued by the board to a state permit applicant that does not currently hold and has never held a state permit of that type, for that activity, at that location. An application for a new permit issued pursuant to this chapter, 9VAC25-880, or 9VAC25-890 shall not be subject to §§ 62.1-44.15:3 A and 62.1-44.15:4 D of the Code of Virginia.

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

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

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

"Oil and gas exploration, production, processing, or treatment operations or transmission facilities" means all field activities or operations associated with exploration,

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

"Operator" means the owner or operator of any facility or activity subject to the Act and this chapter. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other state permit or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

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

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

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

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

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

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"Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of general permit coverage has been provided where applicable.

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

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

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

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

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

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

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

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical,

chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

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

"Predevelopment" refers to the conditions that exist at the time that plans for the land development of a tract of land are submitted to the VSMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the first item being submitted shall establish predevelopment conditions.

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

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

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

"Qualified personnel" means a person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity. For VSMP authorities this requires the use of a person who holds a certificate of competency from the board in the area of project inspection for ESC and project inspection for SWM or combined administrator for ESC and combined administrator for SWM

as defined in 9VAC25-850-10 or a combination of ESC and SWM qualifications from these two areas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Small construction activity" means:

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

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

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface

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waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 9VAC25-870-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

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

"State" means the Commonwealth of Virginia.

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

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

"State permit" means an approval to conduct a land-disturbing activity issued by the board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the board for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Act and this chapter. As the mechanism that imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, a state permit for stormwater discharges from an MS4 and, after June 30, 2014, a state permit for conducting a land-disturbing activity issued pursuant to the Act, are also types of Virginia Pollutant Discharge Elimination System (VPDES) Permits. State permit does not include any state permit that has not yet been the subject of final board action, such as a draft state permit. Approvals issued pursuant to this chapter, 9VAC25-880, and 9VAC25-890 are not issuances of a permit under § 62.1-44.15.01 of the Code of Virginia.

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

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

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

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

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

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

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

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

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

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

"Stormwater management plan" means a document(s) containing material for describing methods for complying with the requirements of the VSMP or this chapter. An agreement in lieu of a stormwater management plan as defined in this chapter shall be considered to meet the requirements of a stormwater management plan.

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

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

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. That are used or could be used for industrial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

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

"SWM" means stormwater management.

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

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

"TMDL Action Plan" means the scheduled steps of activities that the MS4 operator will take to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action plans may be implemented in multiple phases over more than one state permit cycle.

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

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

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

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

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

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

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

"Virginia Stormwater BMP Clearinghouse Website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

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

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

"VSMP authority" means an authority approved by the board after September 13, 2011, to operate a Virginia Stormwater Management Program or, ~~until such approval is given,~~ the department. An authority may include a locality as set forth in § 62.1-44.15:27 of the Code of Virginia; state entity, including the department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 62.1-44.15:31 of the Code of Virginia, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. Prior to approval, the board must find that the ordinances adopted by the locality's VSMP authority are consistent with the Act and this chapter including the General Permit for Discharges of Stormwater from Construction Activities (9VAC25-880).

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

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Act (§ 62.1-44.15:24 et seq. of the Code of Virginia), and the CWA (33 USC § 1251 et seq.).

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

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

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

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

A. In order to protect the quality of state waters and to control the discharge of stormwater pollutants from land-disturbing activities, runoff associated with Chesapeake Bay Preservation Act land-disturbing activities shall be ~~controlled~~ regulated by localities subject to the Chesapeake Bay Preservation Act or, in the case of state and federal agency projects, the department. In regulating such land-disturbing activities in accordance with subsection B of this section, localities shall have the same authority and responsibilities as set forth in these regulations for VSMP authorities.

B. After June 30, 2014, such land-disturbing activities shall not require completion of a registration statement or require coverage under the General Permit for Discharges of Stormwater from Construction Activities but shall be subject to the following technical criteria and program and administrative requirements:

1. An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during land disturbing activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.
2. A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during the land-disturbing activity. The stormwater management plan shall be developed and submitted in accordance with 9VAC25-870-55. Prior to land disturbance, this plan must be approved by the VSMP authority.
3. Exceptions may be requested in accordance with 9VAC25-870-57.
4. Long-term maintenance of stormwater management facilities shall be provided for and conducted in accordance with 9VAC25-870-58.

5. Water quality design criteria in 9VAC25-870-63 shall be applied to the site.
6. Water quality compliance shall be achieved in accordance with 9VAC25-870-65.
7. Channel protection and flood protection shall be achieved in accordance with 9VAC25-870-66.
8. Offsite compliance options in accordance with 9VAC25-870-69 shall be available to Chesapeake Bay Preservation Act land-disturbing activities.
9. Such land-disturbing activities shall be subject to the design storm and hydrologic methods set out in 9VAC25-870-72, linear development controls in 9VAC25-870-76, and criteria associated with stormwater impoundment structures or facilities in 9VAC25-870-85.

9VAC25-870-55. Stormwater management plans.

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

1. A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in this part to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities.
2. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

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

1. Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features if present, and predevelopment and postdevelopment drainage areas;
2. Contact information including the name, address, telephone number, and email address of the owner and the tax reference number and parcel number of the property or properties affected;
3. A narrative that includes a description of current site conditions and final site conditions or if allowed by the VSMP authority, the information provided and documented during the review process that addresses the current and final site conditions;
4. A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
5. Information on the proposed stormwater management facilities, including (i) the type of facilities; (ii) location,

including geographic coordinates; (iii) acres treated; and (iv) the surface waters or karst features into which the facility will discharge;

6. Hydrologic and hydraulic computations, including runoff characteristics;
7. Documentation and calculations verifying compliance with the water quality and quantity requirements of these regulations;
8. A map or maps of the site that depicts the topography of the site and includes:

- a. All contributing drainage areas;
- b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
- c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
- d. Current land use including existing structures, roads, and locations of known utilities and easements;
- e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
- f. The limits of clearing and grading, and the proposed drainage patterns on the site;
- g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
- h. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements;

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

10. If payment of a fee is required with the stormwater management plan submission by the VSMP authority, the fee and the required fee form in accordance with Part XIII (9VAC25-870-700 et seq.) must have been submitted.

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

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

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9VAC25-870-59. Applying for state permit coverage.

The operator must submit a complete and accurate registration statement, if such statement is required, on the official department form to the VSMP authority in order to apply for state permit coverage. The registration statement must be signed by the operator in accordance with 9VAC25-870-370. In accordance with § 62.1-44.15:28 of the Code of Virginia, no registration statement is required for the construction of a single-family detached residential structure within or outside a common plan of development or sale.

9VAC25-870-65. Water quality compliance.

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

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

1. Vegetated Roof (Version 2.3, March 1, 2011);
2. Rooftop Disconnection (Version 1.9, March 1, 2011);
3. Rainwater Harvesting (Version 1.9.5, March 1, 2011);
4. Soil Amendments (Version 1.8, March 1, 2011);
5. Permeable Pavement (Version 1.8, March 1, 2011);
6. Grass Channel (Version 1.9, March 1, 2011);
7. Bioretention (Version 1.9, March 1, 2011);
8. Infiltration (Version 1.9, March 1, 2011);
9. Dry Swale (Version 1.9, March 1, 2011);
10. Wet Swale (Version 1.9, March 1, 2011);
11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);
12. Extended Detention Pond (Version 1.9, March 1, 2011);
13. Filtering Practice (Version 1.8, March 1, 2011);
14. Constructed Wetland (Version 1.9, March 1, 2011); and
15. Wet Pond (Version 1.9, March 1, 2011).

C. BMPs differing from those listed in subsection B of this section or proprietary BMPs certified in other states shall be reviewed and approved by the director in accordance with procedures established by the department.

D. A VSMP authority may establish limitations on the use of specific BMPs in accordance with § 62.1-44.15:33 of the Code of Virginia.

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

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

9VAC25-870-66. Water quantity.

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

B. Channel protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet the criteria in subdivision 1, 2, or 3 of this subsection, where applicable, from the point of discharge to a point to the limits of analysis in subdivision 4 of this subsection.

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

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

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

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

a. The development shall be consistent, in combination with other stormwater runoff, with the design parameters

of the restored stormwater conveyance system that is functioning in accordance with the design objectives; or

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

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

a. In accordance with the following methodology:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Limits of analysis. Unless subdivision 2 b of this subsection is utilized to comply with the flood protection criteria, stormwater conveyance systems shall be analyzed for compliance with flood protection criteria to a point where:

a. The site's contributing drainage area is less than or equal to 1.0% of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system;

b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-hour storm event prior to the implementation of any stormwater quantity control measures; or

c. The stormwater conveyance system enters a mapped floodplain or other flood-prone area, adopted by ordinance, of any locality.

D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down-gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be

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diverted to a stormwater management facility or a stormwater conveyance system that conveys the runoff without causing down-gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

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

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

9VAC25-870-103. ~~VSMP authority requirements~~ Requirements for Chesapeake Bay Preservation Act land-disturbing activities.

A. ~~A VSMP authority~~ Localities subject to the Chesapeake Bay Preservation Act shall regulate runoff associated with Chesapeake Bay Preservation Act land-disturbing activities in accordance with the following:

1. After June 30, 2014, such land-disturbing activities shall not require completion of a registration statement or require coverage under the General Permit for Discharges of Stormwater from Construction Activities but shall be subject to the technical criteria and program and administrative requirements set out in 9VAC25-870-51.
2. A local or VSMP authority permit, ~~where~~ as applicable, shall be issued permitting the land-disturbing activity.
3. The ~~VSMP authority~~ locality shall regulate such land-disturbing activities in compliance with the:
 - a. Program requirements in 9VAC25-870-104;
 - b. Plan review requirements in 9VAC25-870-108 with the exception of subsection D of 9VAC25-870-108;
 - c. Long-term stormwater management facility requirements of 9VAC25-870-112;
 - d. Inspection requirements of 9VAC25-870-114 with the exception of subdivisions A 3 and A 4 of 9VAC25-870-114;
 - e. Enforcement components of 9VAC25-870-116;
 - f. Hearing requirements of 9VAC25-870-118;

g. Exception conditions of 9VAC25-870-122 excluding subsection C of 9VAC25-870-122 which is not applicable; and

h. Reporting and recordkeeping requirements of 9VAC25-870-126 with the exception of subdivision B 3 of 9VAC25-870-126.

B. ~~A locality's VSMP authority~~ locality subject to the Chesapeake Bay Preservation Act shall adopt an ordinance, ~~and other VSMP authorities shall provide program documentation,~~ that incorporates the components of this section.

C. In accordance with subdivision A 5 of § 62.1-44.15:28 of the Code of Virginia, a locality's VSMP authority may collect a permit issuance fee from the applicant of \$290 and an annual maintenance fee of \$50 for such land-disturbing activities.

9VAC25-870-118. Hearings.

~~The VSMP authority shall ensure that any~~ Any permit applicant, permittee, or person subject to state permit requirements under the ~~Act~~ Stormwater Management Act aggrieved by any action of the ~~VSMP authority~~ department or board taken without a formal hearing, ~~or by inaction of the VSMP authority,~~ shall have a right to ~~may demand in writing~~ a formal hearing pursuant to § 62.1-44.15:44 of the Code of Virginia and shall ensure that all hearings held under this chapter shall be conducted in a manner consistent with § 62.1-44.26 of the Code of Virginia or as otherwise provided by law. A locality holding hearings under this chapter shall do so in a manner consistent with local hearing procedures. The provisions of the Administrative Process Act (§ 2.2-4000 ~~et seq.~~ seq. of the Code of Virginia) shall not apply to decisions rendered by localities ~~but~~ appeals. Appeals of decisions rendered by localities shall be conducted in accordance with local appeal procedures and shall include an opportunity for judicial review in the circuit court of the locality in which the land disturbance occurs or is proposed to occur. Unless otherwise provided by law, the circuit court shall conduct such review in accordance with the standards established in § 2.2-4027 of the Code of Virginia, and the decisions of the circuit court shall be subject to review by the Court of Appeals, as in other cases under this chapter.

9VAC25-870-150. Authorization procedures for Virginia stormwater management programs.

A. A locality ~~required to adopt~~ adopting a VSMP in accordance with § 62.1-44.15:27 ~~A~~ of the Code of Virginia ~~or a town electing to adopt its own VSMP in accordance with § 62.1-44.15:27 B~~ of the Code of Virginia, must submit to the board an application package ~~which that,~~ at a minimum, contains the following:

1. The draft VSMP ordinance(s) as required in 9VAC25-870-148;
2. A funding and staffing plan;

3. The policies and procedures including, but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other public or private entities for the administration, plan review, inspection, and enforcement components of the program; and

4. Such ordinances, plans, policies, and procedures must account for any town lying within the county as part of the locality's VSMP program unless such towns choose to adopt their own program.

B. Upon receipt of an application package, the board or its designee shall have 30 calendar days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria set out in subsection A of this section, the board or its designee must identify to the VSMP authority applicant in writing the reasons the application package is deemed deficient.

C. Upon receipt of a complete application package, the board or its designee shall have 120 calendar days for the review of the application package, unless an extension of time, not to exceed 12 months unless otherwise specified by the board in accordance with § 62.1-44.15:27 M of the Code of Virginia, is requested by the department, provided the VSMP authority applicant has made substantive progress. During the 120-day review period, the board or its designee shall either approve or disapprove the application, or notify the locality of a time extension for the review, and communicate its decision to the VSMP authority applicant in writing. If the application is not approved, the reasons for not approving the application shall be provided to the VSMP authority applicant in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Act and this chapter.

D. A VSMP authority applicant in accordance with § 62.1-44.15:27 of the Code of Virginia shall submit a complete application package for the board's review pursuant to a schedule set by the board in accordance with § 62.1-44.15:27 and shall adopt a VSMP consistent with the Act and this chapter within the timeframe established pursuant to § 62.1-44.15:27 or otherwise established by the board.

E. A ~~town~~ locality or other authorized entity not required to adopt a VSMP in accordance with § 62.1-44.15:27 A of the Code of Virginia but electing to adopt a VSMP ~~may~~ shall notify the ~~board~~ department. Such notification shall include a proposed ~~schedule for adoption of~~ date for a local stormwater management program on or after July 1, 2014, ~~and within a timeframe agreed upon by the board~~ in accordance with a schedule developed by the department.

9VAC25-870-820. Fees for an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities.

The following fees apply, until June 30, 2014, to coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the department prior to a VSMP authority being approved by the board in the area

where the applicable land-disturbing activity is located, or where the department has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency.

General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development equal to or greater than five acres)	\$750
General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)	\$450
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre) (Fee valid until July 1, 2014)	\$200
Individual Permit for Discharges of Stormwater from Construction Activities	\$15,000

The following total fees to be paid by an applicant apply to (i) any operator seeking coverage under a July 1, 2014, General Permit for Discharges of Stormwater from Construction Activities or (ii) on or after July 1, 2014, to any operator seeking coverage under a General Permit for Discharges of Stormwater from Construction Activities, a state or federal agency that does not file annual standards and specifications, or an individual permit issued by the board. On and after approval by the board of a VSMP authority for coverage under the General Permit for Discharges of Stormwater from Construction Activities, no more than 50% of the total fee to be paid by an applicant set out in this part shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted for review in accordance with 9VAC25-870-108. The remaining total fee balance to be paid by an applicant shall be due prior to the issuance of coverage under the General Permit for Discharges of Stormwater from Construction Activities.

When a site or sites are purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees ("total fee to be paid by applicant" column) in accordance with the disturbed acreage of their site or sites according to the following table.

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Fee type	Total fee to be paid by applicant (includes both VSMP authority and department portions where applicable)	Department portion of "total fee to be paid by applicant" (based on 28% of total fee paid*)	<u>family detached residential structures)</u>		
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	\$290	\$0	General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)	\$2,700	\$756
			General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$3,400	\$952
<u>General / Stormwater Management - Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres)</u>	<u>\$209</u>	<u>\$0</u>	General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$4,500	\$1,260
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre) (<u>Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-</u>	\$290	\$81	General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100	\$1,708
			General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale	\$9,600	\$2,688

with land-disturbance acreage equal to or greater than 100 acres)		
Individual Permit for Discharges of Stormwater from Construction Activities (This will be administered by the department)	\$15,000	\$15,000
* If the project is completely administered by the department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the department.		

The following fees apply, on or after July 1, 2014, to coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the board for a state or federal agency that has annual standards and specifications approved by the board.

General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development equal to or greater than five acres)	\$750
General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)	\$450

9VAC25-870-825. Fees for the modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities.

The following fees apply to modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities issued by the board. If the state permit modifications result in changes to stormwater management plans that require additional review by the VSMP authority, such reviews shall be subject to the fees set out in this section. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the state permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial state permit fee paid and the state permit fee that would have applied for the total disturbed acreage in 9VAC25-870-820. No modification or transfer fee shall be required until such board-approved programs exist. These fees shall only be effective when assessed by a VSMP authority, including the department when acting in that capacity, that has been approved by the board. No modification fee shall be required for the General Permit for Discharges of Stormwater from Construction

Activities for a state or federal agency that is administering a project in accordance with approved annual standards and specifications but shall apply to all other state or federal agency projects.

General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre) (<u>Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures</u>)	\$20
General / Stormwater Management – Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage)/Land Clearing (<u>Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VSMP authority</u>)	\$20
General / Stormwater Management – Small Construction Activity/Land Clearing (<u>Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority</u>)	\$0
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one and less than five acres)	\$200
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$250
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$300
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$450
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	\$700

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Individual Permit for Discharges of Stormwater from Construction Activities	\$5,000	<u>General / Stormwater Management – Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VSMP authority)</u>	<u>\$50</u>
<p>9VAC25-870-830. State permit maintenance fees.</p> <p>The following annual permit maintenance fees apply to each state permit identified below, including expired state permits that have been administratively continued. With respect to the General Permit for Discharges of Stormwater from Construction Activities, these fees shall apply until the state permit coverage is terminated, and shall only be effective when assessed by a VSMP authority including the department when acting in that capacity that has been approved by the board. No maintenance fee shall be required for a General Permit for Discharges of Stormwater from Construction Activities until such board approved programs exist. No maintenance fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency that is administering a project in accordance with approved annual standards and specifications but shall apply to all other state or federal agency projects. All regulated MS4s who are issued joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out below:</p>		<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)</u>	<u>\$0</u>
Municipal Stormwater / MS4 Individual (Large and Medium)	\$8,800	General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance equal to or greater than one acre and less than five acres)	\$400
Municipal Stormwater / MS4 Individual (Small)	\$6,000	General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$500
Municipal Stormwater / MS4 General Permit (Small)	\$3,000	General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$650
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$50	General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre) (<u>Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures</u>)	\$50	General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater 100 acres)	\$1,400
		Individual Permit for Discharges from Construction Activities	\$3,000

VA.R. Doc. No. R14-4017; Filed June 27, 2014, 12:56 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act pursuant to the second enactment of Chapters 303 and 598 of the 2014 Acts of Assembly, which provides that amendments to regulations of the board necessary to implement the provisions of the acts are exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), provided that there is a public comment period of at least 30 days on the proposed amendments prior to adoption by the board.

Title of Regulation: **9VAC25-880. General Permit for Discharges of Stormwater from Construction Activities (amending 9VAC25-880-30, 9VAC25-880-40, 9VAC25-880-50, 9VAC25-880-70).**

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

Effective Date: July 1, 2014.

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

Summary:

The amendments incorporate changes to the Code of Virginia enacted by Chapters 303 and 598 of the 2014 Acts of Assembly related to the Virginia Stormwater Management Program (VSMP) Regulations. The amendments (i) provide for the use of an "agreement in lieu of a stormwater management plan," (ii) change terminology from "single-family residence" to "single-family detached residential structure," and (iii) provide for technical changes to accommodate these revisions.

9VAC25-880-30. Authorization to discharge.

A. Any operator governed by this general permit is authorized to discharge to surface waters of the Commonwealth of Virginia provided that:

1. The operator submits a complete and accurate registration statement, if required to do so, in accordance with 9VAC25-880-50 and receives acceptance of the registration by the board;
2. The operator submits any permit fees, if required to do so, in accordance with 9VAC25-870-700 et seq.;
3. The operator complies with the applicable requirements of 9VAC25-880-70;
4. The operator obtains approval of:
 - a. An erosion and sediment control plan from the appropriate VESCP authority as authorized under the Erosion and Sediment Control Regulations (9VAC25-840), unless the operator receives from the VESCP authority an "agreement in lieu of a plan" as defined in 9VAC25-840-10 or prepares the erosion and sediment control plan in accordance with annual standards and specifications approved by the department. The operator

of any land-disturbing activity that is not required to obtain erosion and sediment control plan approval from a VESCP authority or is not required to adopt department-approved annual standards and specifications shall submit the erosion and sediment control plan to the department for review and approval; and

b. A stormwater management plan from the appropriate VSMP authority as authorized under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870), unless the operator receives from the VSMP authority an "agreement in lieu of a stormwater management plan" as defined in 9VAC25-870-10 or prepares the stormwater management plan in accordance with annual standards and specifications approved by the department. The operator of any land-disturbing activity that is not required to obtain stormwater management plan approval from a VSMP authority or is not required to adopt department-approved annual standards and specifications shall submit the stormwater management plan to the department for review and approval; and

5. The board has not notified the operator that the discharge is not eligible for coverage in accordance with subsection B of this section.

B. The board will notify an operator that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The operator is required to obtain an individual permit in accordance with 9VAC25-870-410 B;
2. The operator is proposing discharges to surface waters specifically named in other board regulations that prohibit such discharges;
3. The discharge causes, may reasonably be expected to cause, or contributes to a violation of water quality standards (9VAC25-260);
4. The discharge violates or would violate the antidegradation policy in the Water Quality Standards (9VAC25-260-30); or
5. The discharge is not consistent with the assumptions and requirements of an applicable TMDL approved prior to the term of this general permit.

C. This general permit also authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

1. The support activity is directly related to a construction activity that is required to have general permit coverage for discharges of stormwater from construction activities;
2. The support activity is not a commercial operation, nor does it serve multiple unrelated construction activities by different operators;

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3. The support activity does not operate beyond the completion of the last construction activity it supports;
4. The support activity is identified in the registration statement at the time of general permit coverage;
5. Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity areas; and
6. All applicable, state, federal, and local approvals are obtained for the support activity.

D. Support activities located off-site are not required to be covered under this general permit. Discharges of stormwater from off-site support activities may be authorized under another state or VPDES permit. Where stormwater discharges from off-site support activities are not authorized under this general permit, the land area of the off-site support activity need not be included in determining the total land disturbance acreage of the construction activity seeking general permit coverage.

E. Discharges authorized by this general permit may be commingled with other sources of stormwater that are not required to be covered under a state permit, so long as the commingled discharge is in compliance with this general permit. Discharges authorized by a separate state or VPDES permit may be commingled with discharges authorized by this general permit so long as all such discharges comply with all applicable state and VPDES permit requirements.

F. Authorized nonstormwater discharges. The following nonstormwater discharges from construction activities are authorized by this general permit:

1. Discharges from firefighting activities;
2. Fire hydrant flushings;
3. Water used to wash vehicles or equipment where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;
4. Water used to control dust that has been filtered, settled, or similarly treated prior to discharge;
5. Potable water source, including uncontaminated waterline flushings;
6. Routine external building wash down where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;
7. Pavement wash water where spills or leaks of toxic or hazardous materials have not occurred (or where all spilled or leaked material has been removed prior to washing); where soaps, solvents, or detergents have not been used; and where the wash water has been filtered, settled, or similarly treated prior to discharge;
8. Uncontaminated air conditioning or compressor condensate;
9. Uncontaminated groundwater or spring water;

10. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
11. Uncontaminated, excavation dewatering, including dewatering of trenches and excavations that have been filtered, settled, or similarly treated prior to discharge; and
12. Landscape irrigations.

G. Approval for coverage under this general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

H. Continuation of general permit coverage.

1. Any operator that was authorized to discharge under the general permit issued in 2009 and that submits a complete and accurate registration statement on or before June 30, 2014, is authorized to continue to discharge under the terms of the 2009 general permit until such time as the board either:

- a. Issues coverage to the operator under this general permit or
- b. Notifies the operator that the discharge is not eligible for coverage under this general permit.

2. When the operator is not in compliance with the conditions of the expiring or expired general permit the board may choose to do any or all of the following:

- a. Initiate enforcement action based upon the 2009 general permit;
- b. Issue a notice of intent to deny the new general permit. If the general permit is denied, the owner or operator would then be required to cease the activities authorized by the continued general permit or be subject to enforcement action for operating without a state permit;
- c. Issue a new state permit with appropriate conditions; or
- d. Take other actions authorized by the VSMP Regulation (9VAC25-870).

9VAC25-880-40. Delegation of authorities to state and local programs.

A board-approved VSMP authority is authorized to administer requirements of this general permit, including but not limited to: (i) registration statement acceptance; (ii) fee collection; and (iii) stormwater management plan review and approval; ~~and (iv) permit compliance and enforcement~~ dependent upon conditions established as part of the board approval.

9VAC25-880-50. General permit application (registration statement).

A. Deadlines for submitting registration statement. Any operator seeking coverage under this general permit, and that is required to submit a registration statement, shall submit a complete and accurate general VPDES permit registration statement in accordance with this section, which shall serve

as a notice of intent for coverage under the general VPDES permit for discharges of stormwater from construction activities.

1. New construction activities.

a. Any operator proposing a new stormwater discharge from construction activities shall submit a complete and accurate registration statement to the VSMP authority prior to the commencement of land disturbance.

b. Any operator proposing a new stormwater discharge from construction activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment is authorized to discharge under this general permit, provided that:

(1) The operator submits a complete and accurate registration statement to the VSMP authority no later than 30 days after commencing land disturbance; and

(2) Documentation to substantiate the occurrence of the public emergency is provided with the registration statement.

c. Any operator proposing a new stormwater discharge associated with the construction of a single-family residence separately built, disturbing less than one acre and part of a larger detached residential structure, within or outside a common plan of development or sale, is authorized to discharge under this general permit and is not required to submit a registration statement or the department portion of the permit fee, provided that the stormwater management plan for the larger common plan of development or sale provides permanent control measures (i.e., stormwater management facilities) encompassing the single family residence.

2. Existing construction activities.

a. Any operator that was authorized to discharge under the general permit issued in 2009 and that intends to continue coverage under this general permit shall:

(1) Submit a complete and accurate registration statement to the VSMP authority on or before June 1, 2014; and

(2) Update its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

b. Any operator with an existing stormwater discharge associated with the construction of a single-family residence separately built, disturbing less than one acre and part of a larger detached residential structure, within or outside a common plan of development or sale, and that intends to continue coverage under this general permit, is authorized to discharge under this general permit and is not required to submit a registration statement or the department portion of the permit fee, provided that: (1) The stormwater management plan for the larger common plan of development or sale provides

~~permanent control measures (i.e., stormwater management facilities) encompassing the single family residence; and (2) The the operator updates its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.~~

3. For stormwater discharges from construction activities where the operator changes, the new operator must submit a complete and accurate registration statement or transfer agreement form to the VSMP authority prior to assuming operational control over site specifications or commencing work on-site.

4. Late notifications. Operators are not prohibited from submitting registration statements after commencing land disturbance. When a late registration statement is submitted, authorization for discharges shall not occur until coverage under the general permit is issued. The VSMP authority, department, board, and the EPA reserve the right to take enforcement action for any unpermitted discharges that occur between the commencement of land disturbance and discharge authorization.

B. Registration statement. The operator shall submit a registration statement to the VSMP authority that shall contain the following information:

1. Name, contact, mailing address, telephone number, and email address if available of the construction activity operator. No more than one operator may receive coverage under each registration statement;

NOTE: General permit coverage will be issued to this operator, and the certification in subdivision 11 of this subsection must be signed by the appropriate person associated with this operator.

2. Name and location if available of the construction activity and all off-site support activities to be covered under this general permit, including city or county, and latitude and longitude in decimal degrees;

3. Status of the construction activity: federal, state, public, or private;

4. Nature of the construction activity (e.g., commercial, industrial, residential, agricultural, oil and gas, etc.);

5. Name of the receiving water(s) and HUC;

6. If the discharge is through a municipal separate storm sewer system (MS4), the name of the municipal separate storm sewer system operator;

7. Estimated project start date and completion date;

8. Total land area of development and estimated area to be disturbed by the construction activity (to the nearest one-hundredth of an acre);

9. Whether the area to be disturbed by the construction activity is part of a larger common plan of development or sale;

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10. A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the General VPDES Permit for Stormwater Discharges from Construction Activities prior to submitting the registration statement. By signing the registration statement the operator certifies that the SWPPP has been prepared; and

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

C. The registration statement shall be signed in accordance with 9VAC25-880-70, Part III K.

9VAC25-880-70. General permit.

Any operator whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements contained therein and be subject to all requirements of 9VAC25-870.

General Permit No.: VAR10

Effective Date: July 1, 2014

Expiration Date: June 30, 2019

GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES

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

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the Virginia Stormwater Management Act and regulations adopted pursuant thereto, operators of construction activities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in State Water Control Board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Discharge Authorization and Special Conditions, Part II - Stormwater Pollution Prevention Plan, and Part III - Conditions Applicable to All VPDES Permits as set forth herein.

PART I

DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

A. Coverage under this general permit.

1. During the period beginning with the date of coverage under this general permit and lasting until the general permit's expiration date, the operator is authorized to discharge stormwater from construction activities.

2. This general permit also authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

a. The support activity is directly related to the construction activity that is required to have general permit coverage for discharges of stormwater from construction activities;

b. The support activity is not a commercial operation, nor does it serve multiple unrelated construction activities by different operators;

c. The support activity does not operate beyond the completion of the last construction activity it supports;

d. The support activity is identified in the registration statement at the time of general permit coverage;

e. Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity areas; and

f. All applicable state, federal, and local approvals are obtained for the support activity.

B. Limitations on coverage.

1. Post-construction discharges. This general permit does not authorize stormwater discharges that originate from the site after construction activities have been completed and the site, including any support activity sites covered under the general permit registration, has undergone final stabilization. Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit.

2. Discharges mixed with nonstormwater. This general permit does not authorize discharges that are mixed with sources of nonstormwater, other than those discharges that are identified in Part I E (Authorized nonstormwater discharges) and are in compliance with this general permit.

3. Discharges covered by another state permit. This general permit does not authorize discharges of stormwater from construction activities that have been covered under an individual permit or required to obtain coverage under an alternative general permit.

4. Impaired waters and TMDL limitation. Discharges of stormwater from construction activities to surface waters identified as impaired in the 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit for (i) sediment or a sediment-related parameter (i.e., total

suspended solids or turbidity) or (ii) nutrients (i.e., nitrogen or phosphorus) are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a SWPPP that minimizes the pollutants of concern and, when applicable, is consistent with the assumptions and requirements of the approved TMDL wasteload allocations. In addition, the operator shall implement the following items:

- a. The impaired water(s), approved TMDL(s), and pollutant(s) of concern, when applicable, shall be identified in the SWPPP;
- b. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;
- c. Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and
- d. The applicable SWPPP inspection requirements specified in Part II F 2 shall be amended as follows:

(1) Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted on the next business day; and

(2) Representative inspections used by utility line installation, pipeline construction, or other similar linear construction activities shall inspect all outfalls discharging to surface waters identified as impaired or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit.

5. Exceptional waters limitation. Discharges of stormwater from construction activities not previously covered under the general permit issued in 2009 to exceptional waters identified in 9VAC25-260-30 A 3 c are not eligible for coverage under this general permit unless the operator implements the following:

- a. The exceptional water(s) shall be identified in the SWPPP;
- b. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;
- c. Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and
- d. The applicable SWPPP inspection requirements specified in Part II F 2 shall be amended as follows:

(1) Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted on the next business day; and

(2) Representative inspections used by utility line installation, pipeline construction, or other similar linear construction activities shall inspect all outfalls discharging to exceptional waters.

6. There shall be no discharge of floating solids or visible foam in other than trace amounts.

C. Commingled discharges. Discharges authorized by this general permit may be commingled with other sources of stormwater that are not required to be covered under a state permit, so long as the commingled discharge is in compliance with this general permit. Discharges authorized by a separate state or VPDES permit may be commingled with discharges authorized by this general permit so long as all such discharges comply with all applicable state and VPDES permit requirements.

D. Prohibition of nonstormwater discharges. Except as provided in Parts I A 2, I C, and I E, all discharges covered by this general permit shall be composed entirely of stormwater associated with construction activities. All other discharges including the following are prohibited:

- 1. Wastewater from washout of concrete;
- 2. Wastewater from the washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
- 3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
- 4. Oils, toxic substances, or hazardous substances from spills or other releases; and
- 5. Soaps, solvents, or detergents used in equipment and vehicle washing.

E. Authorized nonstormwater discharges. The following nonstormwater discharges from construction activities are authorized by this general permit when discharged in compliance with this general permit:

- 1. Discharges from firefighting activities;
- 2. Fire hydrant flushings;
- 3. Waters used to wash vehicles or equipment where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;
- 4. Water used to control dust that has been filtered, settled, or similarly treated prior to discharge;
- 5. Potable water sources, including uncontaminated waterline flushings;

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6. Routine external building wash down where soaps, solvents or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;
7. Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (or where all spilled or leaked material has been removed prior to washing); where soaps, solvents, or detergents have not been used; and where the wash water has been filtered, settled, or similarly treated prior to discharge;
8. Uncontaminated air conditioning or compressor condensate;
9. Uncontaminated ground water or spring water;
10. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
11. Uncontaminated excavation dewatering, including dewatering of trenches and excavations that have been filtered, settled, or similarly treated prior to discharge; and
12. Landscape irrigation.

F. Termination of general permit coverage.

1. The operator of the construction activity shall submit a notice of termination in accordance with 9VAC25-880-60 to the VSMP authority after one or more of the following conditions have been met:
 - a. Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator is responsible. When applicable, long term responsibility and maintenance requirements shall be recorded in the local land records prior to the submission of a notice of termination;
 - b. Another operator has assumed control over all areas of the site that have not been finally stabilized and obtained coverage for the ongoing discharge;
 - c. Coverage under an alternative VPDES or state permit has been obtained; or
 - d. For residential construction only, temporary soil stabilization has been completed and the residence has been transferred to the homeowner.

2. The notice of termination should be submitted no later than 30 days after one of the above conditions in subdivision 1 of this subsection is met. Authorization to discharge terminates at midnight on the date that the notice of termination is submitted for the conditions set forth in subdivisions 1 b through 1 d of this subsection. Termination of authorizations to discharge for the conditions set forth in subdivision 1 a of this subsection shall be effective upon notification from the department that the provisions of subdivision 1 a of this subsection

have been met or 60 days after submittal of the notice of termination, whichever occurs first.

3. The notice of termination shall be signed in accordance with Part III K of this general permit.

G. Water quality protection.

1. The operator must select, install, implement and maintain control measures as identified in the SWPPP at the construction site that minimize pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standard.

2. If it is determined by the department that the operator's discharges are causing, have reasonable potential to cause, or are contributing to an excursion above any applicable water quality standard, the department, in consultation with the VSMP authority, may take appropriate enforcement action and require the operator to:

- a. Modify or implement additional control measures in accordance with Part II B to adequately address the identified water quality concerns;
- b. Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or
- c. Submit an individual permit application in accordance with 9VAC25-870-410 B 3.

All written responses required under this chapter must include a signed certification consistent with Part III K.

PART II

STORMWATER POLLUTION PREVENTION PLAN

A stormwater pollution prevention plan (SWPPP) shall be developed prior to the submission of a registration statement and implemented for the construction activity, including any support activity, covered by this general permit. SWPPPs shall be prepared in accordance with good engineering practices. Construction activities that are part of a larger common plan of development or sale and disturb less than one acre may utilize a SWPPP template provided by the department and need not provide a separate stormwater management plan if one has been prepared and implemented for the larger common plan of development or sale.

The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other plans such as a spill prevention control and countermeasure (SPCC) plan developed for the site under § 311 of the federal Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Part II A. All plans incorporated by reference into the SWPPP become enforceable under this general permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP, the operator must develop the missing elements and include them in the SWPPP.

Any operator that was authorized to discharge under the general permit issued in 2009, and that intends to continue coverage under this general permit, shall update its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

A. Stormwater pollution prevention plan contents. The SWPPP shall include the following items:

1. General information.

- a. A signed copy of the registration statement, if required, for coverage under the general VPDES permit for discharges of stormwater from construction activities;
- b. Upon receipt, a copy of the notice of coverage under the general VPDES permit for discharges of stormwater from construction activities (i.e., notice of coverage letter);
- c. Upon receipt, a copy of the general VPDES permit for discharges of stormwater from construction activities;
- d. A narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway, etc.);
- e. A legible site plan identifying:
 - (1) Directions of stormwater flow and approximate slopes anticipated after major grading activities;
 - (2) Limits of land disturbance including steep slopes and natural buffers around surface waters that will not be disturbed;
 - (3) Locations of major structural and nonstructural control measures, including sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to filter, settle, or similarly treat sediment, that will be installed between disturbed areas and the undisturbed vegetated areas in order to increase sediment removal and maximize stormwater infiltration;
 - (4) Locations of surface waters;
 - (5) Locations where concentrated stormwater is discharged;
 - (6) Locations of support activities, when applicable and when required by the VSMP authority, including but not limited to (i) areas where equipment and vehicle washing, wheel wash water, and other wash water is to occur; (ii) storage areas for chemicals such as acids, fuels, fertilizers, and other lawn care chemicals; (iii) concrete wash out areas; (iv) vehicle fueling and maintenance areas; (v) sanitary waste facilities, including those temporarily placed on the construction site; and (vi) construction waste storage; and
 - (7) When applicable, the location of the on-site rain gauge or the methodology established in consultation with the VSMP authority used to identify measurable storm events for inspection purposes.

2. Erosion and sediment control plan.

- a. An erosion and sediment control plan approved by the VESCP authority as authorized under the Erosion and Sediment Control Regulations (9VAC25-840), an "agreement in lieu of a plan" as defined in 9VAC25-840-10 from the VESCP authority, or an erosion and sediment control plan prepared in accordance with annual standards and specifications approved by the department. Any operator proposing a new stormwater discharge from construction activities that is not required to obtain erosion and sediment control plan approval from a VESCP authority or does not adopt department-approved annual standards and specifications shall submit the erosion and sediment control plan to the department for review and approval.
- b. All erosion and sediment control plans shall include a statement describing the maintenance responsibilities required for the erosion and sediment controls used.
- c. A properly implemented approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, that adequately:
 - (1) Controls the volume and velocity of stormwater runoff within the site to minimize soil erosion;
 - (2) Controls stormwater discharges, including peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;
 - (3) Minimizes the amount of soil exposed during the construction activity;
 - (4) Minimizes the disturbance of steep slopes;
 - (5) Minimizes sediment discharges from the site in a manner that addresses (i) the amount, frequency, intensity, and duration of precipitation; (ii) the nature of resulting stormwater runoff; and (iii) soil characteristics, including the range of soil particle sizes present on the site;
 - (6) Provides and maintains natural buffers around surface waters, directs stormwater to vegetated areas to increase sediment removal, and maximizes stormwater infiltration, unless infeasible;
 - (7) Minimizes soil compaction and, unless infeasible, preserves topsoil;
 - (8) Ensures that stabilization of disturbed areas will be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days; and
 - (9) Utilizes outlet structures that withdraw stormwater from the surface (i.e., above the permanent pool or wet

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storage water surface elevation), unless infeasible, when discharging from sediment basins or sediment traps.

3. Stormwater management plan.

a. New construction activities. A stormwater management plan approved by the VSMP authority as authorized under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870), or an agreement in lieu of a stormwater management plan" as defined in 9VAC25-870-10 from the VSMP authority, or a stormwater management plan prepared in accordance with annual standards and specifications approved by the department. Any operator proposing a new stormwater discharge from construction activities that is not required to obtain stormwater management plan approval from a VSMP authority or does not adopt department-approved annual standards and specifications shall submit the stormwater management plan to the department for review and approval.

b. Existing construction activities. Any operator that was authorized to discharge under the general permit issued in 2009, and that intends to continue coverage under this general permit, shall ensure compliance with the requirements of 9VAC25-870-93 through 9VAC25-870-99 of the VSMP Regulation, including but not limited to the water quality and quantity requirements. The SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed prior to the completion of the construction process to control pollutants in stormwater discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree possible. Such measures must be designed and installed in accordance with applicable VESCP authority, VSMP authority, state, and federal requirements, and any necessary permits must be obtained.

4. Pollution prevention plan. A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity. The pollution prevention plan shall:

- a. Identify the potential pollutant-generating activities and the pollutant that is expected to be exposed to stormwater;
- b. Describe the location where the potential pollutant-generating activities will occur, or if identified on the site plan, reference the site plan;
- c. Identify all nonstormwater discharges, as authorized in Part I E of this general permit, that are or will be commingled with stormwater discharges from the construction activity, including any applicable support activity;

d. Identify the person responsible for implementing the pollution prevention practice or practices for each pollutant-generating activity (if other than the person listed as the qualified personnel);

e. Describe the pollution prevention practices and procedures that will be implemented to:

(1) Prevent and respond to leaks, spills, and other releases including (i) procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases; and (ii) procedures for reporting leaks, spills, and other releases in accordance with Part III G;

(2) Prevent the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities (e.g., providing secondary containment such as spill berms, decks, spill containment pallets, providing cover where appropriate, and having spill kits readily available);

(3) Prevent the discharge of soaps, solvents, detergents, and wash water from construction materials, including the clean-up of stucco, paint, form release oils, and curing compounds (e.g., providing (i) cover (e.g., plastic sheeting or temporary roofs) to prevent contact with stormwater; (ii) collection and proper disposal in a manner to prevent contact with stormwater; and (iii) a similarly effective means designed to prevent discharge of these pollutants);

(4) Minimize the discharge of pollutants from vehicle and equipment washing, wheel wash water, and other types of washing (e.g., locating activities away from surface waters and stormwater inlets or conveyance and directing wash waters to sediment basins or traps, using filtration devices such as filter bags or sand filters, or using similarly effective controls);

(5) Direct concrete wash water into a leak-proof container or leak-proof settling basin. The container or basin shall be designed so that no overflows can occur due to inadequate sizing or precipitation. Hardened concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wastes. Liquid concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wash waters and shall not be discharged to surface waters;

(6) Minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes including (i) building products such as asphalt sealants, copper flashing, roofing materials, adhesives, and concrete admixtures; (ii) pesticides, herbicides, insecticides, fertilizers, and landscape materials; and (iii) construction and domestic wastes such as packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, Styrofoam, concrete, and other trash or building materials;

(7) Prevent the discharge of fuels, oils, and other petroleum products, hazardous or toxic wastes, and sanitary wastes; and

(8) Address any other discharge from the potential pollutant-generating activities not addressed above; and

f. Describe procedures for providing pollution prevention awareness of all applicable wastes, including any wash water, disposal practices, and applicable disposal locations of such wastes, to personnel in order to comply with the conditions of this general permit. The operator shall implement the procedures described in the SWPPP.

5. SWPPP requirements for discharges to impaired waters, surface waters with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit, and exceptional waters. The SWPPP shall:

a. Identify the impaired water(s), approved TMDL(s), pollutant(s) of concern, and exceptional waters identified in 9VAC25-260-30 A 3 c, when applicable;

b. Provide clear direction that:

(1) Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;

(2) Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and

(3) A modified inspection schedule shall be implemented in accordance with Part I B 4 or Part I B 5.

6. Qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit.

7. Delegation of authority. The individuals or positions with delegated authority, in accordance with Part III K, to sign inspection reports or modify the SWPPP.

8. SWPPP signature. The SWPPP shall be signed and dated in accordance with Part III K.

B. SWPPP amendments, modification, and updates.

1. The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP.

2. The SWPPP must be amended if, during inspections or investigations by the operator's qualified personnel, or by local, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction activity. Revisions to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. If approval by the VESCP authority, VSMP authority, or department is necessary for

the control measure, revisions to the SWPPP shall be completed no later than seven calendar days following approval. Implementation of these additional or modified control measures must be accomplished as described in Part II G.

3. The SWPPP must clearly identify the contractor(s) that will implement and maintain each control measure identified in the SWPPP. The SWPPP shall be amended to identify any new contractor that will implement and maintain a control measure.

4. The operator shall update the SWPPP no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items:

a. A record of dates when:

(1) Major grading activities occur;

(2) Construction activities temporarily or permanently cease on a portion of the site; and

(3) Stabilization measures are initiated;

b. Documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and where modified as soon as possible;

c. Areas that have reached final stabilization and where no further SWPPP or inspection requirements apply;

d. All properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control over each property;

e. The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release;

f. Measures taken to prevent the reoccurrence of any prohibited discharge; and

g. Measures taken to address any evidence identified as a result of an inspection required under Part II F.

5. Amendments, modifications, or updates to the SWPPP shall be signed in accordance with Part III K.

C. Public Notification. Upon commencement of land disturbance, the operator shall post conspicuously a copy of the notice of coverage letter near the main entrance of the construction activity. For linear projects, the operator shall post the notice of coverage letter at a publicly accessible location near an active part of the construction project (e.g., where a pipeline crosses a public road). The operator shall maintain the posted information until termination of general permit coverage as specified in Part I F.

D. SWPPP availability.

1. Operators with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for use by those

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identified as having responsibilities under the SWPPP whenever they are on the construction site.

2. The operator shall make the SWPPP and all amendments, modifications, and updates available upon request to the department, the VSMP authority, the EPA, the VESCP authority, local government officials, or the operator of a municipal separate storm sewer system receiving discharges from the construction activity. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be posted near the main entrance of the construction site.

3. The operator shall make the SWPPP available for public review in an electronic format or in hard copy. Information for public access to the SWPPP shall be posted and maintained in accordance with Part II C. If not provided electronically, public access to the SWPPP may be arranged upon request at a time and at a publicly accessible location convenient to the operator or his designee but shall be no less than once per month and shall be during normal business hours. Information not required to be contained within the SWPPP by this general permit is not required to be released.

E. SWPPP implementation. The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F.

1. All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II F identifies a control measure that is not operating effectively, corrective action(s) shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.

2. If site inspections required by Part II F identify an existing control measure that needs to be modified or if an additional control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then alternative control measures shall be implemented as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority.

F. SWPPP Inspections.

1. Personnel responsible for on-site and off-site inspections. Inspections required by this general permit shall be conducted by the qualified personnel identified by the operator in the SWPPP. The operator is responsible for insuring that the qualified personnel conduct the inspection.

2. Inspection schedule.

a. Inspections shall be conducted at a frequency of:

(1) At least once every five business days; or

(2) At least once every 10 business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted no later than the next business day.

b. Where areas have been temporarily stabilized or land-disturbing activities will be suspended due to continuous frozen ground conditions and stormwater discharges are unlikely, the inspection frequency may be reduced to once per month. If weather conditions (such as above freezing temperatures or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency.

c. Representative inspections may be utilized for utility line installation, pipeline construction, or other similar linear construction activities provided that:

(1) Temporary or permanent soil stabilization has been installed and vehicle access may compromise the temporary or permanent soil stabilization and potentially cause additional land disturbance increasing the potential for erosion;

(2) Inspections occur on the same frequency as other construction activities;

(3) Control measures are inspected along the construction site 0.25 miles above and below each access point (i.e., where a roadway, undisturbed right-of-way, or other similar feature intersects the construction activity and access does not compromise temporary or permanent soil stabilization); and

(4) Inspection locations are provided in the report required by Part II F.

3. Inspection requirements.

a. As part of the inspection, the qualified personnel shall:

(1) Record the date and time of the inspection and when applicable the date and rainfall amount of the last measurable storm event;

(2) Record the information and a description of any discharges occurring at the time of the inspection;

(3) Record any land-disturbing activities that have occurred outside of the approved erosion and sediment control plan;

(4) Inspect the following for installation in accordance with the approved erosion and sediment control plan, identification of any maintenance needs, and evaluation of effectiveness in minimizing sediment discharge, including whether the control has been inappropriately or incorrectly used:

- (a) All perimeter erosion and sediment controls, such as silt fence;
- (b) Soil stockpiles, when applicable, and borrow areas for stabilization or sediment trapping measures;
- (c) Completed earthen structures, such as dams, dikes, ditches, and diversions for stabilization;
- (d) Cut and fill slopes;
- (e) Sediment basins and traps, sediment barriers, and other measures installed to control sediment discharge from stormwater;
- (f) Temporary or permanent channel, flume, or other slope drain structures installed to convey concentrated runoff down cut and fill slopes;
- (g) Storm inlets that have been made operational to ensure that sediment laden stormwater does not enter without first being filtered or similarly treated; and
- (h) Construction vehicle access routes that intersect or access paved roads for minimizing sediment tracking;
- (5) Inspect areas that have reached final grade or that will remain dormant for more than 14 days for initiation of stabilization activities;
- (6) Inspect areas that have reached final grade or that will remain dormant for more than 14 days for completion of stabilization activities within seven days of reaching grade or stopping work;
- (7) Inspect for evidence that the approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications has not been properly implemented. This includes but is not limited to:
 - (a) Concentrated flows of stormwater in conveyances such as rills, rivulets or channels that have not been filtered, settled, or similarly treated prior to discharge, or evidence thereof;
 - (b) Sediment laden or turbid flows of stormwater that have not been filtered or settled to remove sediments prior to discharge;
 - (c) Sediment deposition in areas that drain to unprotected stormwater inlets or catch basins that discharge to surface waters. Inlets and catch basins with failing sediment controls due to improper installation, lack of maintenance, or inadequate design are considered unprotected;
 - (d) Sediment deposition on any property (including public and private streets) outside of the construction activity covered by this general permit;
 - (e) Required stabilization has not been initiated or completed on portions of the site;
 - (f) Sediment basins without adequate wet or dry storage volume or sediment basins that allow the discharge of

stormwater from below the surface of the wet storage portion of the basin;

- (g) Sediment traps without adequate wet or dry storage or sediment traps that allow the discharge of stormwater from below the surface of the wet storage portion of the trap; and
- (h) Land disturbance outside of the approved area to be disturbed;
- (8) Inspect pollutant generating activities identified in the pollution prevention plan for the proper implementation, maintenance and effectiveness of the procedures and practices;
- (9) Identify any pollutant generating activities not identified in the pollution prevention plan; and
- (10) Identify and document the presence of any evidence of the discharge of pollutants prohibited by this general permit.

4. Inspection report. Each inspection report shall include the following items:

- a. The date and time of the inspection and when applicable, the date and rainfall amount of the last measurable storm event;
- b. Summarized findings of the inspection;
- c. The location(s) of prohibited discharges;
- d. The location(s) of control measures that require maintenance;
- e. The location(s) of control measures that failed to operate as designed or proved inadequate or inappropriate for a particular location;
- f. The location(s) where any evidence identified under Part II F 3 a (7) exists;
- g. The location(s) where any additional control measure is needed that did not exist at the time of inspection;
- h. A list of corrective actions required (including any changes to the SWPPP that are necessary) as a result of the inspection or to maintain permit compliance;
- i. Documentation of any corrective actions required from a previous inspection that have not been implemented; and
- j. The date and signature of the qualified personnel and the operator or its duly authorized representative.

The inspection report and any actions taken in accordance with Part II must be retained by the operator as part of the SWPPP for at least three years from the date that general permit coverage expires or is terminated. The inspection report shall identify any incidents of noncompliance. Where an inspection report does not identify any incidents of noncompliance, the report shall contain a certification that the construction activity is in compliance with the SWPPP and this general permit. The report shall be signed in accordance with Part III K of this general permit.

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G. Corrective actions.

1. The operator shall implement the corrective action(s) identified as a result of an inspection as soon as practicable but no later than seven days after discovery or a longer period as approved by the VSMP authority. If approval of a corrective action by a regulatory authority (e.g., VSMP authority, VESCP authority, or the department) is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.
2. The operator may be required to remove accumulated sediment deposits located outside of the construction activity covered by this general permit as soon as practicable in order to minimize environmental impacts. The operator shall notify the VSMP authority and the department as well as obtain all applicable federal, state, and local authorizations, approvals, and permits prior to the removal of sediments accumulated in surface waters including wetlands.

PART III

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

NOTE: Discharge monitoring is not required for this general permit. If the operator chooses to monitor stormwater discharges or control measures, the operator must comply with the requirements of subsections A, B, and C, as appropriate.

A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this general permit. Analyses performed according to test procedures approved under 40 CFR Part 136 shall be performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).
3. The operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Monitoring records and reports shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) and time(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and

- f. The results of such analyses.

2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this general permit, and records of all data used to complete the registration statement for this general permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the board.

C. Reporting monitoring results.

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

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

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

F. Unauthorized stormwater discharges. Pursuant to § 62.1-44.5 of the Code of Virginia, except in compliance with a state permit issued by the department, it shall be unlawful to cause a stormwater discharge from a construction activity.

G. Reports of unauthorized discharges. Any operator who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, 40 CFR Part 302, or § 62.1-44.34:19 of the Code of Virginia that occurs during a 24-hour period into or upon surface waters or who discharges or causes or allows a discharge that may reasonably be expected to enter surface waters, shall notify the Department of Environmental Quality of the discharge immediately upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department and the VSMP authority within five days of discovery of the discharge. The written report shall contain:

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

Discharges reportable to the department and the VSMP authority under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a "bypass" or "upset," as defined herein, should occur from a facility and the discharge enters or could be expected to enter surface waters, the operator shall promptly notify, in no case later than within 24 hours, the department and the VSMP authority by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The operator shall reduce the report to writing and shall submit it to the department and the VSMP authority within five days of discovery of the discharge in

accordance with Part III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

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

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

1. An oral report to the department and the VSMP authority shall be provided within 24 hours from the time the operator becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:

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

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

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

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

3. The operator shall report all instances of noncompliance not reported under Part III I 1 or 2 in writing as part of the SWPPP. The reports shall contain the information listed in Part III I 2.

NOTE: The reports required in Part III G, H and I shall be made to the department and the VSMP authority. Reports may be made by telephone, email, or by fax. For reports outside normal working hours, leaving a recorded message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the operator becomes aware of a failure to submit any relevant facts, or submittal of incorrect information in any report, including a registration statement, to the department or the VSMP authority, the operator shall promptly submit such facts or correct information.

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J. Notice of planned changes.

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

a. The operator plans an alteration or addition to any building, structure, facility, or installation that may meet one of the criteria for determining whether a facility is a new source in 9VAC25-870-420;

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

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

K. Signatory requirements.

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

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

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

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this chapter, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by this general permit, including SWPPPs, and other information requested by the board or the department shall be signed by a person

described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the operator. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The signed and dated written authorization is included in the SWPPP. A copy must be provided to the department and VSMP authority, if requested.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the construction activity, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the VSMP authority as the administering entity for the board prior to or together with any reports or information to be signed by an authorized representative.

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

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

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

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

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

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

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

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

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

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

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering surface waters and in compliance with all applicable state and federal laws and regulations.

S. Duty to mitigate. The operator shall take all steps to minimize or prevent any discharge in violation of this general

permit that has a reasonable likelihood of adversely affecting human health or the environment.

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

U. Bypass.

1. "Bypass," as defined in 9VAC25-870-10, means the intentional diversion of waste streams from any portion of a treatment facility. The operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part III U 2 and 3.

2. Notice.

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

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

3. Prohibition of bypass.

a. Except as provided in Part III U 1, bypass is prohibited, and the board or department may take enforcement action against an operator for bypass unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production;

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

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

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

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V. Upset.

1. An "upset," as defined in 9VAC25-870-10, means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based state permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

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

3. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

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

- a. An upset occurred and that the operator can identify the cause(s) of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The operator submitted notice of the upset as required in Part III I; and
- d. The operator complied with any remedial measures required under Part III S.

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

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

1. Enter upon the operator's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this general permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this general permit;
3. Inspect and photograph at reasonable times any facilities, equipment (including monitoring and control

equipment), practices, or operations regulated or required under this general permit; and

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

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

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

Y. Transfer of state permits.

1. State permits are not transferable to any person except after notice to the department. Except as provided in Part III Y 2, a state permit may be transferred by the operator to a new operator only if the state permit has been modified or revoked and reissued, or a minor modification made, to identify the new operator and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.

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

- a. The current operator notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new operators containing a specific date for transfer of state permit responsibility, coverage, and liability between them; and
- c. The department does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the state permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

3. For ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior to taking over operations at the site.

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

VA.R. Doc. No. R14-4018; Filed June 27, 2014, 12:58 p.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Forms

NOTICE: Forms used in administering the following regulation have been filed by the State Corporation Commission. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: **14VAC5-216. Rules Governing Internal Appeal and External Review.**

Effective Date: July 28, 2014.

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

FORMS (14VAC5-216)

[External Review Request Form, Form 216-A \(7/11\)](#)

[Appointment of Authorized Representative, Form 216-B \(7/11\)](#)

[Physician Certification Expedited External Review Request, Form 216-C \(7/11\)](#)

[Physician Certification Experimental or Investigational Denials, Form 216-D \(7/11\)](#)

~~[Independent Review Organization Application for Registration, Form 216-E \(7/11\)](#)~~

[Independent Review Organization Application for Registration, Form 216-E \(rev. 7/14\)](#)

[Health Carrier External Review Annual Report Form, Form 216-F \(7/11\)](#)

[Independent Review Organization External Review Annual Report Form, Form 216-G \(7/11\)](#)

[Self-Insured Plan Opt-In to Virginia External Review Process, Form 216-H \(7/11\)](#)

VA.R. Doc. No. R14-4105; Filed July 2, 2014, 3:32 p.m.

REGISTRAR'S NOTICE: The following regulatory actions are 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 Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Final Regulation

Title of Regulation: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.217 (e)(1)).**

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: September 1, 2014.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, or email crisanti.john@dol.gov.

Summary:

In a direct final rule, federal Occupational Safety & Health Administration (OSHA) made two main revisions to its Mechanical Power Presses Standard in General Industry, 29 CFR 1910. First, OSHA revised a provision that requires employers to develop and maintain certification records of periodic inspections performed on the presses by adding a requirement that they develop and maintain certification records of any maintenance and repairs they perform on the presses during the periodic inspections. Second, OSHA removed the requirement from another provision that employers develop and maintain certification records of weekly inspections and tests performed on the presses. This action incorporates these changes into the Virginia standards for general industry.

Note on Incorporation by Reference: Pursuant to § [2.2-4103](#) of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North 9th Street, Richmond, Virginia 23219.

Statement of Final Agency Action: On June 5, 2014, the Safety and Health Codes Board adopted federal OSHA's

Regulations

direct final rule for the Record Requirements in the Mechanical Power Presses Standard, as published in 78 FR 69543 through 78 FR 69550 on November 20, 2013, with an effective date of February 18, 2014.

Federal Terms and State Equivalents: When the regulations are set forth in the revised final rule for Occupational Safety and Health Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
February 18, 2014	September 1, 2014

VA.R. Doc. No. R14-4102; Filed July 9, 2014, 11:35 a.m.

Final Regulation

Titles of Regulations: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.136, 16VAC25-90-1910.137, Appendix B to Subpart I of Part 1910, 16VAC25-90-1910.269, Appendices A through D to 16VAC25-90-1910.269, 16VAC25-90-1910.331, 16VAC25-90-1910.339; adding Appendices E through G to 16VAC25-90-1910.269).**

16VAC25-155. Virginia Construction Industry General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment (repealing 16VAC25-155-10).

16VAC25-175. Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.500, 16VAC25-175-1926.950, 16VAC25-175-1926.951, 16VAC25-175-1926.952, 16VAC25-175-1926.953, 16VAC25-175-1926.954, 16VAC25-175-1926.955, 16VAC25-175-1926.956, 16VAC25-175-1926.957, 16VAC25-175-1926.958, 16VAC25-175-1926.959, 16VAC25-175-1926.960, 16VAC25-175-1926.961, 16VAC25-175-1926.962, 16VAC25-175-1926.963, 16VAC25-175-1926.964, 16VAC25-175-1926.965, 16VAC25-175-1926.966, 16VAC25-175-1926.967, 16VAC25-175-1926.968, 16VAC25-175-1926.1053, 16VAC25-175-1926.1400, 16VAC25-175-1926.1410; adding 16VAC25-175-1926.97, Appendices A through G to Subpart V of Part 1926).

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: September 1, 2014.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219,

telephone (804) 786-4300, FAX (804) 786-8418, or email crisanti.john@dol.gov.

Summary:

In a final rule, federal Occupational Safety & Health Administration (OSHA) (i) adopted a new construction standard on electrical protective equipment, 29 CFR 1926.97; (ii) revised the standard on the construction of electric power transmission and distribution lines and equipment, 29 CFR Part 1926, Subpart V; (iii) revised the general industry counterparts to these construction standards, 29 CFR 1910.137 and 1910.269; (iv) revised its general industry standard on foot protection, 29 CFR 1910.136, to require employers to ensure that protective footwear is used to protect an employee from an electrical hazard that remains after the employer takes other necessary protective measures; and (v) made certain editorial and nonsubstantive changes for clarification. OSHA also included numerous comparable appendices in 29 CFR 1910.269 and Subpart V of 29 CFR Part 126 in the final rule. This action incorporates these changes into the Virginia standards, with the exception of the change to 29 CFR 1926.6, Incorporation by reference. Like federal OSHA, VOSH is seeking to use the extended phase-in period for this final rule with the same federal date schedule for implementation so that the additional time granted to employers will serve to reduce the transitional costs associated with this rule.

The new federal final rule provides comprehensive and uniform levels of worker protection across industries that previously were lacking and had been addressed by the board in 2004 through the adoption of 16VAC25-155. Since this Virginia unique regulation is no longer necessary, the board is repealing it as part of this regulatory action.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards) and 29 CFR Part 1926 (Safety and Health Regulations for Construction) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason, these documents will not be printed in the Virginia Register of Regulations. A copy of these documents are available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North 9th Street, Richmond, Virginia 23219.

Statement of Final Agency Action: On June 5, 2014, the Safety and Health Codes Board adopted federal OSHA's final rule for Electric Power Generation, Transmission, Distribution and Electrical Protective Equipment, Parts 1910 and 1926, as published in 79 FR 20316 through 79 FR 20743 on April 11, 2014, with an effective date of July 10, 2014.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards and Safety and Health Regulations for Construction are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
July 10, 2014	September 1, 2014

VA.R. Doc. No. R14-4104; Filed July 9, 2014, 11:37 a.m.

Final Regulation

Title of Regulation: 16VAC25-120. **Federal Identical Marine Terminals Standards (amending 16VAC25-120-1917.71).**

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: September 1, 2014.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, or email crisanti.john@dol.gov.

Summary:

In a final rule, federal Occupational Safety & Health Administration (OSHA) implemented a court-ordered remand of certain portions of the standard for vertical tandem lifts (VTLs) by limiting the application of the corner-casting and interbox-connector inspection requirements to shore-to-ship VTLs and removing the tandem lifts of platform containers from the scope of the VTL standard. This action incorporates these changes into the Virginia standards for marine terminals.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1917 (Marine Terminals) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North 9th Street, Richmond, Virginia 23219.

Statement of Final Agency Action: On June 5, 2014, the Safety and Health Codes Board adopted federal OSHA's final rule and remand for Terminals Handling Intermodal Containers or Roll-On Roll-Off Operations; Vertical tandem

lifts, as published in 79 FR 22018 through 79 FR 22020 on April 21, 2014, with an effective date of July 21, 2014.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Marine Terminals are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
July 21, 2014	September 1, 2014

VA.R. Doc. No. R14-4103; Filed July 9, 2014, 11:37 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Final Regulation

REGISTRAR'S NOTICE: The Board of Medicine 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 Board of Medicine will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC85-80. **Regulations Governing the Licensure of Occupational Therapists (amending 18VAC85-80-45).**

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

Effective Date: August 27, 2014.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

This action conforms the requirements regarding practice by a graduate of an occupational therapy or occupational therapy assistant program while awaiting examination results to changes in the Code of Virginia enacted by Chapter 252 of the 2014 Acts of Assembly. The amendments permit an applicant to practice for up to six months from the date of graduation or until the applicant has received a failing score on the licensure examination, whichever comes first.

Regulations

18VAC85-80-45. Practice by a graduate awaiting examination results.

A. A graduate of an accredited occupational therapy educational program may practice with the designated title of "Occupational Therapist, License Applicant" or "O.T.L.-Applicant" until he has ~~taken and received the results of a~~ failing score on the licensure examination from NBCOT or for six months from the date of graduation, whichever occurs sooner. The graduate shall use one of the designated titles on any identification or signature in the course of his practice.

B. A graduate of an accredited occupational therapy assistant educational program may practice with the designated title of "Occupational Therapy Assistant-License Applicant" or "O.T.A.-Applicant" until he has ~~taken and received the results of a~~ failing score on the licensure examination from NBCOT or for six months from the date of graduation, whichever occurs sooner. The graduate shall use one of the designated titles on any identification or signature in the course of his practice.

VA.R. Doc. No. R14-4086; Filed July 8, 2014, 9:09 a.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 17 (2014)

Development and Review of State Agency Regulations

Importance of the Initiative

By virtue of the authority vested in me as Governor under Article V of the Constitution of the Commonwealth of Virginia and under the laws of the Commonwealth, including, but not limited to, Sections 2.2-4013 and 2.2-4017 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish policies and procedures for the review of all new regulations and changes to existing regulations proposed by state agencies, which shall include for purposes of this Executive Order all agencies, boards, commissions, and other entities of the Commonwealth within the executive branch that are authorized to promulgate regulations. Nothing in this Executive Order shall be construed to limit my authority under the Code of Virginia, including to require an additional 30-day public comment period, file a formal objection to a regulation, suspend the effective date of a regulation with the concurrence of the applicable body of the General Assembly, or to exercise any other rights and prerogatives existing under Virginia law.

Acronyms and Definitions

The following acronyms and definitions are set out here for ease of use and represent only a summary of terms and acronyms related to the regulatory review process. More detailed descriptions and definitions can be found throughout the Administrative Process Act (APA), Section 2.2-4000 et seq. of the Code of Virginia.

ABD – Agency Background Document. An ABD is a form completed by agencies and uploaded on the Virginia Regulatory Town Hall (Town Hall) for each regulatory stage in order to describe and explain the regulatory action. The form for each stage is available on the Town Hall.

APA – Administrative Process Act, Section 2.2-4000 et seq. of the Code of Virginia. Article 2 of the APA contains provisions on how regulations are to be promulgated in Virginia.

Day – All references to a day mean a calendar day.

DPB – Virginia Department of Planning and Budget. DPB houses the Economic and Regulatory Analysis Division (ERAD), which reviews regulatory proposals for economic and policy impact and manages the Town Hall website.

EIA – Economic Impact Analysis. An EIA is prepared by DPB and evaluates the estimated costs and benefits of a regulatory proposal.

Emergency rulemaking process – This process is invoked (1) when there is an emergency situation as determined by the

agency and the Governor agrees that an emergency regulation is necessary, or (2) when a Virginia statutory law or the appropriation act or federal law or federal regulation requires that a state regulation be effective in 280 days or less from its enactment.

Executive branch review – The review of a regulatory proposal at various stages by the executive branch before it is published in the Virginia Register of Regulations and available for public comment. The scope of review depends on the stage type, e.g., a proposed stage is reviewed by: the Office of the Attorney General (OAG), DPB, the appropriate Cabinet Secretary, and the Governor.

Exempt rulemaking process – Agency actions that are exempt from the promulgation requirements of Article 2 of the APA can generally be adopted and filed directly with the Office of the Registrar of Regulations (Registrar) and are not subject to executive branch review.

Fast-track rulemaking process – This process may be utilized for rules that are expected to be noncontroversial.

Legislative mandate – When a law is passed by the General Assembly that requires a regulation to be promulgated, amended, or repealed in whole or part.

NOIRA – Notice of Intended Regulatory Action. A NOIRA is the first stage in the standard rulemaking process in Virginia.

OAG – Office of the Attorney General. The OAG must review regulatory proposals at the emergency stage, the fast-track stage, and the proposed stage. In addition, the OAG must review a proposal at the final stage if there have been changes with substantial impact made since the proposed stage.

Register – The Virginia Register of Regulations is an official legal publication that provides information about proposed and final changes to Virginia's regulations. The Registrar is responsible for publication of the Register.

RIS – Regulation Information System. The RIS is a web-enabled application operated by the Registrar and is used by agencies to create text for regulatory proposals. This text is then synchronized on the Town Hall website for display to all Town Hall users.

Rulemaking or regulatory process – There are four types of rulemaking processes in Virginia: (1) emergency, (2) fast-track, (3) standard, and (4) exempt.

Standard rulemaking process – This is the default rulemaking process in Virginia. If a regulatory proposal does not meet the criteria for exempt, fast-track, or emergency rulemaking, it goes through the standard rulemaking process, generally consisting of three stages: NOIRA, proposed, and final.

Governor

Town Hall – The Virginia Regulatory Town Hall website. The Town Hall is managed by DPB and used by agencies to post regulatory proposals and to facilitate the regulatory review process. The site features public comment forums, meeting information, and an email notification service.

VAC – Virginia Administrative Code. The VAC is the official legal publication for regulations in Virginia.

General Policy

The executive branch agencies of the Commonwealth must consider, review, and promulgate numerous regulations each year. This Executive Order sets out procedures and requirements to ensure the efficiency and quality of Virginia's regulatory process. All state employees who draft, provide policy analysis for, or review regulations shall carefully consider and apply the principles outlined below during the regulatory development and review process.

General Principles

A. All regulatory activity should be undertaken with the least possible intrusion into the lives of the citizens of the Commonwealth and be necessary to protect the public health, safety, and welfare. Accordingly, agencies shall consider:

1. The use of economic incentives to encourage the desired outcomes (such as user fees or marketable permits);
2. The use of information disclosure requirements, rather than regulatory mandates, so that the public can make more informed choices;
3. The use of performance standards in place of mandating specific techniques or behavior; and
4. The consideration of reasonably available alternatives in lieu of regulation.

B. Where applicable, and to the extent permitted by law, it shall be the policy of the Commonwealth that only regulations necessary to interpret the law or to protect the public health, safety, or welfare shall be promulgated.

C. Regulations shall be clearly written and easily understandable.

D. Regulations shall be designed to achieve their intended objective in the most efficient, cost effective manner.

Regulatory Development

E. Regulatory development shall be based on the best reasonably available and reliable scientific, economic, and other information concerning the need for, and consequences of, the intended regulation. Agencies shall specifically cite the best reasonably available and reliable scientific, economic, and other information in support of regulatory proposals.

F. Regulatory development shall be conducted in accordance with the statutory provisions related to impact on small

businesses. DPB shall work with state agencies to address these requirements during the regulatory review process, including notifications as appropriate to the Joint Commission on Administrative Rules.

G. During regulatory development, agencies shall consider the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth, as well as the cost of compliance to the general public.

Public Participation

H. Agencies shall actively seek input for proposed regulations from interested parties, stakeholders, citizens, and members of the General Assembly.

I. In addition to requirements established in Article 2 of the APA, agencies shall post all rulemaking actions on the Town Hall to ensure that the public is adequately informed of rulemaking activities.

J. All legal requirements related to public participation and all public participation guidelines shall be strictly followed to ensure that citizens have reasonable access and opportunity to present their comments and concerns. Agencies shall inform interested persons of (1) the Town Hall's email notification service that can send information regarding the specific regulations, regulatory actions, and meetings about which they are interested, and (2) the process to submit comments in the Town Hall public comment forums. Agencies shall establish procedures that provide for a timely written response to all comments and the inclusion of suggested changes that would improve the quality of the regulation.

Other

K. Agencies, as well as reviewing entities, shall endeavor to perform their tasks in the regulatory process as expeditiously as the regulatory subject matter will allow and shall adhere to the timeframes set out in this Executive Order.

L. Regulations will be subject to periodic evaluation, review, and modification, as appropriate, in accordance with the APA, policy initiatives of the Governor, and legislation.

M. Each agency head will be held accountable for ensuring that the policies and objectives specified in this Executive Order are put into effect. Agency heads shall ensure that information requested by DPB, the appropriate Cabinet Secretary, or the Office of the Governor, in connection with this Executive Order, is provided on a timely basis. Incomplete regulatory packages may be returned to the appropriate agency by DPB.

Applicability

The review process in this Executive Order applies to rulemakings initiated by agencies of the Commonwealth of Virginia in accordance with Article 2 of the APA.

With the exception of the requirements governing the periodic review of existing regulations, the posting of meeting agenda and minutes, and the posting of guidance documents, agencies and agency regulatory action exempt from Article 2 of the APA are not subject to the requirements of this Executive Order. Nonetheless, the Governor, a Cabinet Secretary, or the Chief of Staff may request in writing that an agency comply with all or part of the requirements of this Executive Order for regulations exempt from Article 2 of the APA. Copies of such requests shall be forwarded to the Governor's Policy Office and DPB. In addition, a Cabinet Secretary may request in writing that certain Article 2 exempt regulations be further exempted from all or part of the requirements of this Executive Order.

These procedures shall apply in addition to those already specified in the APA, the agencies' public participation guidelines, and the agencies' basic authorizing statutes. As of June 30, 2014, these procedures shall apply to all regulatory actions and stages that have been submitted to DPB for any stage of executive branch review.

Any failure to comply with the requirements set forth herein shall in no way affect the validity of a regulation, create any cause of action or provide standing for any person under Article 5 of the APA (Section 2.2-4025 et seq. of the Code of Virginia), or otherwise challenge the actions of a government entity responsible for adopting or reviewing regulations.

Regulatory Review Process

Regulations shall be subject to executive branch review as specified herein. All agency regulatory packages shall be submitted via the Town Hall. For each stage of the regulatory development process, agencies shall complete and post the applicable ABD on the Town Hall to describe the regulatory action and inform the public about the substance and reasons for the rulemaking. Agencies shall ensure that the correct regulatory text is synchronized with the appropriate stage information page on the Town Hall.

If a regulatory package is submitted to DPB, and DPB determines that the package is not substantially complete, then DPB shall notify the agency within 10 days. At that time, the agency must withdraw the package from the Town Hall and resubmit the package only after all missing elements identified by DPB have been added. Agencies shall submit regulatory packages to the Registrar for publication on the Town Hall within 14 days of being authorized to do so.

In rulemakings where there are two or more stages, the filing of each subsequent stage shall be submitted on the Town Hall as expeditiously as the subject matter allows and no later than 180 days after the conclusion of the public comment period for the prior stage. If this deadline is not met, it shall be reported to the appropriate Cabinet Secretary in an end of year report further described below.

A. Standard Rulemaking Process

1. Notice of Intended Regulatory Action (NOIRA) Stage

The NOIRA shall include the nature and scope of the regulatory changes being considered and the relevant sections of the Virginia Administrative Code. This package shall include draft regulatory text if it is available.

DPB shall review the NOIRA to determine whether it complies with all requirements of this Executive Order and applicable statutes and whether the contemplated regulatory action comports with the policy of the Commonwealth as set forth herein. Within 14 days of receiving a complete NOIRA review package from the agency, the Director of DPB shall advise the appropriate Secretary and the Governor of DPB's determination. If the Director of DPB advises the appropriate Secretary and the Governor that the NOIRA presents issues requiring further review, the NOIRA shall be forwarded to the Secretary. The Secretary shall review the NOIRA within 14 days and forward a recommendation to the Governor. If DPB does not find issues requiring further review, the agency shall be authorized to submit the NOIRA to the Registrar for publication when the Governor approves the NOIRA for publication.

The Chief of Staff to the Governor is hereby authorized to approve or disapprove NOIRAs on behalf of the Governor.

Public comments received following publication of the NOIRA should be encouraged and carefully considered in developing the proposed stage of a regulatory proposal.

2. Proposed Stage

Following the initial public comment period required by Section 2.2-4007.01 of the Code of Virginia, and taking into account the comments received, the agency shall prepare a regulatory review package.

At this stage, the proposed regulation and regulatory review package shall be in as close to final form as possible, including completed review by all appropriate regulatory advisory panels or negotiated rulemaking panels. New issues that were not disclosed to the public when the NOIRA was published shall not be addressed at the proposed stage.

The order of executive branch review shall be as follows:

a. OAG. The OAG will conduct a review of the proposed regulation and produce a memorandum assessing the agency's legal authority to promulgate the regulation. The OAG may also provide any advice, recommendations, or other comments for consideration by the Governor with respect to the proposed regulation. After the OAG has completed its review, the package will be submitted to DPB.

b. DPB. DPB shall review the proposed regulatory package to determine whether it complies with all requirements of this Executive Order, applicable statutes, and other policies of the Commonwealth. Per Section 2.2-4007.04 of the Code of Virginia, within 45 days of receiving a complete regulatory review package, the Director of DPB shall prepare a policy analysis and EIA before advising the appropriate Secretary and the Governor of the results of the review.

c. Cabinet Secretary. The Secretary shall review the proposed regulation package within 14 days and forward a recommendation to the Governor.

d. Governor. The Chief of Staff to the Governor is hereby authorized to approve or disapprove proposed regulations on behalf of the Governor.

Revised Proposed Stage (Optional)

Following the proposed stage public comment period, required by Section 2.2-4007.03 of the Code of Virginia, the agency may wish to make additional changes and/or receive additional public comment by publishing a revised proposed regulation. The order of executive branch review for the revised proposed stage shall be as follows:

a. OAG. The OAG will conduct a review of the revised proposed regulation and produce a memorandum assessing the agency's legal authority to promulgate the regulation. The OAG may also provide any advice, recommendations, or other comments for consideration by the Governor with respect to the revised proposed regulation. After the OAG has completed its review, the package will be submitted to DPB.

b. DPB. DPB shall review the revised proposed regulatory package to determine whether it complies with all requirements of this Executive Order, applicable statutes, and other policies of the Commonwealth. Within 21 days of receiving a complete regulatory package, the Director of DPB shall prepare a policy analysis and EIA before advising the appropriate Secretary and the Governor of the results of the review.

c. Cabinet Secretary. The Secretary shall review the revised proposed regulation package within 14 days and forward a recommendation to the Governor.

d. Governor. The Chief of Staff to the Governor is hereby authorized to approve or disapprove revised proposed regulations on behalf of the Governor.

3. Final Stage

Following the public comment period required by Section 2.2-4007.03 of the Code of Virginia and taking into account all comments received since the last stage was published, the rulemaking entity shall revise the proposed regulation.

If any change with substantial impact – as determined by DPB – has been made to the regulatory text between the proposed and final stages, the agency shall obtain a letter from the OAG certifying that the agency has authority to make the additional changes.

The order of executive branch review shall be as follows:

a. DPB. DPB shall review the final stage package to determine whether it complies with all requirements of this Executive Order, applicable statutes, and other policies of the Commonwealth. In particular, DPB shall assess the effect of any substantive changes made since the publication of the proposed regulation and the responsiveness of the agency to public comment. Within 14 days of receiving a complete final regulation package from the agency, the Director of DPB shall prepare a policy analysis before advising the appropriate Secretary and the Governor of the results of the review.

b. Cabinet Secretary. The Secretary shall review the final stage regulation package within 14 days and forward a recommendation to the Governor.

c. Governor. The Chief of Staff to the Governor is hereby authorized to approve or disapprove proposed final regulations on behalf of the Governor.

B. Fast-Track Rulemaking Process

The fast-track rulemaking process is for rules that are expected to be noncontroversial.

DPB shall review the fast-track regulation to determine whether the regulatory change is appropriately within the intended scope of fast-track regulatory authority, whether it complies with all other requirements of this Executive Order and applicable statutes, and whether the contemplated regulatory action comports with the policy of the Commonwealth. DPB shall request the Governor's office to determine if the fast-track process is appropriate when there is any question as to whether a package should be allowed to proceed in this manner. The Governor shall retain discretion to disapprove use of the fast-track rulemaking process when the Governor determines use of this process is not in the public interest, the determination of which shall be at the sole discretion of the Governor.

After a fast-track regulation has been submitted on the Town Hall, executive branch review will proceed as follows:

1. OAG. The OAG will conduct a review of the proposed fast-track regulation and produce a memorandum assessing the agency's legal authority to promulgate the regulation. The OAG may also provide any advice, recommendations, or other comments for consideration by the Governor with respect to the fast-track regulation. After the OAG has completed its review, the package will be submitted to DPB.

2. DPB. DPB shall determine within 10 days or less whether the regulatory package is appropriate for the fast-track rulemaking process and communicate this decision to the agency. After a package has been determined to be appropriate for the fast-track process, the Director of DPB shall have 30 days to prepare a policy analysis and EIA before advising the appropriate Secretary and the Governor of the results of the review.

3. Cabinet Secretary. The Secretary shall review the fast-track regulation package within 14 days and forward a recommendation to the Governor.

4. Governor. The Chief of Staff to the Governor is hereby authorized to approve or disapprove fast-track regulations on behalf of the Governor.

C. Emergency Rulemaking Process

Emergency regulations may be promulgated by an agency if it determines there is an emergency situation, consults with the OAG, and obtains the approval of the Governor. Emergency regulations may also be promulgated in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a state regulation be effective in 280 days or less from its enactment and the regulation is not exempt from the APA.

If the agency plans to replace the emergency regulation with a permanent regulation, it should file an Emergency/NOIRA stage. The order of executive branch review shall be as follows:

1. OAG. The OAG will conduct a review of the proposed emergency regulation and produce a memorandum assessing the agency's legal authority to promulgate the regulation. The OAG may also provide any advice, recommendations, or other comments for consideration by the Governor with respect to the proposed emergency regulation. After the OAG has completed its review, the package will be submitted to DPB.

2. DPB. DPB shall review the proposed emergency regulatory package to determine whether it complies with all requirements of this Executive Order, applicable statutes, and other policies of the Commonwealth. Within 10 days of receiving a complete emergency regulation package from the agency, the Director of DPB shall prepare a policy analysis before advising the appropriate Secretary and the Governor of the results of the review.

3. Cabinet Secretary. The Secretary shall review the proposed emergency regulation package within 10 days and forward a recommendation to the Governor.

4. Governor. The Chief of Staff to the Governor is hereby authorized to approve or disapprove emergency regulations on behalf of the Governor.

An emergency regulation shall be effective for up to 18 months and may be extended for up to an additional six months if, despite the rulemaking entity's best efforts, a permanent replacement regulation cannot become effective before it expires. If an agency wishes to extend an emergency regulation beyond its initial effective period, the agency shall submit an emergency extension request to the Governor's Office via the Town Hall as soon as the need for the extension is known and no later than 30 days before the emergency regulation is set to expire. The emergency extension request must be granted prior to the expiration date of the emergency regulation, pursuant to Section 2.2-4011D of the Code of Virginia.

Periodic Review of Existing Regulations

Every existing state regulation shall be reviewed at least once every four years by the promulgating agency, unless specifically exempted from periodic review by the Governor. A periodic review shall include notice to the public, a public comment period (minimum of 21 days), and a result to be announced no later than 60 days after the close of the public comment period.

The review shall ensure that each regulation complies with the principles set out in this Executive Order. In addition, each periodic review shall include an examination by the OAG to ensure statutory authority for the regulation and that the regulation does not exceed the agency's rulemaking authority. Agencies shall cooperate with reviews of regulations by the OAG, including, but not limited to, reasonable requests for data and other supporting information as may be necessary to conduct the review.

The periodic review must be conducted on the Town Hall and may be accomplished either (1) during the course of a comprehensive regulatory action using the standard rulemaking process, or (2) by using the periodic review feature as follows:

A. During the course of a comprehensive rulemaking using the standard regulatory process. If the agency already plans to undertake a standard regulatory action, the agency can fulfill the periodic review requirement by including a notice of a periodic review in the NOIRA. When the proposed stage is submitted for executive branch review, the ABD shall include the result of the periodic review. When a regulation has undergone a comprehensive review as part of a regulatory action and when the agency has solicited public comment on the regulation, a periodic review shall not be required until four years after the effective date of the regulatory action.

B. Using the periodic review feature. If, at the time of the periodic review, the agency has no plans to begin a comprehensive rulemaking using the standard rulemaking process, then the agency shall use the periodic review feature to announce and report the result of a periodic review. If the result of the periodic review is to amend the regulation, the

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agency shall link the periodic review with the subsequent action to amend the regulation. If the result is to retain the regulation as is, the agency shall so indicate using the appropriate Town Hall form.

In addition to the procedures described above, the Governor may request a periodic review of a regulation at any time deemed appropriate. Such a request may outline specific areas to be addressed in the review. In the case of such a request, the agency shall follow the procedures for periodic review as established herein or such other procedures as may be stipulated by the Governor.

Petitions for Rulemaking

Agencies shall post petitions for rulemaking and decisions to grant or deny the petitions on the Town Hall, in accordance with the timeframes established in Section 2.2-4007 of the Code of Virginia.

Regulatory Timeframe Deadlines

If an agency fails to meet any regulatory timeframe deadlines set forth below, it shall submit a report to its Cabinet Secretary and DPB no later than December 31 of the year in which the timeframe deadline is not met. This report shall include the Town Hall action and stage number, as well as an explanation of why the timeframe deadline was not met. The report must contain the following missed regulatory timeframe deadlines:

A. For regulatory actions that have multiple stages, the period between the close of a public comment period and when the next stage is submitted on the Town Hall shall not exceed 180 days.

B. Agencies have 14 days to submit a regulatory package to the Register once they have been authorized to do so.

Electronic Availability of Meeting Agenda and Minutes

Executive branch agencies shall post the notice of, and agenda for, a public regulatory meeting on the Town Hall at least 7 days prior to the date of the meeting, except if it is necessary to hold an emergency meeting in which case the agenda shall be posted as soon as possible.

In addition, agencies that promulgate regulations and keep minutes of regulatory meetings shall post such minutes of those meetings on the Town Hall in accordance with the timeframes established in Sections 2.2-3707 and 2.2-3707.1 of the Code of Virginia.

Legislative Mandates

By July 1 of each year, agencies shall post on the Town Hall all legislative mandates for rulemaking activity required by the most recent session of the General Assembly. The agency shall then link each legislative mandate with the regulatory action that implements the mandate.

Electronic Availability of Guidance Documents

Agencies shall post all guidance documents or a link to each agency guidance document, as defined by Section 2.2-4001 of the Code of Virginia, on the Town Hall. Any changes to a guidance document or a guidance document link shall be reflected on the Town Hall within 10 days of the change.

Effective Date of the Executive Order

This Executive Order rescinds and replaces Executive Order Number 14 (2010) issued by Governor Robert F. McDonnell. This Executive Order shall become effective on June 30, 2014, and shall remain in full force and effect until June 30, 2018, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia on this 30th day of June, 2014.

/s/ Terence R. McAuliffe
Governor

EXECUTIVE ORDER NUMBER 18 (2014)

Continuing the Governor's Advisory Board on Service and Volunteerism

Importance of the Initiative

Service and volunteerism are critical components of our civic life. The Commonwealth of Virginia and federal government work in tandem to develop a focal point for these efforts.

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to § 2.2-134 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby affirm the Governor's Advisory Board on Service and Volunteerism. The Board is classified as a gubernatorial advisory board in accordance with § 2.2-2100 of the Code of Virginia.

The Board shall be established to comply with the provisions of the National and Community Services Trust Act of 1993, and to advise the Governor and Cabinet Secretaries on matters related to the promotion and development of national service in the Commonwealth of Virginia. The Board shall have the following specific duties:

1. To advise the Governor, the Secretaries of Education, Health and Human Resources, Natural Resources, Veterans and Defense Affairs, the Commissioner of Social Services, and other appropriate officials, on national and community service programs in Virginia and on fulfilling the responsibilities and duties prescribed by the federal Corporation for National Service.
2. To advise the Governor, the Secretaries of Education, Health and Human Resources, Natural Resources, Veterans and Defense Affairs, the Commissioner of Social Services,

and other appropriate officials, on the development, implementation, and evaluation of Virginia's Unified State Plan that outlines strategies for supporting and expanding national and community service throughout the Commonwealth.

3. To promote the importance of AmeriCorps programs in meeting Virginia's most pressing human, educational, environmental, and public safety needs.
4. To collaborate with the Department of Social Services and other public and private entities to recognize and call attention to the significant community service contributions of Virginia citizens and organizations.
5. To promote volunteerism and community service within the Commonwealth.
6. To work with the Department of Social Services on promoting the involvement of faith-based organizations in community and national service efforts.

The Board shall be comprised of no more than twenty voting members appointed by the Governor and serving at his pleasure. No more than 25 percent of voting members may be state employees.

The Governor may appoint additional persons at his discretion as ex-officio, non-voting members. The voting members of the Board shall elect the Chair. Board voting membership shall include representatives for the categories as outlined in federal regulations issued by the Corporation for National Service.

Staff support as necessary to support the Board's work during the term of its existence shall be furnished by the Department of Social Services, and the Governor may designate further support by any other executive branch agencies. An estimated 300 hours of staff time will be required to support the work of the Board.

Funding needed to support the Board shall be provided from federal funds, private contributions, and state funds appropriated for the same purposes of the Board, authorized by § 2.2-135 of the Code of Virginia. Direct costs for this Board are estimated at no more than \$15,000. Members of the Board shall serve without compensation, but may receive reimbursement for expenses incurred in the discharge of their official duties.

The Board shall meet at least quarterly upon the call of the Chair. The Board shall make an annual report to the Governor and shall issue such other reports and recommendations as it deems necessary or as requested by the Governor.

This Executive Order replaces Executive Order No. 66, issued on July 22, 2013, by Governor Robert F. McDonnell. This Executive Order shall be effective upon its signing and, pursuant to §§ 2.2-134 and 2.2-135 of the Code of Virginia,

and shall remain in force and effect for a year or until superseded or rescinded.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 30th day of June, 2014.

/s/ Terence R. McAuliffe
Governor

EXECUTIVE ORDER NUMBER 19 (2014)

Convening the Governor's Climate Change and Resiliency Update Commission

Importance of the Issue

The National Oceanic and Atmospheric Administration has identified some Virginia coastal areas as among the most vulnerable to sea level rise in the nation, and the U.S. Navy Task Force Climate Change has identified Naval Station Norfolk as one of its most endangered installations. The Chesapeake Bay is particularly susceptible to damage caused by climate change. While Virginia has taken certain steps to mitigate the effects of climate change, it is imperative that the Commonwealth redouble its efforts in the face of this looming problem.

In 2008, Governor Kaine established the Governor's Commission on Climate Change to address these concerns. The Commission's final report outlined the impact that changing weather conditions have on Virginia's built environment, natural systems, and the health of its citizens. Among the findings was the decline or disappearance of key species of the Chesapeake Bay, increased damage from more frequent and severe storms, and the spread of vector born diseases like West Nile virus. The report also made over 150 recommendations to help Virginia adapt to the consequences of climate change, as well as reduce Virginia's contributions to the problem.

Establishment of the Commission

The Commonwealth requires an action-oriented plan with concrete measures to be addressed and executed. Accordingly, I hereby formally convene the Governor's Climate Change and Resiliency Update Commission ("Commission") to review, update, and prioritize the recommendations of the 2008 Climate Change Action Plan. Moreover, the updated report will work to identify sources of revenue to fund the implementation of these recommendations.

Composition of the Commission

The Governor's Climate Change and Resiliency Update Commission membership will be appointed by the Governor and chaired by the Secretaries of Natural Resources and Public Safety and Homeland Security.

Membership shall also include the following individuals or their designee:

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Secretary of Transportation;
Secretary of Commerce and Trade;
Representative(s) of the General Assembly;
Representative(s) from the military;
Representative(s) from local governments;
Scientific experts; and,
Representative(s) from agriculture/forestry, environmental organizations, and affected industries.

The Governor may appoint any other member(s) deemed necessary to carry out the assigned functions of the Commission and the members shall serve at his pleasure.

Staff support for the Commission will be provided by the Offices of the Secretary of Natural Resources, the Secretary of Public Safety and Homeland Security, the Secretary of Transportation, the Secretary of Commerce and Trade, the Department of Environmental Quality, the Department of Mines, Minerals and Energy, the Office of the Governor, and other agencies as may be designated by the Governor. The estimated direct cost of the Commission is \$5,000. All executive branch agencies shall cooperate fully with the Commission and provide any assistance necessary, upon request of the Commission or its staff.

Duties of the Commission

The Commission is charged with conducting an assessment of the recommendations from the 2008 Climate Change Action Plan. Specifically, the Commission will:

- Determine which recommendations from the original report were implemented;
- Update and prioritize the recommendations; and,
- Identify sources of funding to support the implementation of the recommendations.

The Commission shall submit a report with its updated recommendations by June 30, 2015.

Effective Date of the Order

This Executive Order shall be effective upon its signing and, pursuant to §§ 2.2-134 and 2.2-135 of the Code of Virginia, shall remain in force and effect for a year or until superseded or rescinded.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 1st day of July, 2014.

/s/ Terence R. McAuliffe
Governor

GENERAL NOTICES/ERRATA

STATE BOARD OF SOCIAL SERVICES

Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Social Services is conducting a periodic review and small business impact review of **22VAC40-325, Fraud Reduction/Elimination Effort**. The review of this regulation will be guided by the principles in Executive Order 17 (2014).

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 July 28, 2014, and ends August 18, 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 Sandy Smith, Program Manager, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7679, FAX (804) 726-7669, or email sandy.smith@dss.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.

STATE WATER CONTROL BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Water Control Board conducted a small business impact review of **9VAC25-650, Closure Plans and Demonstration of Financial Capability**, and determined that this regulation should be retained in its current form. The State Water Control Board is publishing its report of findings dated June 30, 2014, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation is necessary to protect public health, safety, and welfare. The purpose of the regulation is to ensure that owners or operators of privately owned sewerage systems and sewerage treatment works that discharge between 1,000 gallons and 40,000 gallons per day are capable of continuing

to treat sewage and are capable of properly closing facilities. The proper operation of a sewage system or sewage treatment works to treat sewage before it is discharged into state waters is critical to protect public health and the environment. If a sewage treatment plant ceases to operate, untreated sewage would be discharged into state waters, would negatively impact state waters, and cause impacts to human health and the environment.

One commenter submitted a request to change the regulation. Aqua Virginia believes the regulation should be amended to include a corporate guarantee as an option to demonstrate financial capability. They believe this change would be beneficial for them and possibly reduce the cost of complying with these regulations for a company of the size and financial strength of Aqua.

The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible. Multiple financial mechanisms are available for use to demonstrate financial capability.

The regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation was last revised in 2001. Since that time, technology has advanced and more treatment methods are available to be used at these types of sewage systems and sewage treatment works. Newer technologies are capable of removing more nutrients from sewage before it is discharged to state waters. Additionally, some smaller sewage systems are now no longer independently operated, but operated by larger companies.

This regulation satisfies the provisions of the law and legally binding state requirements and is effective in meeting its goals. The agency is recommending the regulation stay in effect.

In response to comments, however, the agency plans to begin a fast-track regulatory action to include a corporate financial test and corporate guarantee in this regulation to provide more options for owners to provide financial assurance. The agency also plans to make some editorial changes to the regulation.

Contact Information: 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.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Water Control Board conducted a small business impact review of **9VAC25-780, Local and Regional Water Supply Planning**, and determined that this regulation should be retained in its current form. The State Water Control Board is publishing its report of findings dated June 9, 2014, to

General Notices/Errata

support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Water supply is a critical factor for the economic vitality and public health of the Commonwealth and its political subdivisions. Meeting the demand for water is complex and the amount available to meet these needs is finite. This regulation seeks to balance the water supply needs of localities with the promotion of water conservation and water reuse to minimize the demand on finite water supplies. This regulation continues to be needed to ensure adequate water supplies for use by the public while maintaining beneficial uses of state waters.

No comments were received concerning this regulation.

The regulation's level of complexity is appropriate to ensure that the regulated entities are able to develop and implement a water supply plan as efficiently and cost-effectively as possible. Details are provided concerning required plan contents to assist localities with developing plans that meet the requirements of the regulation. This information continues to be necessary and valid over time.

The regulation does not overlap, duplicate, or conflict with any federal or state law or regulation.

The regulation was adopted in 2005 and revised in 2006. The regulation contains a schedule for when water supply plans were to be developed and submitted to the Department of Environmental Quality for review. The schedule was based on the population of the community or communities included in the water supply plan. The last group of localities was required to submit water supply plans by November 2011. These plans were all approved by the department with conditions. The conditions must be met through plan revisions by the end of 2018. New plans must be resubmitted in 2023.

The department does not believe these regulations should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses. When the regulation was originally adopted, flexibility was included in the regulation to allow localities to select how they would create their water supply plans, either individually or with other localities. This allows localities to collaborate on the development of water supply plans and share the costs of developing the plans with other localities included in the plan. The department has highlighted for the localities and regional planning groups where there are water supply challenges to meeting their 2040 water expectations. This information forms the basis of ongoing work among localities and the Department in developing solutions to meeting these future water needs.

Contact Information: Sara Jordan, Senior Water Supply Planner, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7901, FAX (540) 574-7878, or email sara.jordan@deq.virginia.gov.

Proposed Consent Order for Belvedere Station Land Trust

An enforcement action has been proposed for Belvedere Station Land Trust for violations in Albemarle County, Virginia. A proposed consent order describes a settlement to resolve wetland mitigation violations at its Belvedere Development. 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 July 28, 2014, through August 27, 2014.

Proposed Consent Order for Virginia Hospital Center Arlington Health System

An enforcement action has been proposed for the Virginia Hospital Center Arlington Health System in Arlington, Virginia. The consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations associated with the Virginia Hospital Center and the Carlin Springs Health Campus. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from July 29, 2014, through August 28, 2014.

Proposed Consent Order for Workman Oil Company

An enforcement action has been proposed for Workman Oil Company, regarding its underground petroleum storage tanks in Alton, Virginia, for violations of State Water Control Law and regulations. The proposed enforcement action includes a civil charge and a schedule of compliance. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX at (540) 562-6725, or postal mail at Department of Environmental Quality, Roanoke Office, 3019 Peters Creek Road, Roanoke, VA 24019, from July 28, 2014, through August 27, 2014.

Public Participation Procedures for Water Quality Management Planning

Purpose of notice: The State Water Control Board is announcing a public comment period to receive comments through the Department of Environmental Quality (DEQ) on the draft revision to its Public Participation Procedures for Water Quality Management Planning.

Public Comment Period: July 28, 2014, through August 27, 2014.

Description: The document, Public Participation Procedures for Water Quality Management Planning, has been revised to be consistent with changes to Virginia's Administrative Process Act (APA) during the 2014 Session of the General Assembly. The 2014 General Assembly added a provision to the APA granting an exemption for the State Water Control Board's adoption, amendment, or repeal of wasteload allocations (WLAs) into the Water Quality Management Planning Regulation (WQMPR), 9VAC25-720. Therefore, the Public Participation Procedures for Water Quality Management Planning has been modified to include the exemption requirements under § 2.2-4006 A 14 of the APA and water quality actions resulting in adoption, amendment, or repeal of WLAs and procedures for board approval have been revised to meet the exemption criteria. Additional revisions include changes for formatting and changes for clarification of procedures.

In accordance with the Public Participation Procedures for Water Quality Management Planning, an opportunity for public comment for this revision is being noticed and appears in the July 28, 2014, Virginia Register of Regulations. The draft revision to the Public Participation Procedures for Water Quality Management Planning may be found on DEQ's website at the following link under the "Featured Topics" column: <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL.aspx>.

How to Comment: Anyone wishing to submit written comments may do so by mail, fax, or email to Debra Harris at Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218, FAX at (804) 698-4019, or email at debra.harris@deq.virginia.gov. Comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 p.m. on August 27, 2014.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens who submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the revised document.

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: 13VAC5-51. Virginia Statewide Fire Prevention Code.

Publication: 30:16 VA.R. 2027-2071 April 7, 2014.

Correction to Final Regulation:

Page 2035, 13VAC5-51-81 C, Table 107.2, Operational Permit Requirements, under the entry for Hazardous materials, footnote b is corrected to begin with "Two hundred pounds" instead of "Twenty pounds"

VA.R. Doc. No. R12-3161; Filed July 10, 2014, 10:04 a.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 2165, 13VAC5-63-220 A, replace "403.4.4" with "[~~403.4.4~~ 403.4.5]"

VA.R. Doc. No. R12-3159; Filed July 11, 2014, 11:44 a.m.

