VIRGINIA REGISTER OF REGULATIONS

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

June 2017 through July 2018

Volume: Issue	Material Submitted By Noon*	Will Be Published On
33:22	June 2, 2017 **(Friday)**	June 26, 2017
33:23	June 21, 2017	July 10, 2017
33:24	July 5, 2017	July 24, 2017
33:25	July 19, 2017	August 7, 2017
33:26	August 2, 2017	August 21, 2017
34:1	August 16, 2017	September 4, 2017
34:2	August 30, 2017	September 18, 2017
34:3	September 13, 2017	October 2, 2017
34:4	September 27, 2017	October 16, 2017
34:5	October 11, 2017	October 30, 2017
34:6	October 25, 2017	November 13, 2017
34:7	November 8, 2017	November 27, 2017
34:8	November 21, 2017 **(Tuesday)**	December 11, 2017
34:9	December 6, 2017	December 25, 2017
34:10	December 19, 2017 **(Tuesday)**	January 8, 2018
34:11	January 3, 2018	January 22, 2018
34:12	January 17, 2018	February 5, 2018
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34:17	March 28, 2018	April 16, 2018
34:18	April 11, 2018	April 30, 2018
34:19	April 25, 2018	May 14, 2018
34:20	May 9, 2018	May 28, 2018
34:21	May 23, 2018	June 11, 2018
34:22	June 6, 2018	June 25, 2018
34:23	June 20, 2018	July 9, 2018
34:24	July 3, 2018 **(Tuesday)**	July 23, 2018

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending **9VAC5-140, Regulation for Emissions Trading Programs**. The purpose of the proposed action is to develop a regulation, in accordance with Executive Directive 11 (2017), "Reducing Carbon Dioxide Emissions from Electric Power Facilities and Growing Virginia's Clean Energy Economy," that (i) ensures that Virginia is trading-ready to allow for the use of market-based mechanisms and the trading of carbon dioxide (CO_2) allowances through a multistate trading program, and (ii) establishes abatement mechanisms that provide for a corresponding level of stringency to CO_2 limits imposed in other states with such limits.

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

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia; §§ 108, 109, 110, and 302 of the Clean Air Act; 40 CFR Part 51.

Public Comment Deadline: July 26, 2017.

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

VA.R. Doc. No. R17-5140; Filed June 1, 2017, 10:23 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action - Additional Comment Period

EDITOR'S NOTE: This is a republication of the Notice of Intended Regulatory Action (NOIRA) that appeared in 33:13 VA.R. 1401 February 20, 2017. This NOIRA is being republished to allow for additional public comment closer to the July 1, 2017, effective date of the emergency regulation.

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-10, State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions**; **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care and Services**; **12VAC30-60, Standards Established and Methods Used to Assure High Quality Care**; and **12VAC30-130, Amount, Duration and Scope of Selected Services**, relating to changes to the psychiatric residential treatment service program. The purpose of the proposed action is to update the regulations for group homes and residential treatment facilities for individuals younger than the age of 21 years. The action includes changes to the following areas: (i) provider qualifications including acceptable licensing standards; (ii) preadmission assessment requirements; (iii) program requirements; (iv) new discharge planning and care coordination requirements; and (v) language enhancements for utilization review requirements to clarify program requirements and help providers avoid payment retractions.

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

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

Public Comment Deadline: July 26, 2017.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

VA.R. Doc. No. R17-4495; Filed May 31, 2017, 8:32 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

Proposed Regulation

Title of Regulation: **6VAC20-70. Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections (amending 6VAC20-70-10 through 6VAC20-70-70, 6VAC20-70-100, 6VAC20-70-110; adding 6VAC20-70-25, 6VAC20-70-115; repealing 6VAC20-70-80, 6VAC20-70-90, 6VAC20-70-120, 6VAC20-70-130).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 25, 2017.

Agency Contact: Barbara Peterson-Wilson, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street 12th Floor, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 786-0410, or email barbara.peterson-wilson@dcjs.virginia.gov.

Basis: Section 9.1-102 of the Code of Virginia authorizes the Department of Criminal Justice Services (DCJS), under the direction of the Criminal Justice Services Board, to adopt regulations and to establish compulsory minimum entry-level, in-service, and advanced training standards, as well as the time required for completion of such training, for persons employed as deputy sheriffs and jail officers by local criminal justice agencies; correctional officers employed by the Department of Corrections under the provisions of Title 53.1 of the Code of Virginia; and juvenile correctional officers employed at a juvenile correctional facility as the term is defined in § 66-25.3 of the Code of Virginia.

Purpose: This regulation was last amended in 1987. DCJS worked with the Department of Corrections (DOC) to conduct a comprehensive review of this outdated regulation, and the proposed amendments will update relevant Code of Virginia citations and regulatory language and clearly outline, increase, and enhance the training requirements for noncustodial employees. This regulatory action is essential to protect the health, safety, and welfare of the citizens to ensure noncustodial employees who have been designated by the Director of DOC to carry a firearm and detain individuals have the proper training. Proper training in the handling and discharging of firearms and detaining individuals reduces the risk of serious injury or death to noncustodial employees, correctional officers, inmates, and the general public.

Substance: The amendments to the regulation include the following:

1. Replace the term and definition of "approved training school" with "certified training academy," replace the term "school director" with "academy director," and add additional terms.

2. Identify noncustodial employee training categories.

3. Create a new section addressing approval authority for revisions to the training standards.

4. Clarify who is required to complete the compulsory minimum training standards and require any employee who has not completed the training required for corrections officers identified in 6VAC20-100 to complete the training requirements identified in this regulation.

5. Add language to address what training is required for individuals who have separated from the Department of Corrections and those who left noncustodial employee or corrections officer status.

6. Increase the number of training hours required from eight hours to 80 hours and increase the timeline for noncustodial staff to complete the training to 12 months to accommodate the proposed increase in training hours.

7. Allow the Director of DCJS the ability to grant an extension to the time limits for the completion of training.

8. Add language providing DCJS with the option to suspend or revoke a previously approved training.

9. Make the firearm training requirements the same as those required for corrections officers. Noncustodial employees will be required to complete firearms training annually.

10. Require that the Director of DOC or his designee be provided notification of expulsion.

11. Provide that records are to be maintained by the academy and comply with the Virginia Public Records Act.

12. Make in-service training requirements the same as those required by corrections officers.

Issues: The primary advantages of the proposed amendments to this regulation are the increased and enhanced training, which serves to protect the health, safety, and welfare of the public, DOC employees and inmates, and the Commonwealth. The training ensures noncustodial employees who have been designated by the Director of DOC to carry a firearm and detain individuals have the proper training. Proper training in the handling and discharging of firearms and detaining individuals reduces the risk of serious

injury or death to noncustodial employees, correctional officers, inmates, and the general public.

There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Criminal Justice Services Board (Board) proposes to amend its regulation governing training for certain noncustodial employees of the Department of Corrections (DOC).[1] Specifically, the Board proposes to: 1) update definitions and other regulatory text to make the regulation easier to read and understand, 2) increase initial training requirements from eight hours to 80 hours and newly require 40 hours of in-service training every biennium, 3) require that initial training be completed within 12 months of designation,[2] 4) allow the Director of the Department of Criminal Justice Services (DCJS) to grant an extension of that time limit, 5) set rules for re-entering a noncustodial position, and 6) allow DCJS the authority to suspend specific training modules.

Result of Analysis. Benefits likely outweigh costs for all proposed changes.

Estimated Economic Impact. Most of the regulatory changes proposed by the Board do not change any substantive requirement or duty for any entity but, instead, are aimed at making the regulatory text easier to read and understand. Changes to the definitions in the regulation, as well as language that notes what entities have approval authority over training standards, fall into this category of change. No affected entity is likely to incur costs on account of changes such as these. To the extent that the current regulation contains outdated definitions, or might be otherwise confusing or opaque, these changes will benefit readers by making the regulation more easily understood.

In addition to these clarifying changes, the Board proposes several substantive changes to this regulation.

Current regulation requires that noncustodial employees of DOC who are subject to this regulation[3] complete eight hours of initial training; affected employees are not currently required by this regulation to complete any continuing in-service training. DCJS staff reports when this regulation was first promulgated, noncustodial staff positions were typically filled with DOC employees moving from custodial positions and, therefore, these individuals would have had extensive relevant training. DCJS staff further reports that noncustodial staff positions are no longer filled strictly from the ranks of custodial staff so the training requirements in this regulation are likely no longer adequate.

The Board now proposes to increase initial training for affected noncustodial employees to 80 hours of initial training and 40 hours of in-service training every two years. These new training requirements are roughly equal to the training hours that custodial staff are required by regulation to receive on firearms and detention. Although these proposed training requirements substantially increase the amount of training required by law, they will likely have little actual impact on DOC or affected employees. DOC staff report that, per DOC policy, affected noncustodial staff already have to complete 104 hours of initial training and 40 hours of in-service training every two years. Since DOC already requires training hours that match or exceed the hours proposed by the Board, DOC is very unlikely to incur any additional costs on account of these proposed changes.

Current regulation requires affected noncustodial employees to complete their currently required eight hours of training within 120 days of the date of assuming their noncustodial position, and specifies that these employees may not carry a weapon until training is completed. Since initial training requirements will increase substantially under this proposed regulation, the Board proposes to extend the time allowed for initial training to 12 months while still requiring that training be completed before noncustodial employees are allowed to carry a weapon. This change will benefit both affected noncustodial employees and DOC as sufficient time will be allowed to complete the increased training required by the proposed regulation. No affected entities are likely to be harmed by this extension because noncustodial employees will still not be allowed to carry firearms until they are adequately trained. Benefits likely outweigh costs for this proposed change.

This proposed regulation will newly allow the Director of DCJS to grant extensions to the proposed 12 month time limit for training so long as there is a valid reason for the extension and so long as the agency administrator[4] applies for the extension prior to the expiration of any time limit. Valid reasons for receiving an extension include: illness, injury, military service and special duty assignment required and performed in the public interest. This change will benefit affected non-custodial employees and DOC as it will allow both greater flexibility to complete training when it is interrupted by certain life circumstances. No affected entity is likely to incur costs on account of this proposed change.

The Board also proposes to newly specify that any noncustodial employee or custodial employee who separates from DOC's employ for 24 months or fewer must complete required in-service hours and annual firearms training when they are re-employed as affected noncustodial employees. Any individuals who have been separated from DOC's employ for greater than 24 months will be required to complete all required initial training when they are re-employed as affected noncustodial employees. DCJS staff reports that these proposed changes will make employment rules for noncustodial employees consistent with employment rules for custodial employees. These changes will likely benefit all DOC staff and inmates as it will provide greater assurance that all staff who are authorized to handle weapons and detain people are adequately trained.

Current regulation allows DCJS to suspend or revoke approval of any training academy that is noncompliant or deficient but only allows DCJS the power to suspend or revoke approval for the whole academy. The Board now proposes to also allow DCJS to just suspend or revoke individual training modules. Board staff reports that from time to time law changes, court decisions or changes in best practices will make the curriculum of individual training modules obsolete or even erroneous. Right now, DCJS has no way to address this other than to suspend or revoke approval for the entire training academy if it is teaching such a module. Board staff reports that the Board is proposing this change so that DCJS can address problematic training within an academy without adversely affecting the whole academy. This change will benefit academies by limiting suspension and revocations of their operations to only cover specific deficiencies. This change will also benefit affected noncustodial employees as it will better forestall obsolete or erroneous training they might receive without impeding their ability to be trained in a timely fashion. Benefits likely exceed costs for this proposed change.

Businesses and Entities Affected. These proposed regulatory changes will affect training academies, noncustodial employees who are authorized to carry a firearm and detain individuals and DOC. DCJS staff reports that DOC currently only employs 42 noncustodial employees who would be subject to this proposed regulation.

Localities Particularly Affected. No localities will be particularly affected by these proposed regulatory changes.

Projected Impact on Employment. These proposed regulatory changes are unlikely to significantly affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Real Estate Development Costs. These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. These proposed regulatory changes are unlikely to affect any small business in the Commonwealth.

Alternative Method that Minimizes Adverse Impact. No small businesses will be adversely affected by these proposed regulatory changes.

Adverse Impacts:

Businesses. Businesses in the Commonwealth are unlikely to experience any adverse impacts on account of this proposed regulation.

Localities. No localities are likely to incur costs on account of these proposed regulatory changes.

Other Entities. These proposed regulatory changes are unlikely to adversely affect other entities in the Commonwealth.

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[1]This regulation only governs noncustodial employees who, by their appointment, are authorized to carry a weapon and detain individuals. This category of noncustodial employees comprises wardens, assistant wardens, regional operations chiefs, operations-logistics specialists, deputy directors of DOC and the Director of DOC.

[2]The Director of DOC designates noncustodial employees who may carry a weapon.

[3]DOC has many noncustodial employees who are not subject to this regulation because they are not authorized by the Director of DOC to carry a weapon or to detain people. Secretarial support staff, food service staff, counselors, buildings and grounds/maintenance personnel, agribusiness staff, teachers, nurses, doctors and psychologists in the employ of DOC are noncustodial staff but are not subject to this regulation because they would not be authorized to carry weapons.

[4]The agency administrator is the Director of DOC or his designee.

Agency's Response to Economic Impact Analysis: The Department of Criminal Justice Services concurs generally with the economic impact analysis provided by the Department of Planning and Budget.

Summary:

The proposed amendments (i) increase initial training requirements from eight hours to 80 hours every two years and add a new requirement of 40 hours of in-service training every two years, (ii) require that initial training be completed within 12 months of designation, (iii) allow the Director of the Department of Criminal Justice Services (DCJS) to grant an extension of the 12-month time limit for completing training, (iv) set rules for reentering a noncustodial position, and (v) authorize DCJS to suspend specific training modules.

6VAC20-70-10. Definitions.

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

"Academy director" means the chief administrative officer of a certified training academy.

"Agency administrator" means the Director of the Department of Corrections, or his designee.

~~"Approved training school" means a training school which provides instruction of at least the minimum training standards as mandated by the board and has been approved by the department for the specific purpose of training criminal justice personnel~~.

"Board" means the Criminal Justice Services Board.

"Certified training academy" means a training facility in compliance with academy certification standards and operated by the state or local unit or units of government for the specific purpose of training criminal justice personnel.

"Committee on Training" means the standing committee of the board that is charged with reviewing proposed changes to the standards, holding public hearings, and approving changes to the standards as needed.

"Curriculum Review Committee" means the committee consisting of nine individuals representing the Department of Corrections. Two members of the committee shall represent the western region, two members shall represent the eastern region, two members shall represent the central region and three members shall represent administration.

"Department" means the Department of Criminal Justice Services.

"Director" means the chief administrative officer of the department.

"Full-time attendance" means noncustodial employees in training shall attend all classes and shall not be placed on duty, on post, or call, except in cases of an emergency, while completing compulsory minimum training requirements.

"Noncustodial employee" includes those employees specifically designated by the director of the Department of Corrections who, by their appointment, must carry a weapon.

"Satellite facility" means a facility located away from the certified academy facility that the certified academy uses to conduct mandated training. This definition specifically excludes firing ranges, driver training sites and physical fitness or defensive tactics sites, which may be located away from the certified academy facility. Commercial conference and training facilities, such as hotels and motels, that are used for mandated training are specifically excluded from this definition.

~~"School director" means the chief administrative officer of an approved training school.~~

6VAC20-70-20. Compulsory minimum training standards for noncustodial employees.

~~Pursuant to the provisions of §§ 18.2-308 (5), 19.2-81.2, 9-170 and 53.1-29 of the Code of Virginia, the board establishes the following as the compulsory minimum training standards for noncustodial employees of the Department of Corrections:~~

	~~Hours~~
~~1. General~~	~~1~~
~~a. Orientation~~	
~~b. Evaluation~~	
~~2. Skills~~	~~4~~
~~a. Firearms (Four hours classroom plus range firing)~~	
~~3. Legal Matters~~	~~3~~
~~a. Corrections and Related Law~~	~~1~~
~~b. Legal Responsibility and Authority of Employees~~	~~2~~
~~TOTAL~~	~~8 plus range~~

A. Pursuant to the provisions of § 9.1-102 of the Code of Virginia, the department under the direction of the board shall establish the compulsory minimum training standards for the Department of Corrections, Division of Adult Institutions. Pursuant to §§ 19.2-81.2 and 53.1-29 of the Code of Virginia noncustodial employees of the Department of Corrections who have the authority to detain an individual and noncustodial employees who have been designated to carry a weapon by the Director of the Department of Corrections are required to complete 80 hours of a basic course in detention training and the basic course in firearms for correctional officers approved by the Department of Criminal Justice Services.

B. Basic noncustodial employee training categories are:

1. Category 1 – Security and Supervision;
2. Category 2 – Communication;
3. Category 3 – Safety;
4. Category 4 – Emergency Response;
5. Category 5 – Conflict and Crisis Management;
6. Category 6 – Law and Legal Issues;
7. Category 7 – Duty Assignments and Responsibilities;
8. Category 8 – Professionalism; and
9. Category 9 – Firearms Training.

ACADEMY TRAINING HOURS – 80

6VAC20-70-25. Approval authority.

A. The Criminal Justice Services Board shall be the approval authority for the training categories of the compulsory minimum training standards. Amendments to training categories shall be made in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The Committee on Training of the Criminal Justice Services Board shall be the approval authority for the performance outcomes, training objectives, criteria, and lesson plan guides that support the performance outcomes. Performance outcomes, training objectives, criteria, and lesson plan guides supporting the compulsory minimum training standards may be added, deleted, or amended by the Committee on Training based upon written recommendation of a chief of police, sheriff, agency administrator, academy director, or the Curriculum Review Committee.

C. Prior to approving changes to the performance outcomes, training objectives, criteria, or lesson plan guides, the Committee on Training shall conduct a public hearing. Sixty days prior to the public hearing, the proposed changes shall be distributed to all affected parties for the opportunity to comment. Notice of changes to the performance outcomes, training objectives, criteria, and lesson plan guides shall be filed for publication in the Virginia Register of Regulations upon adoption, change, or deletion. The department shall notify each certified academy in writing of any new, revised, or deleted objectives. Such adoptions, changes, or deletions shall become effective 30 days after publication in the Virginia Register.

6VAC20-70-30. Applicability.

A. Every person employed in a noncustodial position who by appointment to that position has been designated by the Director of the Department of Corrections to carry a weapon ~~must~~ shall meet the compulsory minimum training standards ~~herein~~ established in this chapter.

B. Noncustodial employees meeting all of the following conditions shall not be required to complete the compulsory minimum training standards:

1. The noncustodial employee was previously employed as a corrections officer;

2. The noncustodial employee originally complied with all the compulsory minimum training requirements of 6VAC20-100 (Rules Relating to compulsory Minimum Training Standards for Correctional Officers of the Department of Corrections, Division of Adult Institutions); and

3. At the time of appointment a period of 24 months or less has passed since the noncustodial employee served in the position of a corrections officer.

6VAC20-70-40. Time required for completion of training.

A. Every noncustodial employee, so designated, shall not carry a weapon until the compulsory minimum training standards as set forth in ~~6VAC20-70-20~~ this chapter have been ~~satisfactorily~~ completed.

B. Every noncustodial employee, so designated, shall ~~satisfactorily~~ complete the compulsory minimum training standards for noncustodial employees within ~~120 days~~ 12 months of assuming a position ~~which~~ that is designated as a noncustodial position.

C. The director may grant an extension of the time limit for completion of the minimum training required upon presentation of evidence by the agency administrator that the officer was unable to complete the required training within the specified time limit due to illness, injury, military service, or special duty assignment required and performed in the public interest. However, each agency administrator shall request such extension prior to expiration of any time limit.

D. Any noncustodial employee who originally complied with all training requirements and later separated from noncustodial employee or correctional officer status, for a period of 24 months or less, upon reentry as a noncustodial employee shall be required to complete compulsory in-service training and complete annual firearms training set forth in 6VAC20-70-115.

E. Any noncustodial employee who originally complied with all training requirements and later separated from noncustodial employee or corrections officer status, for a period greater than 24 months, upon reentry as a noncustodial employee shall be required to complete all compulsory minimum training standards set forth in this chapter.

6VAC20-70-50. How compulsory minimum training standards ~~may be~~ are attained.

A. The compulsory minimum training standards shall be attained by attending and ~~satisfactorily~~ completing ~~an approved training school~~ training requirements at a certified training academy or satellite facility.

B. ~~Noncustodial~~ Full-time attendance is required of all noncustodial employees attending ~~an approved training school are required to attend all classes and~~ a certified training academy or satellite facility. Noncustodial employees should not be placed on duty, on post, or on call except in cases of emergency. In the event of an emergency, the agency administrator or designee shall determine if it is appropriate to place a noncustodial employee on duty, on post, or on call and shall advise the academy director within 24 hours. Noncustodial employees shall be responsible for any material missed during an excused absence.

6VAC20-70-60. Approved training ~~schools~~ and certified academies.

A. Noncustodial ~~employees~~ employee training ~~schools must~~ shall be approved by the department prior to the first scheduled class. Approval is requested by making application to the director ~~on forms provided by the department~~ or designee using the Department of Criminal Justice Services electronic records management system for compulsory minimum standards and in-service training. The director or designee may approve ~~those schools which~~ trainings that on the basis of curricula, instructors, facilities, and examinations~~,~~ provide the required minimum training. One application for all mandated training shall be submitted prior to the beginning of each fiscal year. A curriculum listing the subject matter, instructors, dates, and times for the entire proposed training session shall be submitted to the department ~~30 days prior to the beginning of each proposed session~~ within the time limits established by the department. An exemption to the ~~30 day requirement~~ established time limitations may be ~~waived~~ granted by the director for good cause shown by the ~~school~~ academy director.

B. Each ~~school~~ academy director will be required to maintain a ~~current~~ file of all current lesson plans and supporting material for each subject contained in the compulsory minimum training standards.

C. ~~Schools which are approved will~~ Training shall be subject to inspection and review by the director or staff, or both.

D. The department may suspend or revoke the approval of ~~an approved~~ previously sanctioned training ~~school~~ upon written notice, which shall contain the ~~reason(s)~~ reasons upon which the suspension or revocation is based, to the ~~school's~~ academy director. The ~~school's~~ academy director may request a hearing before the director or his designee. The request shall be in writing and must be received by the department within 15 business days of the date of the notice of suspension or revocation. The ~~school's~~ academy director may appeal the decision of the director or his designee to the board. Such request shall be in writing and must be received by the board within 15 business days of the date of the decision of the director or his designee.

E. The department may suspend or revoke the ~~approval of an approved training school~~ certification of a certified training academy upon written notice, which shall contain the ~~reason(s)~~ reasons upon which the suspension or revocation is based, to the ~~school's~~ academy director. The ~~school's~~ academy director may request a hearing before the director or his designee. The request shall be in writing and must be received by the department within 15 business days of the date of the notice of suspension or revocation. The ~~school's~~ academy director may appeal the decision of the director or his designee to the board. Such request shall be in writing and must be received by the board within 15 business days of the date of the decision of the director or his designee.

6VAC20-70-70. Grading.

A. ~~All written examinations shall include a minimum of two questions for each hour of mandatory instruction. This requirement likewise includes the classroom instruction on performance-oriented subject matter.~~ Noncustodial employees shall comply with the requirements of this chapter. Certified training academies and satellite facilities shall utilize testing procedures that indicate that every noncustodial employee, prior to completion of the training academy, has ~~B. All noncustodial employees shall attain~~ attained a minimum ~~grade~~ score of 70% ~~in~~ on all tests for each grading category identified in 6VAC20-70-20 to ~~satisfactorily~~ complete the compulsory minimum training standards. ~~Any noncustodial employee who fails to attain the minimum 70% in any grading category will be required to take all subjects comprising that grading category in a subsequent approved training school~~ A certified training academy may require noncustodial employees to attain a score greater than 70% on tests. A noncustodial employee shall not be certified as having complied with the compulsory minimum training standards unless all applicable requirements have been met.

B. A noncustodial employee may be ~~tested and~~ retested ~~as may be necessary~~ within the time limits of 6VAC20-70-40 and according to each certified training academy's written policy. ~~A noncustodial employee shall not be certified as having complied with the compulsory minimum training standards unless all applicable requirements have been met.~~

~~C. Approved noncustodial employee training schools shall maintain accurate records of all tests, grades and testing procedures. Academy training records must be maintained in accordance with the provisions of these rules and §§ 42.1-76 through 42.1-91 of the Code of Virginia.~~

6VAC20-70-80. ~~Firearms.~~ (Repealed.)

~~The following firearms training will be applicable to noncustodial employees of the Department of Corrections who have been designated to carry a weapon:~~

~~1. Classroom – Service handgun, shotgun and special weapons (four hours).~~

~~a. Nonmenclature and Care of Weapons~~

~~b. Safety~~

~~c. Legal Aspects of Firearms Use~~

~~d. Principles of Shooting~~

~~e. Special Weapons (as utilized by the Department of Corrections) – Familiarization, no firing~~

~~2. Range.~~

~~a. Service Handgun.~~

~~(1) combat course (double action)~~

~~60 rounds~~

~~Silhouette Target~~

~~Qualification – 70% (5 points per hit on silhouette)~~

~~(Minimum 210 points out of a possible 300 points)~~

~~(2) Course.~~

~~7 yards – two handed crouch – 6 rounds (one on whistle)~~

~~7 yards – two handed crouch – 6 rounds (two on whistle)~~

~~7 yards – two handed crouch – 12 rounds (30 seconds from whistle)~~

~~15 yards – two handed point shoulder – 6 rounds (one on whistle)~~

~~15 yards – two handed point shoulder – 6 rounds – (two on whistle)~~

~~15 yards – two handed point shoulder – 12 rounds (30 seconds from whistle)~~

~~25 yards – two handed point shoulder – 6 rounds (10 seconds/right hand)~~

~~25 yards – two handed point shoulder – 6 rounds (10 seconds/left hand)~~

~~b. Shotgun~~

~~10 rounds~~

~~Bobber Target~~

~~No. 4 Buck~~

~~Qualification – 80% (10 points per hit on bobber target)~~

~~25 yards – shoulder position – 10 rounds~~

6VAC20-70-90. ~~Recertification.~~ (Repealed.)

~~A. All noncustodial employees shall recertify every other calendar year by satisfactorily completing the firearms training set forth in 6VAC20-70-80. The specific time frame for compliance by currently certified noncustodial employees is enumerated in subsections C and D. Any noncustodial employee who does not comply as set forth below in subsections C and D shall be subject to the provisions of § 9-181 of the Code of Virginia.~~

~~B. All noncustodial employees shall be required to qualify annually with service handgun and shotgun in accordance with 6VAC20-70-80.~~

~~C. All noncustodial employees whose recertification due date is in 1987 shall comply with the recertification requirements by December 31, 1987, and thereafter by December 31 of every other calendar year.~~

~~D. All noncustodial employees whose recertification due date is in 1988 shall comply with the recertification requirements by December 31, 1988, and thereafter by December 31 of every other calendar year.~~

6VAC20-70-100. Failure to comply with rules and regulations.

A. Noncustodial employees attending ~~an approved training school~~ a certified training academy or satellite facility shall comply with the rules and regulations promulgated by the ~~department~~ board and any other rules and regulations within the authority of the ~~school~~ academy director. The director of the ~~school~~ academy shall be responsible for enforcement of all rules and regulations established to govern the conduct of attendees. If the ~~school~~ academy director considers a violation of the rules and regulations detrimental to the welfare of the ~~school~~ certified training academy, the ~~school~~ academy director may expel the noncustodial employee from the ~~school~~ academy. ~~Consistent with Department of Corrections' policy, notification~~ Notification of such action shall immediately be reported in writing to the ~~supervisor of the individual expelled and the appropriate Department of Corrections Division Director~~ agency administrator or designee.

6VAC20-70-110. Administrative requirements.

A. ~~Reports will be required from the school director on forms approved by the department and at such times as designated by the director.~~ The academy director shall complete a report using the department's electronic records management system for compulsory minimum standards and in-service training within 60 days of completion of compulsory training conducted at the certified training academy or satellite facility.

B. ~~The school director shall, within 30 days upon completion of an approved training school, comply with the following: 1. Submit~~ The academy director shall prepare a grade report on each officer maintaining the original for academy records and forwarding a copy to the agency administrator or designee. The academy director shall submit to the department ~~a roster containing the names of those noncustodial employees who have satisfactorily completed all training requirements and, if applicable,~~ a revised curriculum for the training session, if applicable.

C. The ~~school~~ academy director shall furnish each instructor with a complete set of course resumes and objectives for the assigned subject matter.

D. The certified training academy shall maintain accurate records for all noncustodial employees of all tests, grades, and testing procedures. Approved training academy records must be maintained in accordance with the provisions of this chapter and the Virginia Public Records Act (§ 42.1-76 et seq. of the Code of Virginia).

6VAC20-70-115. In-service training for noncustodial employees and annual firearms training.

A. Every two years, noncustodial employees as defined in 6VAC20-70-10 shall complete a total of 40 hours of in-service training as identified in this subsection by December 31 of the second calendar year after completing an approved training academy.

1. Cultural diversity training - two hours.

2. Legal training - four hours. Subjects to be provided are at the discretion of the academy director of an approved training academy and shall be designated as legal training.

3. Career development or elective training - 34 hours. Subjects to be provided are at the discretion of the academy director of an approved training academy.

B. Firearms training.

1. Every noncustodial employee required to carry a firearm in the performance of duty shall qualify annually using the applicable firearms course approved by the Committee on Training of the board. Annual range qualification shall include a review of issues and policies relating to weapons safety, nomenclature, maintenance, and use of force. With prior approval of the director, a reasonable modification of the firearms course may be approved to accommodate qualification on indoor ranges.

2. Noncustodial employees shall qualify annually with a minimum cumulative passing score of 70%.

6VAC20-70-120. ~~Effective date.~~ (Repealed.)

~~These rules shall be effective on and after July 1, 1987, and until amended or repealed.~~

6VAC20-70-130. ~~Adopted: October 12, 1979.~~ (Repealed.)

~~Amended: April 1, 1987.~~

~~FORMS (6VAC20-70)~~

~~Criminal Justice Training Roster, Form 41, eff. 1/93.~~

VA.R. Doc. No. R16-4542; Filed May 24, 2017, 1:18 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with (i) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved and (ii) § 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.

Titles of Regulations: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-25, 9VAC25-31-110, 9VAC25-31-120, 9VAC25-31-170, 9VAC25-31-190, 9VAC25-31-200, 9VAC25-31-210, 9VAC25-31-220, 9VAC25-31-400, 9VAC25-31-410, 9VAC25-31-840; adding 9VAC25-31-950 through 9VAC25-31-1030).**

9VAC25-870. Virginia Stormwater Management Program (VSMP) Regulation (amending 9VAC25-870-10, 9VAC25-870-15, 9VAC25-870-370, 9VAC25-870-400, 9VAC25-870-410, 9VAC25-870-430, 9VAC25-870-440, 9VAC25-870-450, 9VAC25-870-460, 9VAC25-870-640, 9VAC25-870-650).

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

Effective Date: July 26, 2017.

Agency Contact: Debra Harris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4019, or email debra.harris@deq.virginia.gov.

Summary:

The Environmental Protection Agency published the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule in the Federal Register, 80 FR 64063 (October 22, 2015). This rule provides requirements for the electronic reporting and sharing of NPDES program information. The rule requires the use of electronic reporting instead of paper-based reporting in order to (i) save time and limited resources; (ii) increase data accuracy and improve compliance; and (iii) support better protection of waters. The goal is to improve the ability of authorized programs, such as Virginia's Virginia Pollutant Discharge Elimination System Program, to target the most serious water quality and compliance problems while also helping to shift limited resources to more pertinent tasks by reducing time and resources necessary for the paper-based reporting activities. The final exempt regulatory action amends 9VAC25-31 and 9VAC25-870 in order to incorporate the federal electronic reporting rule.

9VAC25-31-25. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the ~~United States~~ U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced and incorporated ~~herein~~ in this chapter that regulation shall be as it exists and has been published in the ~~July 1, 2013~~ July 1, 2016, update.

9VAC25-31-110. Signatories to permit applications and reports.

A. All permit applications shall be signed as follows:

1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

3. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

B. All reports required by permits, and other information requested by the board shall be signed by a person described in subsection A of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in subsection A of this section;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

3. The written authorization is submitted to the department.

C. If an authorization under subsection B of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection B of this section must be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

D. Any person signing a document under subsection A or B of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. Electronic reporting. If documents described in subsection A or B of this section are submitted electronically by or on behalf of the VPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section and shall ensure that all of the relevant requirements of Part XI (9VAC25-31-950 et seq.) of this chapter and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D).

9VAC25-31-120. Storm water discharges.

A. Permit requirements.

1. Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a VPDES permit except:

a. A discharge with respect to which a permit has been issued prior to February 4, 1987;

b. A discharge associated with industrial activity; or

c. A discharge which either the board or the regional administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to surface waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water run-off, except for those discharges from conveyances which do not require a permit under subdivision 2 of this subsection or agricultural storm water run-off which is exempted from the definition of point source.

2. The board may not require a permit for discharges of storm water run-off from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation run-off and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, by-product or waste products located on the site of such operations.

3. In addition to meeting the requirements of subsection B of this section, an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing VPDES permit number.

4. For storm water discharges associated with industrial activity from point sources which discharge through a nonmunicipal or nonpublicly owned separate storm sewer system, the board, in its discretion, may issue: a single VPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into surface waters; or, individual permits to each discharger of storm water associated with industrial activity through the nonmunicipal conveyance system.

a. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to surface waters, with each discharger to the nonmunicipal conveyance a co-permittee to that permit.

b. Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

c. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

5. Conveyances that discharge storm water run-off combined with municipal sewage are point sources that must obtain VPDES permits in accordance with the procedures of 9VAC25-31-100 and are not subject to the provisions of this section.

6. Whether a discharge from a municipal separate storm sewer is or is not subject to VPDES regulation shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III or Title VI of the CWA.

7. a. On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by subdivision 1 of this subsection to obtain a permit, operators shall be required to obtain a VPDES permit only if:

(1) The board or the EPA regional administrator determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

(2) The board or the EPA regional administrator determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

b. Operators of nonmunicipal sources designated pursuant to subdivisions 7 a (1) and (2) of this subsection shall seek coverage under a VPDES permit in accordance with subdivision B 1 of this section.

c. Operators of storm water discharges designated pursuant to subdivisions 7 a (1) and (2) of this subsection shall apply to the board for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the board.

B. Application requirements for storm water discharges associated with industrial activity.

1. Dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the board is evaluating for designation under subdivision A 1 c of this section, shall submit a VPDES application in accordance with the requirements of 9VAC25-31-100 as modified and supplemented by the provisions of this subsection.

a. Except as provided in subdivisions 1 b and c of this subsection, the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

(1) A site map showing topography (or indicating the outline of drainage areas served by the outfall or outfalls covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water run-off, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

(2) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(3) A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of nonstorm water discharges which are not covered by a VPDES permit; tests for such nonstorm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the onsite drainage points that were directly observed during a test;

(4) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

(5) Quantitative data based on samples collected during storm events and collected in accordance with 9VAC25-31-100 of this part from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(a) Any pollutant limited in an effluent guideline to which the facility is subject;

(b) Any pollutant listed in the facility's VPDES permit for its process wastewater (if the facility is operating under an existing VPDES permit);

(c) Oil and grease, pH, BOD_5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(d) Any information on the discharge required under 9VAC25-31-100 G 7 f and g;

(e) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event or events sampled, and the method of flow measurement or estimation; and

(f) The date and duration (in hours) of the storm event or events sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled run-off and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

(6) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of 9VAC25-31-100 G 2, G 3, G 4, G 5, G 7 c, G 7 d, G 7 e, and G 7 h; and

(7) Operators of new sources or new discharges which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in subdivision 1 a (5) of this subsection instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in subdivision 1 a (5) of this subsection within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the VPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of 9VAC25-31-100 K 3 b, K 3 c, and K 5.

b. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with subdivision 1 a of this subsection, unless the facility:

(1) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987; or

(2) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

(3) Contributes to a violation of a water quality standard.

c. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

d. Applicants shall provide such other information the board may reasonably require to determine whether to issue a permit.

2. No application for a VPDES permit authorizing direct or indirect discharge of stormwater runoff from a new municipal solid waste landfill into a local watershed protection district established and designated as such by city ordinance prior to January 1, 2006, shall be considered complete unless it contains certification from the local governing body of the city in which the discharge is to take place, that the discharge is consistent with the city's ordinance establishing and designating the local watershed protection district. This requirement shall apply to applications for new or modified individual VPDES permits and for new or modified coverage under general VPDES permits. This requirement does not apply to any municipal solid waste landfill in operation on or before January 1, 2006.

C. Application deadlines. Any operator of a point source required to obtain a permit under this section that does not have an effective VPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

1. Individual applications.

a. Except as provided in subdivision 1 b of this subsection, for any storm water discharge associated with industrial activity as defined in this chapter which is not authorized by a storm water general permit, a permit application made pursuant to subsection B of this section shall be submitted to the department by October 1, 1992;

b. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications must be submitted to the department by March 10, 2003;

2. A permit application shall be submitted to the department within 180 days of notice, unless permission for a later date is granted by the board, for:

a. A storm water discharge which either the board or the regional administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters; or

b. A storm water discharge subject to subdivision B 1 d of this section;

3. Facilities with existing VPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. Facilities with permits for storm water discharges associated with industrial activity which expire on or after May 18, 1992, shall submit a new application in accordance with the requirements of 9VAC25-31-100 and 9VAC25-31-120 B (Form 1, Form 2F, and other applicable forms) 180 days before the expiration of such permits.

D. Petitions.

1. Any person may petition the board to require a VPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

2. The board shall make a final determination on any petition received under this section within 90 days after receiving the petition.

E. Conditional exclusion for no exposure of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is no exposure of industrial materials and activities to rain, snow, snowmelt or run-off and the discharger satisfies the conditions in subdivisions 1 through 4 of this subsection. No exposure means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and run-off. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

1. To qualify for this exclusion, the operator of the discharge must:

a. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and run-off;

b. Complete and sign (according to 9VAC25-31-110) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in subdivision 2 of this subsection;

c. Submit the signed certification to the department once every five years. As of the start date in Table 1 of 9VAC25-31-1020, all certifications submitted in compliance with this section shall be submitted electronically by the owner or operator to the department in compliance with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, owners or operators may be required to report electronically if specified by a particular permit;

d. Allow the department to inspect the facility to determine compliance with the no exposure conditions;

e. Allow the department to make any no exposure inspection reports available to the public upon request; and

f. For facilities that discharge through an MS4, upon request, submit a copy of the certification of no exposure to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

2. Storm resistant shelter is not required for:

a. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("sealed" means banded or otherwise secured and without operational taps or valves);

b. Adequately maintained vehicles used in material handling; and

c. Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

3. a. This conditional exclusion from the requirement for a VPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be no exposure discharges, individual permit requirements should be adjusted accordingly.

b. If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, or run-off, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for unpermitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

c. Notwithstanding the provisions of this subsection, the board retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

4. The no exposure certification requires the submission of the following information, at a minimum, to aid the board in determining if the facility qualifies for the no exposure exclusion:

a. The legal name, address and phone number of the discharger.

b. The facility name and address, the county name and the latitude and longitude where the facility is located.

c. Certification that indicates that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

(1) Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

(2) Materials or residuals on the ground or in storm water inlets from spills/leaks;

(3) Materials or products from past industrial activity;

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

(5) Materials or products during loading/unloading or transporting activities;

(6) Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants);

(7) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

(8) Materials or products handled/stored on roads or railways owned or maintained by the discharger;

(9) Waste material (except waste in covered, nonleaking containers, e.g., dumpsters);

(10) Application or disposal of process wastewater (unless otherwise permitted); and

(11) Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow.

d. All no exposure certifications must include the following certification statement and be signed in accordance with the signatory requirements of 9VAC25-31-110: "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of no exposure and obtaining an exclusion from VPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under 9VAC25-31-120 E 2). I understand that I am obligated to submit a no exposure certification form once every five years to the Department of Environmental Quality and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the department, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under a VPDES permit prior to any point source discharge of storm water associated with industrial activity from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

9VAC25-31-170. General permits.

A. The board may issue a general permit in accordance with the following:

1. The general permit shall be written to cover one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under subdivision 2 b of this subsection, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:

a. Designated planning areas under §§ 208 and 303 of CWA;

b. Sewer districts or sewer authorities;

c. City, county, or state political boundaries;

d. State highway systems;

e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;

f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

g. Any other appropriate division or combination of boundaries.

2. The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are either:

a. Storm water point sources; or

b. One or more categories or subcategories of point sources other than storm water point sources, or one or more categories or subcategories of treatment works treating domestic sewage, if the sources or treatment works treating domestic sewage within each category or subcategory all:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

(4) Require the same or similar monitoring; and

(5) In the opinion of the board, are more appropriately controlled under a general permit than under individual permits.

3. Where sources within a specific category of dischargers are subject to water quality-based limits imposed pursuant to 9VAC25-31-220, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this chapter.

2. Authorization to discharge, or authorization to engage in sludge use and disposal practices.

a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of this subsection, contains a provision that a notice of intent is not required or the board notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this chapter. As of the start date in Table 1 of 9VAC25-31-1020, all notices of intent submitted in compliance with this subsection shall be submitted electronically by the discharger (or treatment works treating domestic sewage) to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, dischargers (or treatment works treating domestic sewage) may be required to report electronically if specified by a particular permit.

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream or streams and other required data elements as identified in Appendix A to 40 CFR Part 127, as adopted by reference in 9VAC25-31-1030. General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements. Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in 9VAC25-31-100 J 1, including a topographic map. All notices of intent shall be signed in accordance with 9VAC25-31-110.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date or dates when a discharger is authorized to discharge under the permit.

d. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), in accordance with the permit either upon receipt of the notice of intent by the department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the board. Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the board, be authorized to discharge under a general permit without submitting a notice of intent where the board finds that a notice of intent requirement would be inappropriate. In making such a finding, the board shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the

discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The board shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The board may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under subdivision 3 c of this subsection.

g. A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in subdivision C 4 of 9VAC25-31-130.

3. Requiring an individual permit.

a. The board may require any discharger authorized by a general permit to apply for and obtain an individual VPDES permit. Any interested person may request the board to take action under this subdivision. Cases where an individual VPDES permit may be required include the following:

(1) The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general VPDES permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

(3) Effluent limitation guidelines are promulgated for point sources covered by the general VPDES permit;

(4) A water quality management plan containing requirements applicable to such point sources is approved;

(5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general VPDES permit; or

(7) The discharge(s) is a significant contributor of pollutants. In making this determination, the board may consider the following factors:

(a) The location of the discharge with respect to surface waters;

(b) The size of the discharge;

(c) The quantity and nature of the pollutants discharged to surface waters; and

(d) Other relevant factors.

b. Permits required on a case-by-case basis.

(1) The board may determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, storm water discharges, and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the board decides that an individual permit is required under this subsection, except as provided in subdivision 3 b (3) of this subsection, the board shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the board. The question whether the designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this subsection, the board may require the discharger to submit a permit application or other information regarding the discharge under the law and § 308 of the CWA. In requiring such information, the board shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under 9VAC25-31-120 A 1 within 60 days of notice or under 9VAC25-31-120 A 7 within 180 days of notice, unless permission for a later date is granted by the board. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 9VAC25-31-100 with reasons supporting the request. The request shall be processed under the applicable parts of this chapter. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual VPDES permit is issued to an owner or operator otherwise subject to a general VPDES permit, the applicability of the general permit to the individual VPDES permittee is automatically terminated on the effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the

individual permit, the general permit shall apply to the source.

Part III
Permit Conditions

9VAC25-31-190. Conditions applicable to all permits.

The following conditions apply to all VPDES permits. Additional conditions applicable to VPDES permits are in 9VAC25-31-200. All conditions applicable to VPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this regulation must be given in the permit.

A. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the law and the CWA, except that noncompliance with certain provisions of the permit may constitute a violation of the law but not the CWA. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the CWA within the time provided in the chapters that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

B. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit.

C. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

D. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

G. Permits do not convey any property rights of any sort, or any exclusive privilege.

H. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the law. The permittee shall also furnish to the department upon request, copies of records required to be kept by the permit.

I. The permittee shall allow the director, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA and the law, any substances or parameters at any location.

J. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. Except for records of monitoring information required by the permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by Part VI (9VAC25-31-420 et seq.) of this chapter), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved

litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

3. Records of monitoring information shall include:

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

b. The individual or individuals who performed the sampling or measurements;

c. The date or dates analyses were performed;

d. The individual or individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or alternative EPA approved methods; or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in Part VI of this chapter, unless other test procedures have been specified in the permit.

K. All applications, reports, or information submitted to the department shall be signed and certified as required by 9VAC25-31-110.

L. Reporting requirements.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 9VAC25-31-180 A; or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 9VAC25-31-200 A 1.

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of permits to change the name of the permittee and incorporate such other requirements as may be necessary under the law or the CWA.

4. Monitoring results shall be reported at the intervals specified in the permit.

a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the department for reporting results of monitoring of sludge use or disposal practices. As of the start date in Table 1 of 9VAC25-31-1020, all reports and forms submitted in compliance with this subdivision 4 shall be submitted electronically by the permittee to the department in compliance with this subdivision 4 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, permittees may be required to report electronically if specified by a particular permit.

b. If the permittee monitors any pollutant specifically addressed by the permit more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in Part VI of this chapter, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the department.

c. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

5. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

6. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and such discharge enters or could be expected to enter state waters, the owner shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of such discharge. This notification shall provide all available details of the incident, including any adverse ~~affects~~ effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with subdivision 7 a of this subsection. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

a. Unusual spillage of materials resulting directly or indirectly from processing operations;

b. Breakdown of processing or accessory equipment;

c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as sewer lines or wastewater pump stations); and

d. Flooding or other acts of nature.

7. Twenty-four hour and five-day reporting.

a. The permittee shall report any noncompliance ~~which~~ that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A ~~written submission~~ report in a format required by the department shall also be provided within five days of the time the permittee becomes aware of the circumstances. The ~~written submission~~ five-day report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(1) For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described in subdivision 7 a of this subsection with the exception of time of discovery, as well as the type of event (i.e., combined sewer overflows, sanitary sewer overflows, or bypass events); type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall); discharge volumes untreated by the treatment works treating domestic sewage; types of human health and environmental impacts of the sewer overflow event; and whether the noncompliance was related to wet weather.

(2) As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this subdivision 7 shall be submitted electronically by the permittee to the department in compliance with this subdivision 7 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this subdivision by a particular permit.

(3) The director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this subdivision.

b. The following shall be ~~included as information which must be~~ reported within 24 hours under this subdivision:

(1) Any unanticipated bypass ~~which~~ that exceeds any effluent limitation in the permit.

(2) Any upset ~~which~~ that exceeds any effluent limitation in the permit.

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

c. The board may waive the ~~written~~ five-day report on a case-by-case basis for reports under this subdivision if the oral report has been received within 24 hours.

8. The permittee shall report all instances of noncompliance not reported under subdivisions 4, 5, 6, and 7 of this subsection, in ~~writing~~ a format required by the department at the time the next monitoring reports are submitted. The reports shall contain the information listed in subdivision 7 of this subsection.

a. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in subdivision 7 a of this subsection and the applicable required data in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.

b. As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this subdivision 8 shall be submitted electronically by the permittee to the department in compliance with this subdivision 8 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit.

c. The director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

9. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, it shall promptly submit such facts or information.

10. The owner, operator, or the duly authorized representative of an VPDES-regulated entity is required to electronically submit the required information, as specified in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, to the department.

M. Bypass.

1. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subdivisions 2 and 3 of this subsection.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, permittees may be required to report electronically if specified by a particular permit.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subdivision L 7 of this section ~~(24 hour notice)~~. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, permittees may be required to report electronically if specified by a particular permit.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under subdivision 2 of this subsection.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in subdivision 3 a of this subsection.

N. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of subdivision 2 of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in subdivision L 7 b (2) of this section (24-hour notice); and

d. The permittee complied with any remedial measures required under subsection D of this section.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

9VAC25-31-200. Additional conditions applicable to specified categories of VPDES permits.

The following conditions, in addition to those set forth in 9VAC25-31-190, apply to all VPDES permits within the categories specified below:

A. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the department as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

a. One hundred micrograms per liter (100 µg/l);

b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the board in accordance with 9VAC25-31-220 F.

2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the board in accordance with 9VAC25-31-220 F.

B. Publicly and privately owned treatment works. All POTWs and PVOTWs must provide adequate notice to the department of the following:

1. Any new introduction of pollutants into the POTW or PVOTW from an indirect discharger which would be subject to § 301 or 306 of the CWA and the law if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW or PVOTW by a source introducing pollutants into the POTW or PVOTW at the time of issuance of the permit.

3. For purposes of this subsection, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW or PVOTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW or PVOTW.

4. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design capacity authorized by the VPDES permit for each month of any three-month period, the owner shall within 30 days notify the department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

a. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could be reasonably anticipated, resulting from high influent flows.

b. Upon receipt of the owner's plan of action, the board shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.

c. Failure to timely submit an adequate plan shall be deemed a violation of the permit.

d. Nothing herein shall in any way impair the authority of the board to take enforcement action under § 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of Virginia.

C. Wastewater works operator requirements.

1. The permittee shall employ or contract at least one wastewater works operator who holds a current wastewater license appropriate for the permitted facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations (18VAC160-20). Notwithstanding the foregoing requirement, unless the discharge is determined by the board on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

a. That have a design hydraulic capacity equal to or less than 0.04 mgd;

b. That discharge industrial waste or other waste from coal mining operations; or

c. That do not utilize biological or physical/chemical treatment.

2. In making this case-by-case determination, the board shall consider the location of the discharge with respect to state waters, the size of the discharge, the quantity and nature of pollutants reaching state waters and the treatment methods used at the wastewater works.

3. The permittee shall notify the department in writing whenever he is not complying, or has grounds for anticipating he will not comply with the requirements of subdivision 1 of this subsection. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

D. Lake level contingency plans. Any VPDES permit issued for a surface water impoundment whose primary purpose is to provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be released when the water level above the dam drops below designated levels due to drought conditions, and such plan shall take into account and minimize any adverse effects of any release reduction requirements on downstream users. This subsection shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

E. Concentrated Animal Feeding Operations (CAFOs). The activities of the CAFO shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter or process wastewater to surface waters of the state except in the case of an overflow caused by a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges as defined in subdivision C 3 of 9VAC25-31-130 are permitted. Domestic sewage or industrial waste shall not be managed under the

Virginia Pollutant Discharge Elimination System General Permit for CAFOs (9VAC25-191). Any permit issued to a CAFO shall include:

1. Requirements to develop, implement and comply with a nutrient management plan. At a minimum, a nutrient management plan shall include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented and be in compliance with the nutrient management plan as a requirement of the permit. The nutrient management plan must, to the extent applicable:

a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

c. Ensure that clean water is diverted, as appropriate, from the production area;

d. Prevent direct contact of confined animals with surface waters of the state;

e. Ensure that chemicals and other contaminants handled on site are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface waters of the state;

g. Identify protocols for appropriate testing of manure, litter, process wastewater and soil;

h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and

i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.

2. Recordkeeping requirements. The permittee must create, maintain for five years, and make available to the director upon request the following records:

a. All applicable records identified pursuant to subdivision 1 i of this subsection;

b. In addition, all CAFOs subject to EPA Effluent Guidelines for Feedlots (40 CFR Part 412) must comply with recordkeeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c);

A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the director upon request.

3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of EPA Effluent Guidelines for Feedlots (40 CFR Part 412). Large CAFOs must retain for five years records of the date, recipient name and address and approximate amount of manure, litter or process wastewater transferred to another person.

4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the director. As of the start date in Table 1 of 9VAC25-31-1020, all annual reports submitted in compliance with this subsection shall be submitted electronically by the permittee to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, the permittee may be required to report electronically if specified by a particular permit. The annual report must include:

a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

c. Estimated amount of total manure, litter and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);

d. Total number of acres for land application covered by the nutrient management plan developed in accordance with subdivision 1 of this subsection;

e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;

f. Summary of all manure, litter and process wastewater discharges from the production area that occurred in the previous 12 months including for each discharge the date of discovery, duration of discharge, ~~time~~ and approximate volume;

g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or

approved by a certified nutrient management planner; and

h. The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with subdivisions 5 a (2) and 5 b (4) of this subsection, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with subdivision 5 b of this subsection, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with subdivision 5 b (4) of this subsection, and the amount of any supplemental fertilizer applied during the previous 12 months.

5. Terms of the nutrient management plan. Any permit issued to a CAFO shall require compliance with the terms of the CAFO's site-specific nutrient management plan. The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the board to be necessary to meet the requirements of subdivision 1 of this subsection. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by subdivision 4 h of this subsection and, as applicable, 40 CFR 412.4(c), shall include the fields available for land application; field-specific rates of application properly developed, as specified in subdivisions 5 a and b of this subsection, to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms shall address rates of application using one of the following two approaches, unless the board specifies that only one of these approaches may be used:

a. Linear approach. An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

(1) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the board, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the board for each crop or use identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

(2) Large CAFOs that use this approach shall calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; or

b. Narrative rate approach. An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:

(1) The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the board, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in accordance with subdivision 5 b (2) of this subsection); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the board for each crop or use identified for each field. In addition, the terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the nutrient management plan, as required by subdivision 1 g of this subsection; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the

timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

(2) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops shall be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan shall include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the board for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied shall be determined in accordance with the methodology described in subdivision 5 b (1) of this subsection.

(3) For CAFOs using this approach, the following projections shall be included in the nutrient management plan submitted to the board, but are not terms of the nutrient management plan: the CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

(4) CAFOs that use this approach shall calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in subdivision 5 b (1) of this subsection before land applying manure, litter, and process wastewater and shall rely on the following data:

(a) A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by subdivision 5 b (1) of this subsection, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the board; and

(b) The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

9VAC25-31-210. Establishing permit conditions.

A. In addition to conditions required in all permits, the board shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the law, the CWA and regulations. These shall include conditions under 9VAC25-31-240 (duration of permits), 9VAC25-31-250 (schedules of compliance) ~~and~~, 9VAC25-31-220 (monitoring), electronic reporting requirements of 40 CFR Part 3 and Part XI (9VAC25-31-950 et seq.) of this chapter.

B. 1. An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in Part V of this chapter.

2. New or reissued permits, and to the extent allowed under Part V of this chapter modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in 9VAC25-31-220 and 9VAC25-31-230.

C. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

9VAC25-31-220. Establishing limitations, standards, and other permit conditions.

In addition to the conditions established under 9VAC25-31-210 A, each VPDES permit shall include conditions meeting the following requirements when applicable.

A. 1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under § 301 of the CWA, on new source performance standards promulgated under § 306 of CWA, on case-by-case effluent limitations determined under § 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 9VAC25-31-180 B (protection period).

2. The board may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a VPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical

information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

B. Other effluent limitations and standards.

1. Other effluent limitations and standards under §§ 301, 302, 303, 307, 318 and 405 of the CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under § 307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the board shall institute proceedings under this chapter to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

2. Standards for sewage sludge use or disposal under § 405(d) of the CWA and Part VI (9VAC25-31-420 et seq.) of this chapter unless those standards have been included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act (42 USC § 6901 et seq.), Part C of Safe Drinking Water Act (42 USC § 300f et seq.), the Marine Protection, Research, and Sanctuaries Act of 1972 (33 USC § 1401 et seq.), or the Clean Air Act (42 USC § 4701 et seq.), or in another permit issued by the Department of Environmental Quality or any other appropriate state agency under another permit program approved by the administrator. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under § 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the board may initiate proceedings under this chapter to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

3. Requirements applicable to cooling water intake structures at new facilities under § 316 (b) of the CWA, in accordance with 9VAC25-31-165.

C. Reopener clause. For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the board shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under § 405(d) of the CWA. The board may promptly modify or revoke and reissue any permit containing the reopener clause required by this subdivision if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

D. Water quality standards and state requirements. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under §§ 301, 304, 306, 307, 318 and 405 of the CWA necessary to:

1. Achieve water quality standards established under the law and § 303 of the CWA, including state narrative criteria for water quality.

a. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the board determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality standard, including Virginia narrative criteria for water quality.

b. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Virginia water quality standard, the board shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

c. When the board determines, using the procedures in subdivision 1 b of this subsection, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Virginia numeric criteria within a Virginia water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

d. Except as provided in this subdivision, when the board determines, using the procedures in subdivision 1 b of this subsection, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Virginia water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the board demonstrates in the fact sheet or statement of basis of the VPDES permit, using the procedures in subdivision 1 b of this subsection, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Virginia water quality standards.

e. Where Virginia has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable Virginia water quality standard, the board must establish effluent limits using one or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the board demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed Virginia criterion, or an explicit policy or regulation interpreting Virginia's narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents;

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under § 307(a) of the CWA, supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The fact sheet required by 9VAC25-31-280 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The permit contains a reopener clause allowing the board to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

f. When developing water quality-based effluent limits under this subdivision the board shall ensure that:

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR 130.7 ;

2. Attain or maintain a specified water quality through water quality related effluent limits established under the law and § 302 of the CWA;

3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under the law and § 401 of the CWA;

4. Conform to applicable water quality requirements under § 401(a)(2) of the CWA when the discharge affects a state other than Virginia;

5. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under the law or regulations in accordance with § 301(b)(1)(C) of the CWA;

6. Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under § 208(b) of the CWA;

7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M, for ocean discharges; or

8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 the CFR Part 125, Subpart D.

E. Technology-based controls for toxic pollutants. Limitations established under subsections A, B, or D of this section, to control pollutants meeting the criteria listed in subdivision 1 of this subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An explanation of the development of these limitations shall be included in the fact sheet.

1. Limitations must control all toxic pollutants which the board determines (based on information reported in a permit application or in a notification required by the permit or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee; or

2. The requirement that the limitations control the pollutants meeting the criteria of subdivision 1 of this subsection will be satisfied by:

a. Limitations on those pollutants; or

b. Limitations on other pollutants which, in the judgment of the board, will provide treatment of the pollutants under subdivision 1 of this subsection to the levels required by the law and 40 CFR Part 125, Subpart A.

F. A notification level which exceeds the notification level of 9VAC25-31-200 A 1 a, b, or c, upon a petition from the permittee or on the board's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

G. Twenty-four-hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under 9VAC25-31-190 L 7 b (3) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

H. Durations for permits, as set forth in 9VAC25-31-240.

I. Monitoring requirements. The following monitoring requirements:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

2. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 9VAC25-31-190 ~~and in~~, subdivisions 5 through 8 of this subsection, and Part XI (9VAC25-31-950 et seq.) of this chapter. Reporting shall be no less frequent than specified in the above regulation;

4. To assure compliance with permit limitations, requirements to monitor:

a. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

b. The volume of effluent discharged from each outfall;

c. Other measurements as appropriate including pollutants in internal waste streams; pollutants in intake water for net limitations; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; and pollutants in sewage sludge or other monitoring as specified in Part VI (9VAC25-31-420 et seq.) of this chapter; or as determined to be necessary on a case-by-case basis pursuant to the law and § 405(d)(4) of the CWA; and

d. According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the permit for pollutants with no approved methods;

5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less that once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in Part VI (9VAC25-31-420 et seq.) of this chapter (where applicable), but in no case less than once a year. All results shall be electronically reported in compliance with 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter;

6. Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;

7. Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in subdivision 6 of this subsection) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loading identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

b. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;

c. Such report and certification be signed in accordance with 9VAC25-31-110; and

d. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements; and

8. Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under 9VAC25-31-190 L 1, 4, 5, 6, and 7 at least annually.

J. Pretreatment program for POTWs. Requirements for POTWs to:

1. Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under § 307(b) of the CWA and Part VII (9VAC25-31-730 et seq.) of this chapter;

2. Submit a local program when required by and in accordance with Part VII of this chapter to assure compliance with pretreatment standards to the extent

applicable under § 307(b) of the CWA. The local program shall be incorporated into the permit as described in Part VII of this chapter. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of Part VII of this chapter;

3. Provide a written technical evaluation of the need to revise local limits under Part VII of this chapter following permit issuance or reissuance; and

4. For POTWs which are sludge-only facilities, a requirement to develop a pretreatment program under Part VII of this chapter when the board determines that a pretreatment program is necessary to assure compliance with Part VI of this chapter.

K. Best management practices to control or abate the discharge of pollutants when:

1. Authorized under § 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

2. Authorized under § 402(p) of the CWA for the control of storm water discharges;

3. Numeric effluent limitations are infeasible; or

4. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the law and the CWA.

L. Reissued permits.

1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under § 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of §§ 301(b)(1)(C) or 303(d) or (e) of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with § 303(d)(4) of the CWA.

2. Exceptions. A permit with respect to which subdivision 1 of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

b. (1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The board determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under § 402(a)(1)(B) of the CWA;

c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

d. The permittee has received a permit modification under the law and §§ 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the CWA; or

e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subdivision 2 b of this subsection shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the law or the CWA or for reasons otherwise unrelated to water quality.

3. In no event may a permit with respect to which subdivision 2 of this subsection applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a Virginia water quality standard applicable to such waters.

M. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the board may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The board's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

N. Any conditions imposed in grants made by the board to POTWs under §§ 201 and 204 of the CWA which are reasonably necessary for the achievement of effluent limitations under § 301 of the CWA and the law.

O. Requirements governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use regulated by Part VI of this chapter.

P. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

Q. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with 9VAC25-31-330.

9VAC25-31-400. Minor modifications of permits.

Upon the consent of the permittee, the board may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part IV of this chapter. Any permit modification not processed as a minor modification under this section must be made for cause and with draft permit and public notice. Minor modifications may only:

A. Correct typographical errors;

B. Require more frequent monitoring or reporting by the permittee;

C. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

D. Allow for a change in ownership or operational control of a facility where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the department;

E. 1. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge.

2. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; or

F. Incorporate conditions of an approved POTW pretreatment program (or a modification thereto that has been approved in accordance with the procedures in this chapter) as enforceable conditions of the POTW's permits.

G. Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of subdivision C 5 of 9VAC25-31-130.

H. Require electronic reporting requirements (to replace paper reporting requirements) including those specified in 40 CFR Part 3 and Part XI (9VAC25-31-950 et seq.) of this chapter.

9VAC25-31-410. Termination of permits.

A. The following are causes for terminating a permit during its term, or for denying a permit renewal application, after public notice and opportunity for a public hearing:

1. The permittee has violated any regulation or order of the board, any provision of the law, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which in the opinion of the board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;

2. Noncompliance by the permittee with any condition of the permit;

3. The permittee's failure to disclose fully all relevant material facts, or the permittee's misrepresentation of any relevant material facts in applying for a permit, or in any other report or document required under the law or this chapter;

4. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit; or

6. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit necessary to protect human health or the environment.

B. The board shall follow the applicable procedures in this chapter in terminating any VPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW or a PVOTW (but not by land application or disposal into a well), the board may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the board shall follow the applicable procedures for termination under 9VAC25-31-370 D. Expedited permit termination procedures are not

available to permittees that are subject to pending state or federal enforcement actions including citizen suits brought under state or federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law.

C. Permittees that wish to terminate their permit must submit a notice of termination (NOT) to the department. If requesting expedited permit termination procedures, a permittee must certify in the NOT that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. As of the start date in Table 1 of 9VAC25-31-1020, all NOTs submitted in compliance with this subsection shall be submitted electronically by the permittee to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, the permittee may be required to report electronically if specified by a particular permit.

9VAC25-31-840. Reporting requirements for POTWs and industrial users.

A. (Reserved.)

B. Reporting requirements for industrial users upon effective date of categorical pretreatment standard baseline report. Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under 9VAC25-31-780 A 4, whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the control authority a report which contains the information listed in subdivisions 1 through 7 of this subsection. At least 90 days prior to commencement of discharge, new sources and sources that become industrial users subsequent to the promulgation of an applicable categorical standard shall be required to submit to the control authority a report which contains the information listed in subdivisions 1 through 5 of this subsection. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources shall give estimates of the information requested in subdivisions 4 and 5 of this subsection.

1. Identifying information. The user shall submit the name and address of the facility including the name of the operator and owners.

2. Permits. The user shall submit a list of any environmental control permits held by or for the facility.

3. Description of operations. The user shall submit a brief description of the nature, average rate of production, and standard industrial classification of the operation or operations carried out by such industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

4. Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

a. Regulated process streams; and

b. Other streams as necessary to allow use of the combined wastestream formula of 9VAC25-31-780 E. (See subdivision 5 d of this subsection.)

The control authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

5. Measurement of pollutants.

a. The user shall identify the pretreatment standards applicable to each regulated process;

b. In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the standard or control authority) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the standard requires compliance with a Best Management Practice or pollution prevention alternative, the user shall submit documentation as required by the control authority or the applicable standards to determine compliance with the standard;

c. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this subsection;

d. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user shall measure the flows and concentrations necessary to allow use of the combined wastestream formula of 9VAC25-31-780 E in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 9VAC25-31-780 E, this adjusted limit along with supporting data shall be submitted to the control authority;

e. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. Where 40 CFR Part

136 does not contain sampling or analytical techniques for the pollutant in question, or where the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator;

f. The control authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures; and

g. The baseline report shall indicate the time, date and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW

6. Certification. A statement, reviewed by an authorized representative of the industrial user (as defined in subsection M of this section) and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) or additional pretreatment, or both, are required for the industrial user to meet the pretreatment standards and requirements.

7. Compliance schedule. If additional pretreatment or O and M, or both, will be required to meet the pretreatment standards, the shortest schedule by which the industrial user will provide such additional pretreatment or O and M, or both. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

a. Where the industrial user's categorical pretreatment standard has been modified by a removal allowance (9VAC25-31-790), the combined wastestream formula (9VAC25-31-780 E), or a fundamentally different factors variance (9VAC25-31-850), or any combination of them, at the time the user submits the report required by this subsection, the information required by subdivisions 6 and 7 of this subsection shall pertain to the modified limits.

b. If the categorical pretreatment standard is modified by a removal allowance (9VAC25-31-790), the combined wastestream formula (9VAC25-31-780 E), or a fundamentally different factors variance (9VAC25-31-850), or any combination of them, after the user submits the report required by this subsection, any necessary amendments to the information requested by subdivisions 6 and 7 of this subsection shall be submitted by the user to the control authority within 60 days after the modified limit is approved.

C. Compliance schedule for meeting categorical pretreatment standards. The following conditions shall apply to the schedule required by subdivision B 7 of this section:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.);

2. No increment referred to in subdivision 1 of this subsection shall exceed nine months; and

3. Not later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the control authority.

D. Report on compliance with categorical pretreatment standard deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in subdivisions B 4 through B 6 of this section. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 9VAC25-31-780 C, this report shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

E. Periodic reports on continued compliance.

1. Any industrial user subject to a categorical pretreatment standard, after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority or the director, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report

shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in subdivision B 4 of this section except that the control authority may require more detailed reporting of flows. In cases where the pretreatment standard requires compliance with a Best Management Practice (or pollution prevention alternative), the user shall submit documentation required by the control authority or the pretreatment standard necessary to determine the compliance status of the user. At the discretion of the control authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the control authority may agree to alter the months during which the above reports are to be submitted. For industrial users for which the department is the control authority, as of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance with this subsection shall be submitted electronically by the industrial user to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, the industrial users for which the department is the control authority may be required to report electronically if specified by a particular control mechanism.

2. The control authority may authorize the industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user. This authorization is subject to the following conditions:

a. The control authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.

b. The monitoring waiver is valid only for the duration of the effective period of the permit or other equivalent individual control mechanism, but in no case longer than five years. The user must submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism.

c. In making a demonstration that a pollutant is not present, the industrial user must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver must be signed in accordance with subsection L of this subsection, and include the certification statement in 9VAC25-31-780 A 2 b. Nondetectable sample results may only be used as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

d. Any grant of the monitoring waiver by the control authority must be included as a condition in the user's control mechanism. The reasons supporting the waiver and any information submitted by the user in its request for the waiver must be maintained by the control authority for three years after expiration of the waiver.

e. Upon approval of the monitoring waiver and revision of the user's control mechanism by the control authority, the industrial user must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the industrial user:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 CFR [specify applicable national pretreatment standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under 9VAC25-31-840 E 1."

f. In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the user's operations, the user must immediately: Comply with the monitoring requirements of subdivision 1 of this subsection or other more frequent monitoring requirements imposed by the control authority, and notify the control authority.

g. This provision does not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard.

3. The control authority may reduce the requirement in the subdivision 1 of this subsection to a requirement to report no less frequently than once a year, unless required more frequently in the pretreatment standard or by the approval authority, where the industrial user meets all of the following conditions:

a. The industrial user's total categorical wastewater flow does not exceed any of the following:

(1) 0.01% of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the industrial user discharges in batches;

(2) 0.01% of the design dry weather organic treatment capacity of the POTW; and

(3) 0.01% of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved local limits were developed by a POTW in accordance with 9VAC25-31-770 C and D.

b. The industrial user has not been in significant noncompliance, as defined in 9VAC25-31-800 F 2 g, for any time in the past two years;

c. The Industrial User does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period pursuant to subdivision G 3 of this section;

d. The industrial user must notify the control authority immediately of any changes at its facility causing it to no longer meet conditions of subdivision 3 a or b of this subsection. Upon notification, the industrial user must immediately begin complying with the minimum reporting in subdivision 1 of this subsection; and

e. The control authority must retain documentation to support the control authority's determination that a specific industrial user qualifies for reduced reporting requirements under subdivision 3 of this subsection for a period of three years after the expiration of the term of the control mechanism.

4. Where the control authority has imposed mass limitations on industrial users as provided for by 9VAC25-31-780 C, the report required by subdivision 1 of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

5. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 9VAC25-31-780 C, the report required by subdivision 1 of this subsection shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by subdivision 1 of this subsection shall include the user's actual average production rate for the reporting period.

F. Notice of potential problems, including slug loading. All categorical and noncategorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by 9VAC25-31-770 B, by the industrial user.

G. Monitoring and analysis to demonstrate continued compliance with pretreatment standards and requirements.

1. Except in the case of nonsignificant categorical users, the reports required in subsections B, D, E, and H of this section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the control authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification required under subdivision B 6 and subsection D of this section. In addition, where the POTW itself collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

2. If sampling performed by an industrial user indicates a violation, the user shall notify the control authority within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after becoming aware of the violation. Where the control authority has performed the sampling and analysis in lieu of the industrial user, the control authority must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis. Resampling is not required if:

a. The control authority performs sampling at the industrial user at a frequency of at least once per month; or

b. The control authority performs sampling at the user between the time when the initial sampling was conducted and the time when the user or the control authority receives the results of this sampling.

3. The reports required in subsection E of this section must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the control authority. Where time-proportional composite sampling or grab sampling is authorized by the control authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the industrial user file for that facility or facilities. Using protocols (including

appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the control authority, as appropriate.

4. For sampling required in support of baseline monitoring and 90-day compliance reports required in subsections B and D of this section, a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by subsections E and H of this section, the control authority shall require the number of grab samples necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

5. All analyses shall be performed in accordance with procedures contained in 40 CFR Part 136 and amendments thereto or with any other test procedures approved by EPA, and shall be reported to the control authority. Sampling shall be performed in accordance with EPA-approved techniques. Where 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or where EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by EPA.

6. If an industrial user subject to the reporting requirement in subsection E or H of this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the control authority, using the procedures prescribed in subdivision 5 of this subsection, the results of this monitoring shall be included in the report.

H. Reporting requirements for industrial users not subject to categorical pretreatment standards. The control authority must require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant noncategorical industrial users must submit to the control authority at least once every six months (on dates specified by the control authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the control authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the user must submit documentation required by the control authority to determine the compliance status of the user. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR Part 136 and amendments thereto. This sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user. For industrial users for which the department is the control authority, as of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance with this subsection shall be submitted electronically by the industrial user to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, the industrial users for which the department is the control authority may be required to report electronically if specified by a particular control mechanism.

I. Annual POTW reports. POTWs with approved pretreatment programs shall provide the department with a report that briefly describes the POTW's program activities, including activities of all participating agencies if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's pretreatment program, and at least annually thereafter, and shall include, at a minimum, the following:

1. An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements. The list must also identify industrial users subject to categorical pretreatment standards that are subject to reduced reporting requirements under subdivision E 3 of this section and identify which industrial users are nonsignificant categorical industrial users.;

2. A summary of the status of industrial user compliance over the reporting period;

3. A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period;

4. A summary of changes to the POTW's pretreatment program that have not been previously reported to the department; ~~and~~

5. Any other relevant information requested by the director~~.~~;

6. Any additional applicable required data in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030; and

7. As of the start date in Table 1 of 9VAC25-31-1020, all annual reports submitted in compliance with this subsection shall be submitted electronically by the POTW pretreatment program to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, the department may also require POTW pretreatment programs to electronically submit annual reports under this section if specified by a particular permit.

J. Notification of changed discharge. All industrial users shall promptly notify the control authority (and the POTW if the POTW is not the control authority) in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under the Code of Virginia and this section.

K. Compliance schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program required by 9VAC25-31-800:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);

2. No increment referred to in subdivision 1 of this subsection shall exceed nine months; and

3. Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the department including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the department.

L. Signatory requirements for industrial user reports. The reports required by subsections B, D, and E of this section shall include the certification statement as set forth in 9VAC25-31-780 A 2 b, and shall be signed as follows:

1. By a responsible corporate officer, if the industrial user submitting the reports required by subsections B, D and E of this section is a corporation. For the purpose of this subdivision, 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 initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

2. By a general partner or proprietor if the industrial user submitting the reports required by subsections B, D and E of this section is a partnership or sole proprietorship, respectively.

3. By a duly authorized representative of the individual designated in subdivision 1 or 2 of this subsection if:

a. The authorization is made in writing by the individual described in subdivision 1 or 2 of this subsection;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

c. The written authorization is submitted to the control authority.

4. If an authorization under subdivision 3 of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subdivision 3 of this subsection must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

M. Signatory requirements for POTW reports. Reports submitted to the department by the POTW in accordance with subsection I of this section must be signed by a principal

executive officer, ranking elected official or other duly authorized employee. The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or the pretreatment program. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the approval authority prior to or together with the report being submitted.

N. Provision governing fraud and false statements. The reports and other documents required to be submitted or maintained under this section shall be subject to:

1. The provisions of 18 USC § 1001 relating to fraud and false statements;

2. The provisions of the law or § 309(c)(4) of the CWA, as amended, governing false statements, representation or certification; and

3. The provisions of § 309(c)(6) of the CWA regarding responsible corporate officers.

O. Recordkeeping requirements.

1. Any industrial user and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section including documentation associated with Best Management Practices. Such records shall include for all samples:

a. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

b. The dates analyses were performed;

c. Who performed the analyses;

d. The analytical techniques/methods used; and

e. The results of such analyses.

2. Any industrial user or POTW subject to the reporting requirements established in this section (including documentation associated with Best Management Practices) shall be required to retain for a minimum of three years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the director and the regional administrator (and POTW in the case of an industrial user). This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the director or the regional administrator.

3. Any POTW to which reports are submitted by an industrial user pursuant to subsections B, D, E, and H of this section shall retain such reports for a minimum of three years and shall make such reports available for inspection and copying by the director and the regional administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the director or the regional administrator.

P. 1. The industrial user shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under the Code of Virginia and 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in the Code of Virginia and 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under subsection J of this section. The notification requirement in this section does not apply to pollutants already reported under self-monitoring requirements of subsections B, D, and E of this section.

2. Dischargers are exempt from the requirements of subdivision 1 of this subsection during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

3. In the case of any new regulations under § 3001 of RCRA (42 USC § 6901 et seq.) identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

4. In the case of any notification made under this subsection, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

Q. Annual certification by nonsignificant categorical industrial users. A facility determined to be a nonsignificant categorical industrial user pursuant to 9VAC25-31-10 must annually submit the following certification statement, signed in accordance with the signatory requirements in subsection L of this section. This certification must accompany an alternative report required by the control authority:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR ____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year]:

1. The facility described as _____ [facility name] met the definition of a nonsignificant categorical industrial user as described in 9VAC25-31-10;

2. The facility complied with all applicable pretreatment standards and requirements during this reporting period; and

3. The facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information.

_____"

R. The control authority that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 (Electronic reporting).

Part XI

VPDES Electronic Reporting Requirements

9VAC25-31-950. Purpose and scope.

A. This part, in conjunction with the reporting requirements specified in this chapter and 9VAC25-870, specifies the requirements for:

1. Electronic reporting of information by VPDES permittees;

2. Facilities or entities seeking coverage under VPDES general permits;

3. Facilities or entities submitting stormwater certifications or waivers from VPDES permit requirements;

4. Industrial users located in municipalities without approved local pretreatment programs; and

5. Approved pretreatment programs.

B. Proper collection, management, and sharing of the data and information listed in Appendix A of 40 CFR Part 127, as adopted by reference in 9VAC25-31-1030, ensures that there is timely, complete, accurate, and nationally consistent set of data about the NPDES program.

9VAC25-31-960. Definitions.

In addition to the definitions given in Part I (9VAC25-31-10 et seq.) of this chapter, the following definitions apply to this part.

"NPDES data group" means the group of related data elements identified in Table 1 in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030. These NPDES data groups have similar regulatory reporting requirements and have similar data sources.

"Minimum set of NPDES data" means the data and information listed in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.

"Program reports" means the information reported by VPDES-regulated entities and listed in Table 1 of Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, except NPDES Data Groups 1, 2, and 3.

"VPDES-regulated entity" means any entity regulated by the VPDES Program in accordance with this chapter or 9VAC25-870.

9VAC25-31-970. Types of data to be reported electronically by VPDES permittees, facilities, and entities subject to this part.

A. VPDES-regulated entities must electronically submit the minimum set of NPDES data for these reports if such reporting requirements are applicable. The following reports are the source of the minimum set of data from regulated entities:

1. Discharge Monitoring Report (9VAC25-31-190 and 9VAC25-870-430);

2. Concentrated Animal Feeding Operation (CAFO) Annual Program Report (9VAC25-31-200);

3. Pretreatment Program Annual Report (9VAC25-31-840);

4. Sewer Overflow and Bypass Incident Event Report (9VAC25-31-190 and 9VAC25-870-430);

5. CWA § 316(b) Annual Reports (9VAC25-31-165); and

6. Municipal Separate Storm Sewer System (MS4) Program Reports (9VAC25-870-400 and 9VAC25-870-440).

B. Facilities or entities seeking coverage under or termination from general permits and facilities or entities submitting stormwater certifications or waivers from VPDES permit requirements must electronically submit the minimum set of NPDES data for the following notices, certifications, and waivers if such reporting requirements are applicable:

1. Notice of intent (NOI) to discharge by facilities seeking coverage under a general VPDES permit rather than an individual VPDES permit, as described in 9VAC25-31-170 B 2 and 9VAC25-870-410;

2. Notice of termination (NOT), as described in 9VAC25-31-410 and 9VAC25-870-650;

3. No exposure certification (NOE), as described in 9VAC25-31-120 E 1 c; and

4. Certification in support of waiver for stormwater discharge associated with small construction activity, as described in 9VAC25-870-10.

C. Industrial users located in municipalities without approved local pretreatment programs must electronically submit the minimum set of NPDES data for the following self-monitoring reports if such reporting requirements are applicable:

1. Periodic reports on continued compliance, as described in 9VAC25-31-840 E; and

2. Reporting requirements for industrial users not subject to categorical pretreatment standards, as described in 9VAC25-31-840 H.

D. The minimum set of NPDES data for VPDES-regulated facilities is identified in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.

9VAC25-31-980. Signature and certification standards for electronic reporting.

The signatory and certification requirements identified in 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110 or 9VAC25-870-370 as appropriate, and 9VAC25-31-840 L shall also apply to electronic submissions of information by VPDES permittees, facilities, and entities subject to this part.

9VAC25-31-990. Requirements regarding quality assurance and quality control.

A. Responsibility for the quality of the information provided electronically in compliance with this part by the VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A) rests with the owners and operators of those facilities or entities. VPDES permittees, facilities, and entities subject to this part must use quality assurance and quality control procedures to ensure the quality of the information submitted in compliance with this part.

B. VPDES permittees, facilities, and entities subject to this part must electronically submit their VPDES information in compliance with the data quality requirements specified in 9VAC25-31-1000. VPDES permittees, facilities, and entities subject to this part must electronically submit their information unless a waiver is granted in compliance with this part (see 9VAC25-31-1010).

9VAC25-31-1000. Requirements regarding timeliness, accuracy, completeness, and national consistency.

VPDES permittees, facilities, and entities subject to this part must comply with all requirements in this part and electronically submit the minimum set of NPDES data in the following nationally consistent manner:

1. Electronic submissions of the minimum set of NPDES data to the department must be timely.

a. Measurement data including information from discharge monitoring reports, self-monitoring data from industrial users located outside of approved local pretreatment programs, and similar self-monitoring data. The electronic submission of these data is due when that monitoring information is required to be reported in compliance with statutes, regulations, the VPDES permit, another control mechanism, or an enforcement order.

b. Program report data. The electronic submission of this data is due when that program report data is required to be reported in compliance with statutes, regulations, the VPDES permit, another control mechanism, or an enforcement order.

2. Electronic submissions of the minimum set of NPDES data must be identical to the actual measurements taken by the owner, operator, or their duly authorized representative.

3. Electronic submission of the minimum set of NPDES data must include all required data (see Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030) and these electronic submissions must be sent to the data system of the department.

4. Electronic submissions of the minimum set of NPDES data must be compliant with EPA data standards as set forth in this part and in a form, including measurement units, fully compatible with EPA's national NPDES data system.

9VAC25-31-1010. Waivers from electronic reporting.

A. VPDES permittees, facilities, and entities subject to this part must electronically submit the minimum set of NPDES data in compliance with this part, 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110 or 9VAC25-870-370 as appropriate, and 9VAC25-31-840 L unless a waiver is granted in compliance with this section.

B. Temporary waivers from electronic reporting may be granted by the department for programs for which the department has received authorization to implement the NPDES program, in compliance with this section, to VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A).

1. Each temporary waiver must not extend beyond five years. However, VPDES-regulated entities may reapply for a temporary waiver. It is the duty of the owner, operator, or duly authorized representative of the VPDES permittee, facility, and entity subject to this part to reapply for a new temporary waiver. The department cannot grant a temporary waiver to a VPDES-regulated entity without first receiving a temporary waiver request from the VPDES-regulated entity.

2. To apply for a temporary waiver, the owner, operator, or duly authorized representative of the VPDES permittee,

facility, and entity subject to this part must submit the following information to their authorized VPDES program:

(a) Facility name;

(b) VPDES permit number (if applicable);

(c) Facility address;

(d) Name, address, and contact information for the owner, operator, or duly authorized facility representative;

(e) Brief written statement regarding the basis for claiming such a temporary waiver; and

(f) Any other information required by the department.

3. The department will determine whether to grant a temporary waiver. The department shall provide notice to the owner, operator, or duly authorized facility representative submitting a temporary waiver request in compliance with the requirements of subsection E of this section.

4. VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A) that have received a temporary waiver must continue to provide the minimum set of NPDES data (as well as other required information in compliance with statutes, regulations, the VPDES permit, another control mechanism, or an enforcement order) in hard-copy format to the department. The department shall electronically transfer these data to EPA in accordance with 40 CFR Part 127 Subpart C.

5. An approved temporary waiver is not transferrable.

C. Permanent waivers from electronic reporting may be granted by the department for programs for which the department has received authorization to implement the NPDES program, in compliance with this section, to VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A).

1. Permanent waivers are only available to facilities and entities owned or operated by members of religious communities that choose not to use certain modern technologies (e.g., computers, electricity). The department cannot grant a permanent waiver to a VPDES-regulated entity without first receiving a permanent waiver request from the VPDES-regulated entity.

2. To apply for a permanent waiver, the owner, operator, or duly authorized representative of the VPDES permittee, facility, and entity subject to this part must submit the information listed in subdivision B 2 of this section to the department.

3. An approved permanent waiver is not transferrable.

4. VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A) that have received a permanent waiver shall continue to provide the minimum set of NPDES data (as well as other required information in compliance with statutes, regulations, the VPDES permit, another control mechanism, or an enforcement order) in hard-copy format to the department. The department shall electronically transfer these data to EPA in accordance with 40 CFR Part 127 Subpart C.

D. Episodic waivers from electronic reporting may be granted by the department for programs for which the department has received authorization to implement the NPDES program, in compliance with this section, to VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A). The following conditions apply to episodic waivers.

1. No waiver request from the VPDES permittee, facility, or entity is required to obtain an episodic waiver from electronic reporting.

2. Episodic waivers are not transferrable.

3. Episodic waivers cannot last more than 60 days.

4. The department will decide if the episodic waiver provision allows facilities and entities to delay their electronic submissions or to send hard-copy (paper) submissions. Episodic waivers are only available to facilities and entities in the following circumstances:

a. Large scale emergencies involving catastrophic circumstances beyond the control of the facilities, such as forces of nature (e.g., hurricanes, floods, fires, earthquakes) or other national disasters. The department will make the determination if an episodic waiver is warranted in this case and must receive the hard-copy (paper) submissions.

b. Prolonged electronic reporting system outages (i.e., outages longer than 96 hours). The department, will make the determination if an episodic waiver is warranted in this case and must receive the hard-copy (paper) submissions.

E. Responsibilities regarding review of waiver requests from VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A).

1. Under this section, a VPDES permittee, facility, or entity subject to this part (see 9VAC25-31-950 A) may seek a waiver from electronic reporting. The department shall review the temporary or permanent waiver requests that it receives and either approve or reject these requests within 120 days.

2. The department shall provide the permittee, facility, or entity with notice of the approval or rejection of their temporary or permanent waiver request from electronic reporting.

3. The department shall electronically transfer to EPA the minimum set of NPDES data as specified in Appendix A of 40 CFR Part 127, as adopted by reference in 9VAC25-31-1030, that they receive from permittees, facilities, or entities with a waiver from electronic reporting in accordance with 40 CFR 127.23.

4. Under subsection D of this section, episodic waivers from electronic reporting may be granted by the department to VPDES permittees, facilities, and entities. The department granting an episodic waiver must provide notice, individually or through means of mass communication, regarding when such an episodic waiver is available, the facilities and entities that may use the episodic waiver, the likely duration of the episodic waiver, and any other directions regarding how facilities and entities should provide the minimum set of NPDES data, as well as other required information in compliance with statutes, regulations, the VPDES permit, another control mechanism, or an enforcement order, to the department. No waiver request from the VPDES permittee, facility, or entity is required to obtain an episodic waiver from electronic reporting. The department granting the episodic waiver will determine whether to allow facilities and entities to delay their electronic submissions for a short time (i.e., no more than 40 days) or to send hard-copy (paper) submissions.

9VAC25-31-1020. Implementation of electronic reporting requirements for VPDES permittees, facilities, and entities subject to this part.

A. VPDES permittees, facilities, and entities subject to this part, with the exception of those covered by waivers under 9VAC25-31-1010, must electronically submit the following VPDES information (reports, notices, waivers, and certifications) after the start dates listed in Table 1 of this subsection. This part is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of this part, the permittee may be required to report electronically if specified by a particular permit or if required to do so by state law.

Table 1—Start Dates for Electronic Submissions of VPDES Information

VPDES information	Start dates for electronic submissions
General Permit Reports	
Notices of Intent to discharge (NOIs) (9VAC25-31-170 B 2 and 9VAC25-870-410)	Start date will be provided in a schedule approved by the department.
Notices of Termination (NOTs) (9VAC25-31-410 and 9VAC25-870-650)	Start date will be provided in a schedule approved by the department.
No Exposure Certifications (NOEs) (9VAC25-31-120 E 1 c)	Start date will be provided in a schedule approved by the department.
Certifications in support of waiver for stormwater discharge associated with small construction activity (9VAC25-870-10)	Start date will be provided in a schedule approved by the department.
Discharge Monitoring Reports (9VAC25-31-190 L 4 and 9VAC25-870-430 L 4, as applicable)	
Individual VPDES Permit - Major Facility (9VAC25-31)	January 26, 2018
Individual VPDES Permit - Minor Facility (9VAC25-31)	January 26, 2018
Watershed General VPDES Permit - Nutrient Discharges (9VAC25-820)	March 26, 2018
General VPDES Permit - Industrial Stormwater Discharges (9VAC25-151)	July 26, 2018
All Other General VPDES Permits	Start dates will be provided in a schedule approved by the department.
Concentrated Animal Feeding Operation (CAFO) Annual Program Reports (9VAC25-31-200 E 4)	Start date will be provided in a schedule approved by the department.
Municipal Separate Storm Sewer System (MS4) Program Reports (9VAC25-870-400 D 7 c and 9VAC25-870-440)	Start date will be provided in a schedule approved by the department.
POTW Pretreatment Program Annual Reports (9VAC25-31-840 I)	Start date will be provided in a schedule approved by the department.

Significant Industrial User Compliance Reports in Municipalities Without Approved Pretreatment Programs (9VAC25-31-840 E and H)	Start date will be provided in a schedule approved by the department.
Sewer Overflow or Bypass Event Reports (9VAC25-31-190 L and M and 9VAC25-870-430 L and M)	Start date will be provided in a schedule approved by the department.
CWA 316(b) Annual Reports (9VAC25-31-165 B 6 b)	Start date will be provided in a schedule approved by the department.

B. VPDES permittees, facilities, and entities subject to this part shall electronically submit the information listed in Table 1 of this section in compliance with this part and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110 or 9VAC25-870-370 as appropriate, and 9VAC25-31-840 L.

C. The department shall be the initial recipient as defined in 40 CFR 127.2(b) and as identified by EPA in 81 FR 62395 (September 9, 2016). VPDES permittees, facilities, and entities subject to this part shall electronically submit the information listed in Table 1 in this section to the department.

D. VPDES permittees, facilities, and entities subject to this part that have received a waiver from electronic reporting shall continue to provide the minimum set of NPDES data (as well as other required information in compliance with statutes, regulations, the VPDES permit, another control mechanism, or an enforcement order) to the department in accordance with 9VAC25-31-1010.

9VAC25-31-1030. Adoption by reference of Appendix A to 40 CFR Part 127—Minimum Set of NPDES Data.

A. Except as otherwise provided, the regulations of the U.S. Environmental Protection Agency set forth in Appendix A to 40 CFR Part 127 are hereby incorporated as part of this chapter and 9VAC25-870.

B. In all locations in this chapter and 9VAC25-870 where Appendix A to 40 CFR Part 127 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. The department shall be the initial recipient as defined in 40 CFR 127.2(b) and as identified by EPA in 81 FR 62395 (September 9, 2016). The department will be the initial recipient for all NPDES data groups except for the sewage sludge/biosolids annual program reports (40 CFR Part 503) as Virginia is not authorized for the federal biosolids NPDES program.

2. NPDES-regulated entity shall be the same as VPDES-regulated entity.

3. The authorized NPDES program shall be the department for those NPDES program components for which EPA has granted the state authorization.

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 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.

"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:

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.

"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. As of the start date in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the waiver shall be submitted electronically by the owner or operator to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

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

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

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

"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 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.

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

Except as noted, when a regulation of the United States set forth in the Code of Federal Regulations is referenced and incorporated ~~herein~~ in this chapter, that regulation shall be as it exists and has been published in the ~~July 1, 2012~~ July 1, 2016, update.

9VAC25-870-370. Signatories to state permit applications and reports.

A. All state permit applications shall be signed as follows:

1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for state permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

3. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

B. All reports required by state permits, and other information requested by the board shall be signed by a person described in subsection A of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in subsection A of this section;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

3. The written authorization is submitted to the department.

C. If an authorization under subsection B of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection B of this section must be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

D. Any person signing a document under subsection A or B of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. Electronic reporting. If documents described in subsection A or B of this section are submitted electronically by or on behalf of a VPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section and shall ensure that all of the relevant requirements of Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D) are met for that submission.

9VAC25-870-400. Small municipal separate storm sewer systems.

A. Objectives of the stormwater regulations for small MS4s.

1. Subsections A through G of this section are written in a "readable regulation" format that includes both rule requirements and guidance. The recommended guidance is distinguished from the regulatory requirements by putting the guidance in a separate subdivision headed by the word "Note."

2. Under the statutory mandate in § 402(p)(6) of the Clean Water Act, the purpose of this portion of the stormwater program is to designate additional sources that need to be regulated to protect water quality and to establish a comprehensive stormwater program to regulate these sources.

3. Stormwater runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways including by changing natural hydrologic patterns and by elevating pollutant concentrations and loadings. Stormwater runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

4. The board strongly encourages partnerships and the watershed approach as the management framework for efficiently, effectively, and consistently protecting and restoring aquatic ecosystems and protecting public health.

B. As an operator of a small MS4, am I regulated under the state's stormwater program?

1. Unless you qualify for a waiver under subdivision 3 of this subsection, you are regulated if you operate a small MS4, including but not limited to systems operated by federal, state, tribal, and local governments, including the Virginia Department of Transportation; and

a. Your small MS4 is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or

b. You are designated by the board, including where the designation is pursuant to subdivisions C 3 a and b of this section or is based upon a petition under 9VAC25-870-380 D.

2. You may be the subject of a petition to the board to require a state permit for your discharge of stormwater. If the board determines that you need a state permit, you are required to comply with subsections C through E of this section.

3. The board may waive the requirements otherwise applicable to you if you meet the criteria of subdivision 4 or 5 of this subsection. If you receive a waiver under this section, you may subsequently be required to seek coverage under a state permit in accordance with subdivision C 1 of this section if circumstances change. (See also subdivision E 2 of this section).

4. The board may waive state permit coverage if your MS4 serves a population of less than 1,000 within the urbanized area and you meet the following criteria:

a. Your system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the board; and

b. If you discharge any pollutants that have been identified as a cause of impairment of any water body to which you discharge, stormwater controls are not needed based on wasteload allocations that are part of an approved "total maximum daily load" (TMDL) that addresses the pollutants of concern.

5. The board may waive state permit coverage if your MS4 serves a population under 10,000 and you meet the following criteria:

a. The board has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4;

b. For all such waters, the board has determined that stormwater controls are not needed based on wasteload allocations that are part of an approved TMDL that addresses the pollutants of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;

c. For the purpose of subdivision 5 of this subsection, the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from your MS4; and

d. The board has determined that future discharges from your MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

C. If I am an operator of a regulated small MS4, how do I apply for a state permit and when do I have to apply?

1. If you operate a regulated small MS4 under subsection B of this section, you must seek coverage under a state permit issued by the board.

2. You must seek authorization to discharge under a general or individual state permit, as follows:

a. If the board has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you must submit a registration statement that includes the information on your best management practices and measurable goals required by subdivision D 4 of this section. You may file your own registration statement, or you and other municipalities or governmental entities may jointly submit a registration statement. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, you must submit a registration statement that describes which minimum measures you will implement and identify the entities that will implement the other minimum measures within the area

served by your MS4. The general permit will explain any other steps necessary to obtain permit authorization.

b. (1) If you are seeking authorization to discharge under an individual state permit and wish to implement a program under subsection D of this section, you must submit an application to the board that includes the information required under 9VAC25-870-360 F and subdivision D 4 of this section, an estimate of square mileage served by your small MS4, and any additional information that the board requests. A storm sewer map that satisfies the requirement of subdivision D 2 c (1) of this section will satisfy the map requirement in 9VAC25-870-360 F 7.

(2) If you are seeking authorization to discharge under an individual state permit and wish to implement a program that is different from the program under subsection D of this section, you will need to comply with the state permit application requirements of 9VAC25-870-380 C. You must submit both parts of the application requirements in 9VAC25-870-380 C 1 and 2 by March 10, 2003. You do not need to submit the information required by 9VAC25-870-380 C 1 b and C 2 regarding your legal authority, unless you intend for the state permit writer to take such information into account when developing your other state permit conditions.

(3) If allowed by the board, you and another regulated entity may jointly apply under either subdivision 2 b (1) or (2) of this subsection to be state co-permittees under an individual state permit.

c. If your small MS4 is in the same urbanized area as a medium or large MS4 with a state permit and that other MS4 is willing to have you participate in its stormwater program, you and the other MS4 may jointly seek a modification of the other MS4 state permit to include you as a limited state co-permittee. As a limited state co-permittee, you will be responsible for compliance with the state permit's conditions applicable to your jurisdiction. If you choose this option you will need to comply with the state permit application requirements of 9VAC25-870-380, rather than the requirements of subsection D of this section. You do not need to comply with the specific application requirements of 9VAC25-870-380 C 1 c and d and 9VAC25-870-380 C 2 c (discharge characterization). You may satisfy the requirements in 9VAC25-870-380 C 1 e and 2 d (identification of a management program) by referring to the other MS4's stormwater management program.

d. NOTE: In referencing an MS4's stormwater management program, you should briefly describe how the existing plan will address discharges from your small MS4 or would need to be supplemented in order to adequately address your discharges. You should also explain your role in coordinating stormwater pollutant control activities in your MS4 and detail the resources available to you to accomplish the plan.

3. If you operate a regulated small MS4:

a. Designated under subdivision B 1 a of this section, you must apply for coverage under a state permit or apply for a modification of an existing state permit under subdivision 2 c of this subsection within 180 days of notice, unless the board grants a later date.

b. Designated under subdivision B 1 b of this section, you must apply for coverage under a state permit or apply for a modification of an existing state permit under subdivision 2 c of this subsection within 180 days of notice, unless the board grants a later date.

D. As an operator of a regulated small MS4, what will my MS4 state permit require?

1. Your MS4 state permit will require at a minimum that you develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, the Virginia Stormwater Management Act, and the State Water Control Law. Your stormwater management program must include the minimum control measures described in subdivision 2 of this subsection unless you apply for a state permit under 9VAC25-870-380 C. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the stormwater management program required pursuant to this section and the provisions of the state permit required pursuant to subsection C of this section constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. The board will specify a time period of up to five years from the date of state permit issuance for you to develop and implement your program.

2. Minimum control measures.

a. Public education and outreach on stormwater impacts.

(1) You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff.

(2) NOTE: You may use stormwater educational materials provided by the state, your tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program should inform

individuals and households about the steps they can take to reduce stormwater pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. The board recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. The board recommends that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include: distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school-age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. In addition, the board recommends that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. You are encouraged to tailor your outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

b. Public involvement/participation.

(1) You must, at a minimum, comply with state, tribal, and local public notice requirements when implementing a public involvement/participation program.

(2) The board recommends that the public be included in developing, implementing, and reviewing your stormwater management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local stormwater management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)

c. Illicit discharge detection and elimination.

(1) You must develop, implement and enforce a program to detect and eliminate illicit discharges (as defined in 9VAC25-870-10) into your small MS4.

(2) You must:

(a) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all surface waters that receive discharges from those outfalls;

(b) To the extent allowable under state, tribal or local law, effectively prohibit, through ordinance or other regulatory mechanism, nonstormwater discharges into your storm sewer system and implement appropriate enforcement procedures and actions;

(c) Develop and implement a plan to detect and address nonstormwater discharges, including illegal dumping, to your system; and

(d) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(3) You need to address the following categories of nonstormwater discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)), uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water. (Discharges or flows from fire-fighting activities are excluded from the effective prohibition against nonstormwater and need only be addressed where they are identified as significant sources of pollutants to surface waters.)

(4) NOTE: The board recommends that the plan to detect and address illicit discharges include the following four components: (i) procedures for locating priority areas likely to have illicit discharges, (ii) procedures for tracing the source of an illicit discharge, (iii) procedures for removing the source of the discharge, and (iv) procedures for program evaluation and assessment. The board recommends visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling; a program to promote, publicize, and facilitate public reporting of illicit connections or discharges; and distribution of outreach materials.

d. Construction site stormwater runoff control.

(1) You must develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre, or

equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Reduction of stormwater discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the board waives requirements for stormwater discharges associated with small construction activity in accordance with the definition in 9VAC25-870-10, you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

(2) Your program must include the development and implementation of, at a minimum:

(a) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state, tribal, or local law;

(b) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(c) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(d) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(e) Procedures for receipt and consideration of information submitted by the public; and

(f) Procedures for site inspection and enforcement of control measures.

(3) NOTE: Examples of sanctions to ensure compliance include nonmonetary penalties, fines, bonding requirements and/or state permit denials for noncompliance. The board recommends that procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with VESCP requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. You are encouraged to provide appropriate educational and training measures for construction site operators. You may wish to require a stormwater pollution prevention plan for construction sites within your jurisdiction that discharge into your system. (See 9VAC25-870-460 L and subdivision E 2 of this section.) The board may recognize that another government entity may be responsible for implementing one or more of the minimum measures on your behalf.

e. Post-construction stormwater management in new development and redevelopment.

(1) You must develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

(2) You must:

(a) Develop and implement strategies that include a combination of structural and/or nonstructural best management practices (BMPs) appropriate for your community;

(b) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state, tribal or local law; and

(c) Ensure adequate long-term operation and maintenance of BMPs.

(3) NOTE: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. The board recommends that the BMPs chosen be appropriate for the local community, minimize water quality impacts, and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, the board encourages you to participate in locally based watershed planning efforts that attempt to involve a diverse group of stakeholders, including interested citizens. When developing a program that is consistent with this measure's intent, the board recommends that you adopt a planning process that identifies the municipality's program goals (e.g., minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (e.g., adopt a combination of structural and/or nonstructural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing your program, you should consider assessing existing ordinances, policies, programs and studies that address stormwater runoff quality. In addition to assessing these existing documents and programs, you should provide opportunities to the public to participate in the development of the program. Nonstructural BMPs are preventative actions that involve management and source controls such as: (i) policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space

(including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; (ii) policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; (iii) education programs for developers and the public about project designs that minimize water quality impacts; and (iv) measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. The board recommends that you ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Stormwater technologies are constantly being improved, and the board recommends that your requirements be responsive to these changes, developments or improvements in control technologies.

f. Pollution prevention/good housekeeping for municipal operations.

(1) You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, state, tribe, or other organizations, your program must include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.

(2) NOTE: The board recommends that, at a minimum, you consider the following in developing your program: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and nonstructural stormwater controls to reduce floatables and other pollutants discharged from your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by you, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all stormwater management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

3. If an existing VSMP requires you to implement one or more of the minimum control measures of subdivision 2 of this subsection, the board may include conditions in your state permit that direct you to follow that VSMP's requirements rather than the requirements of subdivision 2 of this subsection. A VSMP is a local, state or tribal municipal stormwater management program that imposes, at a minimum, the relevant requirements of subdivision 2 of this subsection.

4. a. In your state permit application (either a registration statement for coverage under a general permit or an individual permit application), you must identify and submit to the board the following information:

(1) The best management practices (BMPs) that you or another entity will implement for each of the stormwater minimum control measures provided in subdivision 2 of this subsection;

(2) The measurable goals for each of the BMPs including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action; and

(3) The person or persons responsible for implementing or coordinating your stormwater management program.

b. If you obtain coverage under a general permit, you are not required to meet any measurable goals identified in your registration statement in order to demonstrate compliance with the minimum control measures in subdivisions 2 c through f of this subsection unless, prior to submitting your registration statement, EPA or the board has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, you still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.

c. NOTE: Either EPA or the board will provide a menu of BMPs. You may choose BMPs from the menu or select others that satisfy the minimum control measures.

5. a. You must comply with any more stringent effluent limitations in your state permit, including state permit requirements that modify or are in addition to the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The

board may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

b. NOTE: The board strongly recommends that until the evaluation of the stormwater program in subsection G of this section, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.

6. You must comply with other applicable state permit requirements, standards and conditions established in the individual or general permit developed consistent with the provisions of 9VAC25-31-190 through 9VAC25-31-250, as appropriate.

7. Evaluation and assessment.

a. You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals. The board may determine monitoring requirements for you in accordance with monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.

b. You must keep records required by the state permit for at least three years. You must submit your records to the department only when specifically asked to do so. You must make your records, including a description of your stormwater management program, available to the public at reasonable times during regular business hours (see 9VAC25-870-340 for confidentiality provision). You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.

c. Unless you are relying on another entity to satisfy your state permit obligations under subdivision E 1 of this section, you must submit annual reports to the department for your first state permit term. For subsequent state permit terms, you must submit reports in years two and four unless the department requires more frequent reports. As of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance with this subsection shall be submitted electronically by the owner, operator, or the duly authorized representative of the small MS4 to the department in compliance with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit. Your report must include:

(1) The status of compliance with state permit conditions, an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control measures;

(2) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(3) A summary of the stormwater activities you plan to undertake during the next reporting cycle;

(4) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

(5) Notice that you are relying on another governmental entity to satisfy some of your state permit obligations (if applicable).

E. As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

1. You may rely on another entity to satisfy your state permit obligations to implement a minimum control measure if:

a. The other entity, in fact, implements the control measure;

b. The particular control measure, or component thereof, is at least as stringent as the corresponding state permit requirement; and

c. The other entity agrees to implement the control measure on your behalf. In the reports you must submit under subdivision D 7 c of this section, you must also specify that you rely on another entity to satisfy some of your state permit obligations. If you are relying on another governmental entity regulated under the state permit program to satisfy all of your state permit obligations, including your obligation to file periodic reports required by subdivision D 7 c of this section, you must note that fact in your registration statement, but you are not required to file the periodic reports. You remain responsible for compliance with your state permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, the board encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your state permit.

2. In some cases, the board may recognize, either in your individual permit or in a general permit, that another governmental entity is responsible under a state permit for implementing one or more of the minimum control measures for your small MS4. Where the board does so, you are not required to include such minimum control measure(s) in your stormwater management program. Your

state permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

F. As an operator of a regulated small MS4, what happens if I don't comply with the application or state permit requirements in subsections C through E of this section?

State permits are enforceable under the Clean Water Act and the Virginia Stormwater Management Act. Violators may be subject to the enforcement actions and penalties described in Clean Water Act §§ 309(b), (c), and (g) and 505 or under §§ 62.1-44.15:39 through 62.1-44.15:48 of the Code of Virginia. Compliance with a state permit issued pursuant to § 402 of the Clean Water Act is deemed compliance, for purposes of §§ 309 and 505, with §§ 301, 302, 306, 307, and 403, except any standard imposed under § 307 for toxic pollutants injurious to human health. If you are covered as a state co-permittee under an individual permit or under a general permit by means of a joint registration statement, you remain subject to the enforcement actions and penalties for the failure to comply with the terms of the state permit in your jurisdiction except as set forth in subdivision E 2 of this section.

G. Will the small MS4 stormwater program regulations at subsections B through F of this section change in the future?

EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES MS4 stormwater program. The board will reevaluate the regulations based on data from the EPA NPDES MS4 stormwater program, from research on receiving water impacts from stormwater, and the effectiveness of best management practices (BMPs), as well as other relevant information sources.

9VAC25-870-410. General permits.

A. The board may issue a general permit in accordance with the following:

1. The general permit shall be written to cover one or more categories or subcategories of discharges, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:

a. Designated planning areas under §§ 208 and 303 of CWA;

b. Sewer districts or sewer authorities;

c. City, county, or state political boundaries;

d. State highway systems;

e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;

f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

g. Any other appropriate division or combination of boundaries.

2. The general permit may be written to regulate one or more categories within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are stormwater point sources.

3. Where sources within a specific category of dischargers are subject to water quality-based limits imposed pursuant to 9VAC25-870-460, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers covered by the permit.

5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this chapter.

2. Authorization to discharge.

a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers seeking coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A discharger who fails to submit a notice of intent in accordance with the terms of the state permit is not authorized to discharge, under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of this subsection, contains a provision that a notice of intent is not required or the board notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this chapter. <u>As of the start date in Table 1 of 9VAC25-31-1020, all notices of intent submitted in compliance with this subdivision shall be submitted electronically by the discharger (or treatment works treating domestic sewage) to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, dischargers (or treatment works treating domestic sewage) may be required to report electronically if specified by a particular permit.</u>

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program

implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream or streams, and other required data elements as identified in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030. All notices of intent shall be signed in accordance with 9VAC25-870-370.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date or dates when a discharger is authorized to discharge under the state permit.

d. General permits shall specify whether a discharger that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the state permit, is authorized to discharge in accordance with the state permit either upon receipt of the notice of intent by the department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the board. Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Stormwater discharges associated with small construction activity may, at the discretion of the board, be authorized to discharge under a general permit without submitting a notice of intent where the board finds that a notice of intent requirement would be inappropriate. In making such a finding, the board shall consider the (i) type of discharge, (ii) expected nature of the discharge, (iii) potential for toxic and conventional pollutants in the discharges, (iv) expected volume of the discharges, (v) other means of identifying discharges covered by the state permit, and (vi) estimated number of discharges to be covered by the state permit. The board shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The board may notify a discharger that it is covered by a general permit, even if the discharger has not submitted a notice of intent to be covered. A discharger so notified may request an individual permit under subdivision 3 c of this subsection.

3. Requiring an individual permit.

a. The board may require any discharger authorized by a general permit to apply for and obtain an individual permit. Any interested person may request the board to take action under this subdivision. Cases where an individual permit may be required include the following:

(1) The discharger is not in compliance with the conditions of the general permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;

(4) A water quality management plan, established by the State Water Control Board pursuant to 9VAC25-720, containing requirements applicable to such point sources is approved;

(5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(6) The discharge(s) is a significant contributor of pollutants. In making this determination, the board may consider the following factors:

(a) The location of the discharge with respect to surface waters;

(b) The size of the discharge;

(c) The quantity and nature of the pollutants discharged to surface waters; and

(d) Other relevant factors;

b. State permits required on a case-by-case basis.

(1) The board may determine, on a case-by-case basis, that certain stormwater discharges, and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the board decides that an individual permit is required under this subsection, except as provided in subdivision 3 b (3) of this subsection, the board shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the board. The question whether the designation was proper will remain open for consideration during the public comment period for the draft state permit and in any subsequent public hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a stormwater discharge under this subsection, the board may require the discharger to submit a state permit application or other information regarding the discharge under the Act and § 308 of the CWA. In requiring such information, the board shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a state permit under 9VAC25-870-380 A 1 within 60 days of notice or under 9VAC25-870-380 A 8 within 180 days of notice, unless permission for a later date is granted by the board. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft state permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 9VAC25-870-360 with reasons supporting the request. The request shall be processed under the applicable parts of this chapter. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual permit is issued to an owner or operator otherwise subject to a general permit, the applicability of the general permit to the individual permit state permittee is automatically terminated on the effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

Part VIII
State Permit Conditions

9VAC25-870-430. Conditions applicable to all state permits.

The following conditions apply to all state permits. Additional conditions applicable to state permits are in 9VAC25-870-440. All conditions applicable to state permits shall be incorporated into the state permits either expressly or by reference. If incorporated by reference, a specific citation to this regulation must be given in the state permit.

A. The state permittee shall comply with all conditions of the state permit. Any state permit noncompliance constitutes a violation of the Act and the CWA, except that noncompliance with certain provisions of the state permit may constitute a violation of the Act but not the CWA. State permit noncompliance is grounds for enforcement action; for state permit termination, revocation and reissuance, or modification; or denial of a state permit renewal application.

The state permittee shall comply with effluent standards or prohibitions established under § 307(a) of the CWA for toxic pollutants within the time provided in the chapters that establish these standards or prohibitions, even if the state permit has not yet been modified to incorporate the requirement.

B. If the state permittee wishes to continue an activity regulated by the state permit after the expiration date of the state permit, the state permittee must apply for and obtain a new state permit.

C. It shall not be a defense for a state permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the state permit.

D. The state permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the state permit that has a reasonable likelihood of adversely affecting human health or the environment.

E. The state permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the state permittee to achieve compliance with the conditions of the state permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a state permittee only when the operation is necessary to achieve compliance with the conditions of the state permit.

F. State permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the state permittee for a state permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any state permit condition.

G. State permits do not convey any property rights of any sort, or any exclusive privilege.

H. The state permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the state permit or to determine compliance with the state permit. The board may require the state permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the Act. The state permittee shall also furnish to the department upon request, copies of records required to be kept by the state permit.

I. The state permittee shall allow the director as the board's designee, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the state permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the state permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the state permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the state permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring state permit compliance or as otherwise

authorized by the CWA and the Act, any substances or parameters at any location.

J. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The state permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the state permit, and records of all data used to complete the application for the state permit, for a period of at least three years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the state permittee, or as requested by the board.

3. Records of monitoring information shall include:

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

b. The individual or individuals who performed the sampling or measurements;

c. The date or dates analyses were performed;

d. The individual or individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or alternative EPA approved methods, unless other test procedures have been specified in the state permit. Analyses performed according to test procedures approved under 40 CFR Part 136 shall be performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

K. All applications, reports, or information submitted to the VSMP authority and department shall be signed and certified as required by 9VAC25-870-370.

L. Reporting requirements.

1. The state permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 9VAC25-870-420 A; or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in the state permit.

2. The state permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with state permit requirements.

3. State permits are not transferable to any person except in accordance with 9VAC25-870-620.

4. Monitoring results shall be reported at the intervals specified in the state permit.

a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the department. As of the start date in Table 1 of 9VAC25-31-1020, all reports and forms submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

b. If the state permittee monitors any pollutant specifically addressed by the state permit more frequently than required by the state permit using test procedures approved under 40 CFR Part 136 or as otherwise specified in the state permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

c. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

5. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the state permit shall be submitted no later than 14 days following each schedule date.

6. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and such discharge enters or could be expected to enter state waters, the state permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of such 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 state permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with subdivision 7 a of this subsection. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

a. Unusual spillage of materials resulting directly or indirectly from processing operations;

b. Breakdown of processing or accessory equipment;

c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as sewer lines or wastewater pump stations); and

d. Flooding or other acts of nature.

7. Twenty-four hour and five-day reporting.

a. The state permittee shall report any noncompliance ~~which~~ that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the state permittee becomes aware of the circumstances. A ~~written submission~~ report in the format required by the department shall also be provided within five days of the time the state permittee becomes aware of the circumstances. The ~~written submission~~ five-day report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(1) For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described in subdivision 7 a of this subsection (with the exception of time of discovery), as well as the type of event (i.e., combined sewer overflows, sanitary sewer overflows, or bypass events); type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall); discharge volumes untreated by the treatment works treating domestic sewage; types of human health and environmental impacts of the sewer overflow event; and whether the noncompliance was related to wet weather.

(2) As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this subdivision 7 shall be submitted electronically by the permittee to the department in compliance with this subdivision 7 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this subdivision 7 by a particular permit.

(3) The director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this subdivision 7.

b. The following shall be ~~included as information which must be~~ reported within 24 hours under this subdivision:

(1) Any unanticipated bypass that exceeds any effluent limitation in the state permit.

(2) Any upset that exceeds any effluent limitation in the state permit.

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the state permit to be reported within 24 hours.

c. The board may waive the ~~written~~ five-day report on a case-by-case basis for reports under this subdivision if the oral report has been received within 24 hours.

8. The state permittee shall report all instances of noncompliance not reported under subdivisions 4, 5, 6, and 7 of this subsection, in ~~writing~~ the format required by the department, at the time the next monitoring reports are submitted. The reports shall contain the information listed in subdivision 7 of this subsection.

a. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in subdivision 7 a of this subsection and the applicable required data in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.

b. As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this subdivision 8 shall be submitted electronically by the permittee to the department in compliance with this subdivision 8 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit.

c. The director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

9. Where the state permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a state permit application or in any report to the department, it shall promptly submit such facts or information.

10. The owner, operator, or the duly authorized representative of an VPDES-regulated entity is required to

electronically submit the required information, as specified in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, to the department.

M. Bypass.

1. The state permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subdivisions 2 and 3 of this subsection.

2. Notice.

a. Anticipated bypass. If the state permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

b. Unanticipated bypass. The state permittee shall submit notice of an unanticipated bypass as required in subdivision L 7 of this section ~~(24 hour notice)~~. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a state permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The state permittee submitted notices as required under subdivision 2 of this subsection.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in subdivision 3 a of this subsection.

N. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based state permit effluent limitations if the requirements of subdivision 2 of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. A state permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the state permittee can identify the cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The state permittee submitted notice of the upset as required in subdivision L 7 b (2) of this section (24-hour notice); and

d. The state permittee complied with any remedial measures required under subsection D of this section.

3. In any enforcement proceeding the state permittee seeking to establish the occurrence of an upset has the burden of proof.

9VAC25-870-440. Additional conditions applicable to municipal separate storm sewer state permits.

In addition to those conditions set forth in 9VAC25-870-430, the operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the board under 9VAC25-870-380 A 1 e must submit an annual report by a date specified in the state permit for such system. As of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance with this section shall be submitted electronically by the owner, operator, or the duly authorized representative of the MS4 to the department in compliance with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic

reporting. Prior to this date, and independent of Part XI of 9VAC25-31, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit. The report shall include:

1. The status of implementing the components of the stormwater management program that are established as state permit conditions;

2. Proposed changes to the stormwater management programs that are established as state permit conditions. Such proposed changes shall be consistent with 9VAC25-870-380 C 2 d;

3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the state permit application;

4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

5. Annual expenditures and budget for year following each annual report;

6. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and

7. Identification of water quality improvements or degradation.

9VAC25-870-450. Establishing state permit conditions.

A. In addition to conditions required in all state permits, the board shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Stormwater Management Act, the State Water Control Law, the CWA, and attendant regulations. These shall include conditions under 9VAC25-870-480 (duration of state permits), 9VAC25-870-490 (schedules of compliance) ~~and~~, 9VAC25-870-460 (monitoring), electronic reporting requirements of 40 CFR Part 3, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

B. 1. An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a state permit. An applicable requirement is also any requirement that takes effect prior to the modification or revocation and reissuance of a state permit to the extent allowed in Part X of this chapter.

2. New or reissued state permits, and to the extent allowed under Part X of this chapter modified or revoked and reissued state permits, shall incorporate each of the applicable requirements referenced in 9VAC25-870-460 and 9VAC25-870-470.

C. All state permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the state permit.

9VAC25-870-460. Establishing limitations, standards, and other state permit conditions.

In addition to the conditions established under 9VAC25-870-450 A, each state permit shall include conditions meeting the following requirements when applicable.

A. 1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under § 301 of the CWA, on new source performance standards promulgated under § 306 of CWA, on case-by-case effluent limitations determined under § 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 9VAC25-870-420 B (protection period).

2. The board may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a state permit to forego sampling of a pollutant found at 40 CFR Subchapter N if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the state permit and is not available during the term of the first state permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued state permit or modification of a reissued state permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier state permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the state permit as an express state permit condition and the reasons supporting the grant must be documented in the state permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

B. Other effluent limitations and standards under §§ 301, 302, 303, 307, 318 and 405 of the CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under § 307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the state permit, the board shall institute proceedings under this chapter to modify or revoke and reissue the state permit to conform to the toxic effluent standard or prohibition.

C. Water quality standards and state requirements. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards

under §§ 301, 304, 306, 307, 318 and 405 of the CWA necessary to:

1. Achieve water quality standards established under the State Water Control Law and § 303 of the CWA, including state narrative criteria for water quality.

a. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the board determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality standard, including Virginia narrative criteria for water quality.

b. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Virginia water quality standard, the board shall use procedures that account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

c. When the board determines, using the procedures in subdivision 1 b of this subsection, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Virginia numeric criteria within a Virginia water quality standard for an individual pollutant, the state permit must contain effluent limits for that pollutant.

d. Except as provided in this subdivision, when the board determines, using the procedures in subdivision 1 b of this subsection, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Virginia water quality standard, the state permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the board demonstrates in the fact sheet or statement of basis of the state permit, using the procedures in subdivision 1 b of this subsection, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Virginia water quality standards.

e. Where Virginia has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable Virginia water quality standard, the board must establish effluent limits using one or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the board demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed Virginia criterion, or an explicit policy or regulation interpreting Virginia's narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under § 307(a) of the CWA, supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The state permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The fact sheet required by 9VAC25-870-520 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The state permit requires all effluent and ambient monitoring necessary to show that during the term of the state permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The state permit contains a reopener clause allowing the board to modify or revoke and reissue the state permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

f. When developing water quality-based effluent limits under this subdivision the board shall ensure that:

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR 130.7;

2. Attain or maintain a specified water quality through water quality related effluent limits established under the State Water Control Law and § 302 of the CWA;

3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under the State Water Control Law and § 401 of the CWA;

4. Conform to applicable water quality requirements under § 401(a)(2) of the CWA when the discharge affects a state other than Virginia;

5. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under the Act or regulations in accordance with § 301(b)(1)(C) of the CWA;

6. Ensure consistency with the requirements of a Water Quality Management plan established by the State Water Control Board pursuant to 9VAC25-720 and approved by EPA under § 208(b) of the CWA;

7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M, for ocean discharges; or

8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 CFR Part 125, Subpart D.

D. Technology-based controls for toxic pollutants. Limitations established under subsections A, B, or C of this section, to control pollutants meeting the criteria listed in subdivision 1 of this subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An explanation of the development of these limitations shall be included in the fact sheet.

1. Limitations must control all toxic pollutants that the board determines (based on information reported in a permit application or in a notification required by the state permit or on other information) are or may be discharged at a level greater than the level that can be achieved by the technology-based treatment requirements appropriate to the state permittee; or

2. The requirement that the limitations control the pollutants meeting the criteria of subdivision 1 of this subsection will be satisfied by:

a. Limitations on those pollutants; or

b. Limitations on other pollutants that, in the judgment of the board, will provide treatment of the pollutants under subdivision 1 of this subsection to the levels required by the Stormwater Management Act, the State Water Control Law, and 40 CFR Part 125, Subpart A.

E. A notification level that exceeds the notification level of 9VAC25-870-440 A 1 a, b, or c, upon a petition from the state permittee or on the board's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the state permittee.

F. Twenty-four-hour reporting. Pollutants for which the state permittee must report violations of maximum daily discharge limitations under 9VAC25-870-430 L 7 b (3) (24-hour reporting) shall be listed in the state permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

G. Durations for state permits, as set forth in 9VAC25-870-480.

H. Monitoring requirements.

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

2. Required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity including, when appropriate, continuous monitoring;

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 9VAC25-870-430 ~~and in,~~ subdivisions 5 through 8 of this subsection, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Reporting shall be no less frequent than specified in the above regulation;

4. To assure compliance with state permit limitations, requirements to monitor:

a. The mass (or other measurement specified in the state permit) for each pollutant limited in the state permit;

b. The volume of effluent discharged from each outfall;

c. Other measurements as appropriate including pollutants; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; or as determined to be necessary on a case-by-case basis pursuant to the Stormwater Management Act, the State Water Control Law, and § 405(d)(4) of the CWA;

d. According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the state permit for pollutants with no approved methods; and

e. With analyses performed according to test procedures approved under 40 CFR Part 136 being performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less that once a year. All results shall be electronically reported in compliance with 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.)

of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation;

6. Requirements to report monitoring results for stormwater discharges associated with industrial activity that are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;

7. Requirements to report monitoring results for stormwater discharges (other than those addressed in subdivision 6 of this subsection) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a state permit for such a discharge must require:

a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a stormwater discharge and evaluate whether measures to reduce pollutant loading identified in a stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the state permit or whether additional control measures are needed;

b. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the state permit, and identifying any incidents of noncompliance;

c. Such report and certification be signed in accordance with 9VAC25-870-370; and

8. State permits which do not require the submittal of monitoring result reports at least annually shall require that the state permittee report all instances of noncompliance not reported under 9VAC25-870-430 L 1, 4, 5, 6, and 7 at least annually.

I. Best management practices to control or abate the discharge of pollutants when:

1. Authorized under § 402(p) of the CWA for the control of stormwater discharges;

2. Numeric effluent limitations are infeasible; or

3. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Stormwater Management Act, the State Water Control Law, and the CWA.

J. Reissued state permits.

1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA, a state permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under § 304(b) of the CWA subsequent to the original issuance of such state permit, to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous state permit. In the case of effluent limitations established on the basis of § 301(b)(1)(C) or § 303(d) or (e) of the CWA, a state permit may not be renewed, reissued, or modified to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous state permit except in compliance with § 303(d)(4) of the CWA.

2. Exceptions. A state permit with respect to which subdivision 1 of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance that justify the application of a less stringent effluent limitation;

b. (1) Information is available that was not available at the time of state permit issuance (other than revised regulations, guidance, or test methods) and that would have justified the application of a less stringent effluent limitation at the time of state permit issuance; or

(2) The board determines that technical mistakes or mistaken interpretations of the Act were made in issuing the state permit under § 402(a)(1)(B) of the CWA;

c. A less stringent effluent limitation is necessary because of events over which the state permittee has no control and for which there is no reasonably available remedy;

d. The state permittee has received a state permit modification under the Stormwater Management Act, the State Water Control Law, and § 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the CWA; or

e. The state permittee has installed the treatment facilities required to meet the effluent limitations in the previous state permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified state permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of state permit renewal, reissuance, or modification).

Subdivision 2 b of this subsection shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the Act or the CWA or for reasons otherwise unrelated to water quality.

3. In no event may a state permit with respect to which subdivision 2 of this subsection applies be renewed, reissued, or modified to contain an effluent limitation that is less stringent than required by effluent guidelines in

effect at the time the state permit is renewed, reissued, or modified. In no event may such a state permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a Virginia water quality standard applicable to such waters.

K. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with 9VAC25-870-570.

L. Qualifying state, tribal, or local programs.

1. For stormwater discharges associated with small construction activity identified in 9VAC25-870-10, the board may include state permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. Where a qualifying state, tribal, or local program does not include one or more of the elements in this subdivision, then the board must include those elements as conditions in the state permit. A qualifying state, tribal, or local erosion and sediment control program is one that includes:

a. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

b. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

c. Requirements for construction site operators to develop and implement a stormwater pollution prevention plan. A stormwater pollution prevention plan includes site descriptions; descriptions of appropriate control measures; copies of approved state, tribal or local requirements; maintenance procedures; inspection procedures; and identification of nonstormwater discharges; and

d. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

2. For stormwater discharges from construction activity that does not meet the definition of a small construction activity, the board may include state permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. A qualifying state, tribal or local erosion and sediment control program is one that includes the elements listed in subdivision 1 of this subsection and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the state permit writer.

9VAC25-870-640. Minor modifications of individual state permits.

Upon the consent of the state permittee, the board may modify an individual state permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part IX of this chapter. Any individual state permit modification not processed as a minor modification under this section must be made for cause and with draft state permit and public notice. Minor modifications may only:

1. Correct typographical errors;

2. Require more frequent monitoring or reporting by the state permittee;

3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing individual state permit and does not interfere with attainment of the final compliance date requirement;

4. Allow for a change in ownership or operational control of a facility where the board determines that no other change in the individual state permit is necessary, provided that a written agreement containing a specific date for transfer of individual state permit responsibility, coverage, and liability between the current and new individual state permittees has been submitted to the department;

5. a. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge.

b. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with state permit limits~~.~~; or

6. Require electronic reporting requirements (to replace paper reporting requirements) including those specified in 40 CFR Part 3 and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

9VAC25-870-650. Termination of state permits.

A. The following are causes for terminating a state permit during its term, or for denying an individual state permit, or coverage under a general permit renewal application, after notice and opportunity for a hearing by the board.

1. The state permittee has violated any regulation or order of the board or department, any order of the VSMP authority, any provision of the Virginia Stormwater Management Act or this chapter, or any order of a court, where such violation results in the unreasonable degradation of properties, water quality, stream channels, and other natural resources, or the violation is representative of a pattern of serious or repeated violations that in the opinion of the board, demonstrates the state permittee's disregard for or inability to comply with

applicable laws, regulations, state permit conditions, orders, rules, or requirements;

2. Noncompliance by the state permittee with any condition of the state permit;

3. The state permittee's failure to disclose fully all relevant material facts, or the state permittee's misrepresentation of any relevant material facts in applying for a state permit, or in any other report or document required under the Act or this chapter;

4. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by state permit modification or termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge controlled by the state permit;

6. The activity for which the state permit was issued causes unreasonable degradation of properties, water quality, stream channels, and other natural resources; or

7. There exists a material change in the basis on which the state permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or land-disturbing activity controlled by the state permit necessary to prevent unreasonable degradation of properties, water quality, stream channels, and other natural resources.

B. The board shall follow the applicable procedures in this chapter in terminating any state permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW or a PVOTW (but not by land application or disposal into a well), the board may terminate the state permit by notice to the state permittee. Termination by notice shall be effective 30 days after notice is sent, unless the state permittee objects within that time. If the state permittee objects during that period, the board shall follow the applicable procedures for termination under 9VAC25-870-610 D. Expedited state permit termination procedures are not available to state permittees that are subject to pending state or federal enforcement actions including citizen suits brought under state or federal law. If requesting expedited state permit termination procedures, a state permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law.

C. Permittees that wish to terminate their state permit must submit a notice of termination (NOT) to the department. If requesting expedited permit termination procedures, a permittee must certify in the NOT that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. As of the start date in Table 1 of 9VAC25-31-1020, all NOTs submitted in compliance with this subsection shall be submitted electronically by the permittee to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, the permittee may be required to report electronically if specified by a particular permit.

VA.R. Doc. No. R17-4807; Filed May 24, 2017, 12:36 p.m.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **10VAC5-210. Motor Vehicle Title Lending (amending 10VAC5-210-10, 10VAC5-210-30, 10VAC5-210-50).**

Statutory Authority: §§ 6.2-2214 and 12.1-13 of the Code of Virginia.

Effective Date: July 1, 2017.

Agency Contact: Susan Hancock, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9701, FAX (804) 371-9416, or email susan.hancock@scc.virginia.gov.

Summary:

The amendments prohibit licensees from (i) obtaining agreements from borrowers that give licensees or third parties the authority to prepare checks that are drawn upon borrowers' accounts at depository institutions; (ii) obtaining or receiving personal identification numbers for borrowers' credit cards, prepaid cards, debit cards, or other cards; and (iii) providing borrowers or prospective borrowers with false, misleading, or deceptive information. The proposed amendments also expand the definition of "good funds instrument," define the term "prepaid card," address evasions of 10VAC5-210 and compliance with federal laws and regulations, and conform the regulation to the text of the borrower rights and responsibilities pamphlet.

AT RICHMOND, JUNE 1, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2017-00013

Ex Parte: In re: amendments to motor
vehicle title lending regulations

ORDER ADOPTING REGULATIONS

On March 27, 2017, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions to amend the Commission's regulations governing licensed motor vehicle title lenders ("licensees"), which are set forth in Chapter 210 of Title 10 of the Virginia Administrative Code ("Chapter 210"), 10 VAC 5-210-10 et seq.

The proposed amendments expand the definition of "good funds instrument" and add consumer protections relating to personal identification numbers, the preparation of checks drawn on borrowers' deposit accounts, and false, misleading or deceptive information. In addition, the proposal addresses evasions of Chapter 210 and compliance with federal laws and regulations. The proposed amendments also include changes to the text of the borrower rights and responsibilities pamphlet.

The Order to Take Notice and proposed regulations were published in the Virginia Register of Regulations on April 17, 2017, posted on the Commission's website, and sent to all licensees and other interested parties. Licensees and other interested parties were afforded the opportunity to file written comments or request a hearing on or before May 12, 2017. Comments on the proposed regulations were filed by Erin E. Witte on behalf of the Office of the Attorney General and James W. Speer on behalf of the Virginia Poverty Law Center and several Virginia legal aid programs. Ms. Witte and Mr. Speer expressed support for various provisions contained in the proposal. The Commission did not receive any requests for a hearing.

NOW THE COMMISSION, having considered the proposed regulations, the comments filed, the record herein, and applicable law, concludes that the proposed regulations should be adopted as proposed with an effective date of July 1, 2017.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations, as attached hereto, are adopted effective July 1, 2017.

(2) This Order and the attached regulations shall be posted on the Commission's website at http://www.scc.virginia.gov/case.

(3) The Commission's Division of Information Resources shall provide a copy of this Order, including a copy of the attached regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) This case is dismissed, and the papers herein shall be placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof, together with a copy of the attached regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall forthwith send by e-mail or U.S. mail a copy of this Order, together with a copy of the attached regulations, to all licensed motor vehicle title lenders and such other interested parties as he may designate.

10VAC5-210-10. Definitions.

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

"Act" means Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia.

"Advertisement" for purposes of the Act and this chapter means a commercial message in any medium that promotes, directly or indirectly, a motor vehicle title loan. The term includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, calendars, etc.

"Bureau" means the Bureau of Financial Institutions.

"Business day" for purposes of the Act and this chapter means a day on which the licensee's office is open for business as posted as required by subsection B of 10VAC5-210-50.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of Financial Institutions.

"Duplicate original" for purposes of the Act and this chapter means an exact copy of a signed original, an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature.

"Good funds instrument" for purposes of the Act and this chapter means a certified check, cashier's check, money order or, if the licensee is equipped to handle and willing to accept such payments, payment effected by use of a credit card, prepaid card, or debit card.

"Liquid assets" for purposes of the Act and this chapter means cash in depository institutions, money market funds, commercial paper, and treasury bills.

"Prepaid card" means a card with a network logo (e.g., Visa, MasterCard, American Express, or Discover) that is used by a cardholder to access money that has been loaded onto the card in advance.

B. Other terms used in this chapter shall have the meanings set forth in § 6.2-2200 of the Act.

10VAC5-210-30. Notice and pamphlet.

A. Prior to furnishing a prospective borrower with a loan application or receiving any information relating to loan qualification, a licensee shall provide the prospective borrower with (i) a written notice that complies with subsection B of this section; and (ii) a borrower rights and responsibilities pamphlet that complies with subsections C and D of this section.

B. 1. The required text of the written notice shall be as follows: "WARNING: A motor vehicle title loan is not intended to meet your long-term financial needs. The interest rate on a motor vehicle title loan is high and you are pledging your motor vehicle as collateral for the loan. If you fail to repay your loan in accordance with your loan agreement, we may repossess and sell your motor vehicle. You should consider whether there are other lower cost loans available to you. If you obtain a motor vehicle title loan, you should request the minimum loan amount required to meet your immediate needs." A licensee shall not modify or supplement the required text of the written notice.

2. The written notice shall be printed on a single 8-1/2 x 11 sheet of paper and be separate from all other papers, documents, or notices obtained or furnished by the licensee. The notice shall be printed in at least 24-point bold type and contain an acknowledgment that is signed and dated by each prospective borrower. The ~~acknowledgement~~ acknowledgment shall state the following: "I acknowledge that I have received a copy of this notice and the pamphlet entitled "Motor Vehicle Title Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities."

3. A duplicate original of the acknowledged notice shall be kept by a licensee in the separate file maintained with respect to the loan for the period specified in § 6.2-2209 of the Code of Virginia.

C. The borrower rights and responsibilities pamphlet shall be printed in at least 12-point type and be separate from all other papers, documents, or notices obtained or furnished by the licensee. The pamphlet shall contain the exact language prescribed in subsection D of this section. A licensee shall not modify or supplement the required text of the pamphlet. The title of the pamphlet ("Motor Vehicle Title Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities") and the headings for the individual sections of the pamphlet (e.g., "In General," "Notice from Lender," etc.) shall be printed in bold type.

D. The required text of the borrower rights and responsibilities pamphlet shall be as follows:

MOTOR VEHICLE TITLE LENDING IN THE COMMONWEALTH OF VIRGINIA

BORROWER RIGHTS AND RESPONSIBILITIES

Please take the time to carefully review the information contained in this pamphlet. It is designed to advise you of your rights and responsibilities in connection with obtaining a motor vehicle title loan in Virginia under Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia.

If you have any questions about motor vehicle title lending or want additional information, you may contact the Virginia State Corporation Commission's Bureau of Financial Institutions toll-free at (800) 552-7945 or on the Internet at http://www.scc.virginia.gov/bfi.

In General: You are responsible for evaluating whether a motor vehicle title loan is right for you. Alternatives may include among other things less expensive short-term financing from another financial institution, family, or friends, a cash advance on a credit card, or an account with overdraft protection.

Notice from Lender: A motor vehicle title lender is required to provide you with a clear and conspicuous printed notice advising you that a motor vehicle title loan is not intended to meet your long-term financial needs; that the interest rate on a motor vehicle title loan is high; and that if you fail to repay your loan in accordance with your loan agreement, the motor vehicle title lender may repossess and sell your motor vehicle.

Information from Lender: Virginia law prohibits a motor vehicle title lender from providing you with any false, misleading, or deceptive information.

Prohibition on Obtaining Loan if Motor Vehicle has Existing Lien / One Loan at a Time: Virginia law prohibits a motor vehicle title lender from making a motor vehicle title loan to you if (i) your certificate of title indicates that your motor vehicle is security for another loan or has an existing lien; or (ii) you currently have another motor vehicle title loan from either the same motor vehicle title lender or any other motor vehicle title lender conducting a motor vehicle title lending business in Virginia.

Prohibition on Obtaining Loan on Same Day Another Loan was Repaid: Virginia law prohibits a motor vehicle title lender from making a motor vehicle title loan to you on the same day that you repaid or satisfied in full a motor vehicle title loan from either the same motor vehicle title lender or any other motor vehicle title lender conducting a motor vehicle title lending business in Virginia.

Prohibition on Loans to Covered Members of the Armed Forces and their Dependents: Virginia law prohibits a motor vehicle title lender from making motor vehicle title loans to covered members of the armed forces and their dependents. If you are (i) on active duty under a call or order that does not specify a period of 30 days or less; or (ii) on active guard and reserve duty, then you are a covered member of the armed forces and a motor vehicle title lender is prohibited from making a motor vehicle title loan to you. A motor vehicle title lender is also prohibited from making a motor vehicle title loan to you if (i) you are married to a covered member of the armed forces; (ii) you are the child, as defined in 38 USC § 101(4), of a covered member of the

armed forces; or (iii) more than one-half of your support during the past 180 days was provided by a covered member of the armed forces.

Certificate of Title / Other Security Interests: Prior to obtaining a motor vehicle title loan, you will be required to give a motor vehicle title lender the certificate of title for your motor vehicle. The motor vehicle title lender is required to record its lien with the motor vehicle department in the state where your motor vehicle is registered and hold the certificate of title until your loan is repaid or satisfied in full. The motor vehicle title lender cannot take an interest in more than one motor vehicle as security for a motor vehicle title loan. Apart from your motor vehicle and any accessories that are attached to it, the motor vehicle title lender cannot take an interest in any other property you own as security for a motor vehicle title loan.

Maximum Loan Amount: A motor vehicle title lender cannot loan you more than 50% of the fair market value of your motor vehicle. The fair market value is generally based on the loan value for your motor vehicle according to a recognized pricing guide.

Minimum and Maximum Loan Term / Monthly Payments: Under Virginia law, your loan term cannot be either less than 120 days or more than 12 months. Your motor vehicle title loan will be repayable in substantially equal monthly installments of principal and interest. However, if you have a longer first payment period, your first monthly payment may be larger than your remaining monthly payments.

Interest and Other Loan Costs: The following are the maximum interest rates that a motor vehicle title lender is permitted to charge you PER MONTH on the principal amount of your loan that remains outstanding: (i) 22% per month on the portion of the outstanding balance up to and including $700; (ii) 18% per month on the portion of the outstanding balance between $700.01 and $1,400; and (iii) 15% per month on the portion of the outstanding balance of $1,400.01 and higher. As long as these maximum rates are not exceeded, a motor vehicle title lender is allowed to accrue interest using a single blended interest rate if the initial principal is higher than $700. In addition to interest, a motor vehicle title lender may charge you for the actual cost of recording its lien with the motor vehicle department in the state where your motor vehicle is registered.

If you make a payment more than seven calendar days after its due date, a motor vehicle title lender may impose a late charge of up to five percent of the amount of the payment.

A motor vehicle title lender is prohibited from accruing or charging you interest on or after (i) the date the motor vehicle title lender repossesses your motor vehicle; or (ii) 60 days after you fail to make a monthly payment on your loan, unless you are hiding your motor vehicle.

Other than interest and the costs specifically mentioned in this section and the section below ("Costs of Repossession and Sale"), no additional amounts may be directly or indirectly charged, contracted for, collected, received, or recovered by a motor vehicle title lender.

Costs of Repossession and Sale: A motor vehicle title lender may charge you for any reasonable costs that it incurs in repossessing, preparing for sale, and selling your motor vehicle if (i) you default on your motor vehicle title loan; (ii) the motor vehicle title lender sends you a written notice at least 10 days prior to repossession advising you that your motor vehicle title loan is in default and that your motor vehicle may be repossessed unless you pay the outstanding principal and interest; and (iii) you fail to pay the amount owed prior to the date of repossession. A motor vehicle title lender is prohibited from charging you for any storage costs if the motor vehicle title lender takes possession of your motor vehicle.

Written Loan Agreement: A motor vehicle title lender must provide you with a written loan agreement, which must be signed by both you and an authorized representative of the motor vehicle title lender. Your motor vehicle title loan agreement is a binding, legal document that requires you to repay your loan. Make sure you read the entire loan agreement carefully before signing and dating it. A motor vehicle title lender must provide you with a duplicate original of your loan agreement at the time you sign it. If any provision of your loan agreement violates Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia, the provision will not be enforceable against you.

Property Insurance: A motor vehicle title lender may require you to purchase or maintain property insurance for your motor vehicle. However, a motor vehicle title lender cannot require you to purchase or maintain property insurance from or through a particular provider or list of providers.

Prohibition on Obtaining Funds Electronically / Authority to Prepare Checks / Obtaining PINs: A motor vehicle title lender is prohibited from electronically debiting your deposit account or obtaining any of your funds by electronic means. The lender also cannot obtain any agreement from you that gives the lender or a third party the authority to prepare a check that is drawn upon your deposit account. If the motor vehicle title lender is equipped to handle and willing to accept such payments, you may make a payment on your loan by using a credit card, prepaid card, or debit card. However, the lender is prohibited from obtaining or receiving a personal identification number (PIN) for a credit card, prepaid card, debit card, or any other type of card in connection with your loan.

Loan Proceeds: You will receive your loan proceeds in the form of (i) cash; (ii) a check from the motor vehicle title lender; or (iii) a debit card. If you receive a check, the motor vehicle title lender is prohibited from charging you a fee for cashing the check. Similarly, a check casher located in the same office as the motor vehicle title lender is prohibited from charging you a fee for cashing the motor vehicle title

lender's check. If you receive a debit card, the motor vehicle title lender is prohibited from charging you an additional fee when you withdraw or use the loan proceeds.

Other Businesses: A motor vehicle title lender is prohibited from engaging in any other businesses in its motor vehicle title loan offices unless permitted by order of the State Corporation Commission. A motor vehicle title lender is also prohibited by statute from selling you any type of insurance coverage.

Using Motor Vehicle Title Loan to Purchase Products or Services or Repay Other Loans: A motor vehicle title lender is prohibited from making you a motor vehicle title loan so that you can purchase another product or service sold at the motor vehicle title lender's business location. A motor vehicle title lender is also prohibited from making you a motor vehicle title loan so that you can repay another loan you may have from either the motor vehicle title lender or an affiliate of the motor vehicle title lender.

Right to Cancel: You have the right to cancel your motor vehicle title loan at any time prior to the close of business on the next day the motor vehicle title lender is open following the date your loan is made by either returning the original loan proceeds check or paying the motor vehicle title lender the amount advanced to you in cash or by certified check, cashier's check, money order or, if the motor vehicle title lender is equipped to handle and willing to accept such payments, by using a credit card, prepaid card, or debit card. If you cancel your motor vehicle title loan, the motor vehicle title lender must mark your original loan agreement with the word "canceled" and return it to you along with your certificate of title.

Cash Payments / Partial Payments / Prepayments: You have the right to receive a signed, dated receipt for each cash payment made in person, which will show the balance remaining on your motor vehicle title loan.

Additionally, you have the right to make a partial payment on your motor vehicle title loan at any time prior to its specified due date without penalty. However, a motor vehicle title lender may apply a partial payment first to any amounts that are due and unpaid at the time of such payment. If your motor vehicle title loan is current, a partial payment will reduce your outstanding balance as well as the total amount of interest that you will be required to pay.

You also have the right to prepay your motor vehicle title loan in full before its specified maturity date without penalty by paying the motor vehicle title lender the total outstanding balance on your loan, including any accrued and unpaid interest and other charges that you may owe on your motor vehicle title loan.

Lender to Return Original Loan Agreement and Certificate of Title: Within 10 days after the date that you repay your motor vehicle title loan in full, the motor vehicle title lender must (i) mark your original loan agreement with the word "paid" or "canceled" and return it to you; (ii) take any action necessary to reflect the termination of its lien on your motor vehicle's certificate of title; and (iii) return the certificate of title to you. If you have any questions or concerns regarding your certificate of title, you should contact the motor vehicle department in the state where your motor vehicle is registered.

No Rollovers, Extensions, Etc.: A motor vehicle title lender cannot refinance, renew, extend, or rollover your motor vehicle title loan.

Failure to Repay: Pay back your motor vehicle title loan! Know when your payments are due and be sure to repay your motor vehicle title loan on time and in full. IF YOU DO NOT REPAY YOUR MOTOR VEHICLE TITLE LOAN IN ACCORDANCE WITH YOUR LOAN AGREEMENT, THE MOTOR VEHICLE TITLE LENDER MAY REPOSSESS AND SELL YOUR MOTOR VEHICLE (see section below on "Repossession and Sale of your Motor Vehicle").

In general, a motor vehicle title lender cannot seek a personal money judgment against you if you fail to pay any amount owed in accordance with your loan agreement. However, a motor vehicle title lender may seek a personal money judgment against you if you impair the motor vehicle title lender's security interest by (i) intentionally damaging or destroying your motor vehicle; (ii) intentionally hiding your motor vehicle; (iii) giving the motor vehicle title lender a lien on a motor vehicle that has an undisclosed prior lien; (iv) selling your motor vehicle without the motor vehicle title lender's written consent; or (v) securing another loan or obligation with a security interest in your motor vehicle without the motor vehicle title lender's written consent.

In collecting or attempting to collect a motor vehicle title loan, a motor vehicle title lender is required to comply with the restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act, 15 USC § 1692 et seq., regarding harassment or abuse; false, misleading or deceptive statements or representations; and unfair practices in collections. A motor vehicle title lender is also prohibited from threatening or beginning criminal proceedings against you if you fail to pay any amount owed in accordance with your loan agreement.

Repossession and Sale of your Motor Vehicle: If you do not repay your motor vehicle title loan in accordance with your loan agreement, the motor vehicle title lender may repossess and sell your motor vehicle in order to recover any outstanding amounts that you owe.

If a motor vehicle title lender repossesses your motor vehicle, the motor vehicle title lender must send you a written notice at least 15 days prior to the sale of your motor vehicle. The notice will contain (i) the date and time after which your motor vehicle may be sold; and (ii) a written accounting of the outstanding balance on your motor vehicle title loan, the amount of interest accrued through the date the motor vehicle title lender took possession of your motor vehicle, and any reasonable costs incurred to date by the motor vehicle title

lender in connection with repossessing, preparing for sale, and selling your motor vehicle. At any time prior to the sale of your motor vehicle, you may obtain your motor vehicle by paying the motor vehicle title lender the total amount specified in the notice. Payment must be made in cash or by certified check, cashier's check, money order or, if the motor vehicle title lender is equipped to handle and willing to accept such payments, by using a credit card, prepaid card, or debit card.

Within 30 days of a motor vehicle title lender receiving funds from the sale of your motor vehicle, you are entitled to receive any surplus from the sale in excess of the sum of the following: (i) the outstanding balance on your motor vehicle title loan; (ii) the amount of interest accrued on your motor vehicle title loan through the date the motor vehicle title lender repossessed your motor vehicle; and (iii) any reasonable costs incurred by the motor vehicle title lender in repossessing, preparing for sale, and selling your motor vehicle.

See section above on "Costs of Repossession and Sale" for additional information regarding the conditions that must be met in order for a motor vehicle title lender to collect the reasonable costs of repossessing, preparing for sale, and selling your motor vehicle.

Violation of the Virginia Consumer Protection Act: Losses suffered as the result of a motor vehicle title lender's violation of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia may be pursued under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia), which in some cases permits consumers to recover actual and punitive damages.

Complaints and Contacting the Bureau of Financial Institutions: For assistance with any complaints you may have against a motor vehicle title lender, please contact the Bureau of Financial Institutions toll-free at (800) 552-7945 or on the Internet at http://www.scc.virginia.gov/bfi. Complaints must be filed in writing with the Bureau of Financial Institutions. Complaints should be mailed to the Bureau of Financial Institutions, Attn: Complaints, P.O. Box 640, Richmond, Virginia 23218-0640, or faxed to the Bureau of Financial Institutions, Attn: Complaints, at (804) 371-9416.

10VAC5-210-50. Additional business requirements and restrictions.

A. Each original license shall be prominently posted in each place of business of the licensee.

B. A licensee shall post in or on its licensed locations the days and hours during which it is open for business so that the posting is legible from outside.

C. A licensee shall endeavor to provide the loan documents, printed notice, and pamphlet required by 10VAC5-210-30, in a language other than English when a prospective borrower is unable to read the materials printed in English.

D. A licensee shall not knowingly make a motor vehicle title loan to (i) a person who has an outstanding motor vehicle title loan from the same licensee or another licensee; (ii) a covered member of the armed forces; or (iii) a dependent of a covered member of the armed forces. To enable a licensee to make these determinations and the determination in subsection F of this section, a licensee shall clearly and conspicuously include the following questions in its written loan application, which the licensee shall require each applicant to answer before obtaining a motor vehicle title loan. A licensee shall not make a motor vehicle title loan to an applicant unless the applicant answers "no" to all of these questions:

1. Do you currently have a motor vehicle title loan from any motor vehicle title lender?

2. At any time today, did you repay or satisfy in full a motor vehicle title loan from any motor vehicle title lender?

3. Are you (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

4. Are you married to an individual who is either (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

5. Are you the child, as defined in 38 USC § 101(4), of an individual who is either (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

6. Was more than one-half of your support during the past 180 days provided by an individual who is either (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

E. A licensee shall not require a borrower to purchase or maintain property insurance for a motor vehicle from or through a particular provider or list of providers.

F. A licensee shall not knowingly make a motor vehicle title loan to a borrower on the same day that the borrower repaid or satisfied in full a motor vehicle title loan from the same licensee or another licensee. Any motor vehicle title loan made in violation of this subsection shall for purposes of subdivision 17 of § 6.2-2215 of the Code of Virginia be deemed an evasion of the prohibition on refinancing a motor vehicle title loan agreement set forth in § 6.2-2216 F of the Code of Virginia.

G. The maturity date of a motor vehicle title loan shall not be earlier than 120 days from the date a motor vehicle title loan agreement is executed by a borrower or later than 12 months from the date a motor vehicle title loan agreement is executed by a borrower.

H. A licensee shall not (i) electronically debit a borrower's deposit account or otherwise obtain any funds from a borrower by electronic means, including the use of the

Automated Clearing House network, electronic funds transfers, electronic check conversions, or re-presented check entries; or (ii) obtain any agreement from a borrower that gives the licensee or a third party the authority to create or otherwise prepare a check that is drawn upon the borrower's account at a depository institution. This subsection shall not be construed to prohibit a licensee from accepting a payment made by good funds instrument.

I. If a licensee disburses loan proceeds by means of a check, the licensee shall not (i) charge the borrower a fee for cashing the check or (ii) permit either a check casher located in the same office as the licensee or any affiliated check casher to charge the borrower a fee for cashing the check.

J. A borrower shall have the right to cancel a motor vehicle title loan agreement at any time before the close of business on the next business day following the date that the loan agreement is executed by the borrower by returning the original loan proceeds check or paying to the licensee, in the form of cash or good funds instrument, the principal amount advanced to the borrower. If a borrower cancels a loan agreement in accordance with this subsection, the licensee shall upon receipt of the loan proceeds check, cash, or good funds instrument (i) mark the original loan agreement with the word "canceled," return it to the borrower, and retain a copy in its records; and (ii) return the certificate of title to the borrower. Furthermore, the licensee shall not be entitled to charge, contract for, collect, receive, recover, or require a borrower to pay any interest, fees, or other amounts otherwise permitted by § 6.2-2216 of the Code of Virginia.

K. A licensee shall give a borrower a signed, dated receipt for each cash payment made in person, which shall state the balance due on the loan.

L. A borrower shall be permitted to prepay a motor vehicle title loan either in whole or in part without charge. Partial prepayments shall reduce the outstanding loan balance upon which interest is calculated. A licensee may apply a payment first to any amounts that are due and unpaid at the time of such payment.

M. A licensee shall release its security interest and perform the following acts within 10 days after the date that a borrower's obligations under a motor vehicle title loan agreement are satisfied in full: (i) mark the original loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its records; (ii) take any action necessary to reflect the termination of its lien on the motor vehicle's certificate of title; and (iii) return the certificate of title to the borrower.

N. When sending the written notices and accounting specified by § 6.2-2217 of the Code of Virginia, a licensee shall obtain proof of mailing from the United States Postal Service or other common carrier.

O. A licensee may impose a late charge for failure to make timely payment of any amount due under a motor vehicle title loan agreement provided that (i) the late charge is specified in the loan agreement and (ii) the amount of the late charge does not exceed 5.0% of the amount of the payment. A payment shall be considered to be timely if it is made no later than seven calendar days after the due date specified in the loan agreement.

P. Nothing in the Act or this chapter shall be construed to prohibit a licensee from (i) voluntarily accepting a payment on an outstanding motor vehicle title loan from a borrower after the date that such payment was due to the licensee or (ii) considering a payment to be timely if it is made more than seven calendar days after its due date. However, except as otherwise permitted by the Act and this chapter, the licensee shall not charge, contract for, collect, receive, recover, or require a borrower to pay any additional interest, fees, or other amounts.

Q. Pursuant to subdivision 2 of § 6.2-2201 of the Code of Virginia and subdivision 17 of § 6.2-2215 of the Code of Virginia, a licensee shall not make a motor vehicle title loan that has been arranged or brokered by another person. This provision shall not be construed to prohibit a licensee from originating motor vehicle title loans through its own employees.

R. A licensee shall not obtain or receive a personal identification number (PIN) for a credit card, prepaid card, debit card, or any other type of card in connection with a motor vehicle title loan transaction.

S. A licensee shall comply with all federal laws and regulations applicable to the conduct of its business, including the Truth in Lending Act (15 USC § 1601 et seq.), Regulation Z (12 CFR Part 1026), the Equal Credit Opportunity Act (15 USC § 1691 et seq.), Regulation B (12 CFR Part 1002), and the Standards for Safeguarding Customer Information (16 CFR Part 314).

T. A licensee shall not provide any information to a borrower or prospective borrower that is false, misleading, or deceptive.

U. A licensee shall not engage in any business or activity that directly or indirectly results in an evasion of the provisions of this chapter.

VA.R. Doc. No. R17-5062; Filed June 1, 2017, 5:00 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

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

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

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-140, 12VAC30-50-150).**

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

Effective Date: July 26, 2017.

Agency Contact: Emily McClellan, Regulatory Supervisor, Department of Medical Assistance Services, Policy Division, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Summary:

This action conforms 12VAC30-50-140 and 12VAC30-50-150 to the mental health parity requirements of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008 and 42 CFR Part 438, Subpart K (42 CFR 438.900 et seq.) and 42 CFR 440.395. The amendment removes the 26-visit limit from outpatient psychiatric services from the regulations.

Both the federal statutory changes and regulatory changes address the application of MHPAEA parity requirements to Medicaid managed care organizations as described in § 1903(m) of the Social Security Act, Medicaid benchmark plans, and the Children's Health Insurance Program under Title XXI of the Social Security Act. Medicaid is required to cover mental health and substance use disorder benefits to the same degree and in the same manner as medical and surgical benefits; that is, the financial requirements and treatment limitations must be the same. Medicaid is not permitted to impose financial limitations, such as a lifetime dollar benefit limit, or service limits, such as a specified number of covered visits, for mental health and substance abuse treatment services that Medicaid does not also impose on medical and surgical services.

12VAC30-50-140. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Outpatient psychiatric services.

~~1. Psychiatric services are limited to an initial availability of 26 sessions, without prior authorization during the first treatment year. An additional extension of up to 26 sessions during the first treatment year must be prior authorized by DMAS or its designee. The availability is further restricted to no more than 26 sessions each succeeding year when prior authorized by DMAS or its designee. Psychiatric services are further restricted to no more than three sessions in any given seven day period. Consistent with § 6403 of the Omnibus Budget Reconciliation Act of 1989, medically necessary psychiatric services shall be covered when prior authorized by DMAS or its designee for individuals younger than 21 years of age when the need for such services has been identified in an EPSDT screening.~~

~~2.~~ 1. Psychiatric services can be provided by psychiatrists or by a licensed clinical social worker, licensed professional counselor, licensed clinical nurse specialist-psychiatric, or a licensed marriage and family therapist under the direct supervision of a psychiatrist. Medically necessary psychiatric services shall be covered by DMAS or its designee.

~~3.~~ 2. Psychological and psychiatric services shall be medically prescribed treatment that is directly and specifically related to an active written plan designed and signature-dated by either a psychiatrist or by a licensed psychiatric nurse practitioner, licensed clinical social worker, licensed professional counselor, licensed clinical nurse specialist-psychiatric, or licensed marriage and family therapist under the direct supervision of a psychiatrist.

~~4.~~ 3. Psychological or psychiatric services shall be considered appropriate when an individual meets the following criteria:

a. Requires treatment in order to sustain behavioral or emotional gains or to restore cognitive functional levels that have been impaired;

b. Exhibits deficits in peer relations, dealing with authority; is hyperactive; has poor impulse control; is clinically depressed or demonstrates other dysfunctional clinical symptoms having an adverse impact on attention and concentration, ability to learn, or ability to participate in employment, educational, or social activities;

c. Is at risk for developing or requires treatment for maladaptive coping strategies; and

d. Presents a reduction in individual adaptive and coping mechanisms or demonstrates extreme increase in personal distress.

~~5.~~ 4. Psychological or psychiatric services may be provided in an office or a mental health clinic.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of life to the mother if the fetus was carried to term.

G. Physician visits to inpatient hospital patients over the age of 21 are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses or treatment plan and is further restricted to medically necessary authorized (for enrolled providers)/approved (for nonenrolled providers) inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in general hospitals and freestanding psychiatric facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days shall be limited to medically necessary inpatient hospital days.

H. (Reserved.)

I. Reimbursement shall not be provided for physician services provided to recipients in the inpatient setting whenever the facility is denied reimbursement.

J. (Reserved.)

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys, corneas, hearts, lungs, and livers shall be covered for all eligible persons. High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma, breast cancer, leukemia, or myeloma. Transplant services for any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow/stem cell transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization by DMAS. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Standards for coverage of organ transplant services are in 12VAC30-50-540 through 12VAC30-50-580.

L. Breast reconstruction/prostheses following mastectomy and breast reduction.

1. If prior authorized, breast reconstruction surgery and prostheses may be covered following the medically necessary complete or partial removal of a breast for any medical reason. Breast reductions shall be covered, if prior authorized, for all medically necessary indications. Such procedures shall be considered noncosmetic.

2. Breast reconstruction or enhancements for cosmetic reasons shall not be covered. Cosmetic reasons shall be defined as those which are not medically indicated or are intended solely to preserve, restore, confer, or enhance the aesthetic appearance of the breast.

M. Admitting physicians shall comply with the requirements for coverage of out-of-state inpatient hospital services. Inpatient hospital services provided out of state to a Medicaid recipient who is a resident of the Commonwealth of Virginia shall only be reimbursed under at least one the following conditions. It shall be the responsibility of the hospital, when requesting prior authorization for the admission, to demonstrate that one of the following conditions exists in order to obtain authorization. Services provided out of state for circumstances other than these specified reasons shall not be covered.

1. The medical services must be needed because of a medical emergency;

2. Medical services must be needed and the recipient's health would be endangered if he were required to travel to his state of residence;

3. The state determines, on the basis of medical advice, that the needed medical services, or necessary supplementary resources, are more readily available in the other state; or

4. It is general practice for recipients in a particular locality to use medical resources in another state.

N. In compliance with 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed shall be subject to review of the required DMAS forms corresponding to the procedures. The claims shall suspend for manual review by DMAS. If the forms are not properly completed or not attached to the bill, the claim will be denied or reduced according to DMAS policy.

O. Prior authorization is required for the following nonemergency outpatient procedures: Magnetic Resonance Imaging (MRI), including Magnetic Resonance Angiography (MRA), Computerized Axial Tomography (CAT) scans, including Computed Tomography Angiography (CTA), or Positron Emission Tomography (PET) scans performed for the purpose of diagnosing a disease process or physical injury. The referring physician ordering nonemergency outpatient Magnetic Resonance Imaging (MRI), Computerized Axial Tomography (CAT) scans, or Positron

Emission Tomography (PET) scans must obtain prior authorization from the Department of Medical Assistance Services (DMAS) for those scans. The servicing provider will not be reimbursed for the scan unless proper prior authorization is obtained from DMAS by the referring physician.

P. Addiction and recovery treatment services shall be covered in physician services consistent with 12VAC30-130-5000 et seq.

12VAC30-50-150. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization control, or both.

B. Optometrists' services. Diagnostic examination and optometric treatment procedures and services by ophthalmologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services are not provided.

D. Other practitioners' services; psychological services, psychotherapy. Limits and requirements for covered services are found under ~~Outpatient Psychiatric Services~~ outpatient psychiatric services (see 12VAC30-50-140 D).

1. These limitations apply to psychotherapy sessions provided, within the scope of their licenses, by licensed clinical psychologists or licensed clinical social workers/licensed professional counselors/licensed clinical nurse specialists-psychiatric/licensed marriage and family therapists who are either independently enrolled or under the direct supervision of a licensed clinical psychologist. ~~Psychiatric services are limited to an initial availability of 26 sessions without prior authorization. An additional extension of up to 26 sessions during the first treatment year must be prior authorized by DMAS or its designee. The availability is further restricted to no more than 26 sessions each succeeding treatment year when prior authorized by DMAS or its designee. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.~~

2. Psychological testing is covered when provided, within the scope of their licenses, by licensed clinical psychologists or licensed clinical social workers/licensed professional counselors/licensed clinical nurse specialists-psychiatric, marriage and family therapists who are either independently enrolled or under the direct supervision of a licensed clinical psychologist.

E. Addiction and recovery treatment services shall be covered in other licensed practitioner services consistent with Part XX (12VAC30-130-5000 et seq.) of 12VAC30-130.

VA.R. Doc. No. R17-4956; Filed May 30, 2017, 11:43 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **14VAC5-400. Rules Governing Unfair Claim Settlement Practices (amending 14VAC5-400-10, through 14VAC5-400-80; adding 14VAC5-400-25, 14VAC5-400-90, 14VAC5-400-100, 14VAC5-400-110).**

Statutory Authority: §§ 12.1-13, 38.2-223, and 38.2-510 of the Code of Virginia.

Effective Date: January 1, 2018.

Agency Contact: Katie Johnson, Policy Advisor, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9688, FAX (804) 371-9873, or email katie.johnson@scc.virginia.gov.

Summary:

The amendments closely follow the National Association of Insurance Commissioners' Unfair Claims Settlement Practices Act, Unfair Property/Casualty Claims Settlement Practices Model Regulation, and Unfair Life, Accident and Health Claims Settlement Practices Model Regulation. The amendments (i) set forth claims settlement standards that are specific to automobile insurance, property policies, accident and sickness insurance, life insurance, and annuities; (ii) include clear compliance standards for all insurers and claim settlement standards that are applicable specifically to property policies, accident and sickness insurance, life insurance, and annuities; (iii) clarify that 14VAC5-400 applies to all insurance policies

issued in Virginia, except workers' compensation, title insurance, and fidelity and surety insurance; (iv) clarify the definitions of "insured," "insurer," "provider," and "claimant"; (v) include an exception for claims-made policies; (vi) limit the requirement that a signed release indicating payment is final or indicating a settlement has been reached may be obtained from a first party claimant; (vii) limit the release language to the insurer or its insured; (viii) change some of the timeframes; (ix) create an exception to the notification requirement if a provider submits a claim; (x) remove the requirement pertaining to language translations; (xi) add a requirement that a total loss valuation be provided to a claimant upon request; (xii) separate provisions for auto storage and towing; (xiii) specifically address prescription drug claims; and (xiv) allow an insurer to provide to a policyholder a summary of prescription drug claims through an insurer's electronic portal, by telephone, or via written summary upon request.

AT RICHMOND, JUNE 1, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2016-00265

Ex Parte: In the matter of
Amending the Rules Governing
Unfair Claim Settlement Practices

ORDER ADOPTING AMENDMENTS TO RULES

By Order to Take Notice ("Order") entered November 14, 2016, insurers and interested persons were ordered to take notice that subsequent to January 31, 2017, the State Corporation Commission ("Commission") would consider the entry of an order adopting amendments to rules set forth in Chapter 400 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Unfair Claim Settlement Practices" ("Rules"), which amend the Rules at

14 VAC 5-400-10 through 14 VAC 5-400-80, and add new Rules at 14 VAC 5-400-25 and 14 VAC 5-400-90 through 14 VAC 5-400-110, unless on or before January 31, 2017, any person objecting to the adoption of the amendments to the Rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The amendments to Chapter 400 are necessary to conform the Rules to the National Association of Insurance Commissioners' Unfair Claims Settlement Practices Act (MDL-900), Unfair Property/Casualty Claims Settlement Practices Model Regulation (MDL-902), and Unfair Life, Accident and Health Claims Settlement Practices Model Regulation (MDL-903). These amendments clarify that Chapter 400 applies to all insurance policies issued in the Commonwealth of Virginia – except policies of workers' compensation insurance, title insurance, and fidelity and surety insurance – including those policies that are issued by health maintenance organizations, dental maintenance organizations, dental provider organizations, health service plans, accident and sickness insurers, and dental and optometric service plans. In addition, the amendments set forth claims settlement standards that are specific to automobile insurance, property policies, accident and sickness insurance, life insurance and annuities.

The Order required insurers and interested persons to file their comments in support of or in opposition to the proposed amendments to the Rules with the Clerk on or before January 31, 2017.

The Bureau of Insurance ("Bureau") held meetings on January 10, 2017, and January 12, 2017, to allow for insurers and interested persons to discuss and address questions about the proposed Rules with Bureau staff. In addition to comments and questions that the Bureau received during these meetings, the Commission received timely filed comments from the American Council of Life Insurers, the National Risk Retention Association, Allstate Insurance Company, the American Insurance Association, CareFirst BlueCross BlueShield, ProAssurance Corporation, America's Health Insurance Plans, the Property Casualty Insurers Association, the Physician Insurers Association of America, the Virginia Association of Health Plans, and the National Association of Mutual Insurance Companies.

The Bureau considered the comments received and responded to them in its Response to Comments, which the Bureau filed with the Clerk on March 15, 2017. In its Response to Comments, the Bureau recommended numerous revisions to the proposed amendments that addressed many of the comments received.

The Bureau also recommended that the proposed amendments to the Rules and the revisions to these proposed amendments be exposed for additional comment.

On March 20, 2017, the Commission entered an Order to Take Notice of Revised Proposed Rules in which it exposed the revised proposed amendments to the Rules for additional comment until May 1, 2017. The Commission received timely filed comments from Allstate Insurance Company, the National Risk Retention Association, Sentry Insurance Group, Elephant Insurance, the Vermont Captive Insurance Association, the National Association of Mutual Insurance Companies, the Virginia Association of Health Plans, Chubb, the Property Casualty Insurers Association of America, the American Insurance Association, and the State Farm Insurance Companies.

The Bureau considered these comments and responded to them in its Response to Comments, which the Bureau filed with the Clerk on May 22, 2017. In its Response to Comments, the Bureau recommended several revisions to the reproposed amendments that address many of the comments received.

NOW THE COMMISSION, having considered the proposed amendments, the comments filed, the Bureau's Response to Comments, the reproposed amendments to the Rules, the comments filed, the Bureau's Response to

Comments, and all the amendments to the Rules, is of the opinion that the attached amendments to the Rules should be adopted as amended, effective January 1, 2018.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the Rules Governing Unfair Claim Settlement Practices at Chapter 400 of Title 14 of the Virginia Administrative Code, which amend the Rules at 14 VAC 5-400-10 through 14 VAC 5-400-80, and add new Rules at 14 VAC 5-400-25 and 14 VAC 5-400-90 through 14 VAC 5-400-110, which are attached hereto and made a part hereof, are hereby ADOPTED effective January 1, 2018.

(2) The Bureau forthwith shall give notice of the adoption of the amendments to the Rules to all insurers licensed by the Commission to operate in the Commonwealth of Virginia, except for insurers licensed exclusively to write workers' compensation insurance, title insurance, or fidelity and surety insurance, as well as all interested persons.

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

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

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

(6) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Kiva B. Pierce, Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie Blauvelt and Deputy Commissioner Rebecca Nichols.

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

14VAC5-400-10. ~~Scope~~ Purpose and scope.

~~This~~ The purpose of this chapter ~~defines certain~~ is to set forth minimum standards ~~which, if violated with such frequency as to indicate a general business practice, will be deemed to constitute unfair claim settlement practices~~ for the acknowledgment, investigation, and disposition of claims arising under insurance policies issued pursuant to the laws of the Commonwealth of Virginia. This chapter applies to all persons ~~as hereinafter~~ defined in 14VAC5-400-20 and to all insurance policies ~~and insurance contracts~~ except policies of workers' compensation insurance, title insurance, and fidelity and surety insurance ~~and contracts or plans for future hospitalization, medical, surgical, dental, optometric or legal services. This chapter is not exclusive, and other acts, not herein specified, may also be deemed to be a violation of the Unfair Trade Practices Act (§ 38.2-500 et seq. of the Code of Virginia).~~

14VAC5-400-20. Definitions.

The ~~definition of "person" contained in § 38.2-501 of the Code of Virginia shall apply to this chapter and, in addition, where used in this chapter~~ following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Agent" means any ~~individual, corporation, association, partnership or other legal entity~~ person authorized to represent an insurer with respect to a claim~~;~~.

"Claim" means a demand for payment by a claimant and does not mean an inquiry concerning coverage~~;~~.

"Claimant" means ~~either~~ a first party claimant, a third party claimant, ~~or both, and includes such claimant's~~ a designated legal representative ~~and includes a member of the claimant's immediate family~~, or [~~any other representative~~ a member of the claimant's immediate family] designated by the claimant~~;~~.

"Commission" means the State Corporation Commission ~~of the Commonwealth of Virginia;~~.

"Documentation" includes all pertinent communications, including electronic communications and transactions, data, notes, work papers, claim forms, bills, and explanation of benefits forms relative to the claim.

"Estimate" means a written statement of the cost of repairs to an automobile or to property, including any supplements.

"Explanation of benefits" means any form provided by any insurer that explains the amounts covered under a policy or plan and shows the amounts payable by a covered person to a health care provider.

"First party claimant" means an ~~individual, corporation, association, partnership or other legal entity asserting~~ insured, a beneficiary, a policy owner, or an annuitant who asserts a right to payment under an insurance policy ~~or insurance contract issued to such individual, corporation, association, partnership or other legal entity~~ arising out of the occurrence of the contingency or loss covered by such policy ~~or contract;~~.

"Insured" means a person covered by an insurance policy with legal rights to the benefits provided by the policy.

"Insurer" means a person licensed to issue or ~~who~~ that issues any insurance policy ~~or insurance contract~~ in this Commonwealth ~~and or any third party acting on its behalf~~. Insurer shall also include surplus lines brokers~~;~~.

"Investigation" means all activities of an insurer ~~directly or indirectly related to the determination of liability and extent of loss under coverages afforded by an insurance policy or~~

~~insurance contract;~~ used to make a determination that the claim should be paid, denied, or closed.

~~"Notification of claim" means any notification, whether in writing or other means acceptable under the terms of the insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;~~

"Person" has the same meaning as defined in § 38.2-501 of the Code of Virginia.

"Policy" means insurance policy, contract, certificate of insurance, evidence of coverage, or annuity.

"Proof of loss" means all necessary documentation reasonably required by the insurer to make a determination of benefit or coverage.

"Provider" means any person providing ~~health care~~ services pursuant to any accident and sickness policy.

"Third party claimant" means any ~~individual, corporation, association, partnership or other legal entity~~ person asserting a claim against ~~any individual, corporation, association, partnership or other legal entity~~ an insured or a provider filing a claim on behalf of an insured under an insurance policy ~~or insurance contract of an insurer;~~.

~~"Workers' Compensation insurance" includes, but is not limited to, Longshoremen's and Harbor Workers' Compensation.~~

14VAC5-400-25. Compliance standards.

It shall be a violation of this chapter if any person:

1. Willfully violates any provision of this chapter; or

2. Commits a violation of any provision of this chapter with such frequency as to indicate a general business practice.

14VAC5-400-30. File and record documentation.

~~The~~ A. An insurer's claim files shall be subject to examination by the ~~Commission or by its duly appointed designees~~ commission. ~~Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed.~~

B. An insurer shall maintain ~~all~~ claim data so that it is accessible and retrievable for examination. Claim data includes the claim number, line of coverage, date of loss and date received, as well as date of payment of the claim, date of denial, or date closed without payment.

C. Detailed documentation shall be maintained for each claim file in order to permit reconstruction of [~~all transactions~~ the insurer's activities] relating to each claim.

D. Each document within the claim file shall be noted as to date received, date processed, or date mailed.

E. All data and documentation shall be maintained for all open and closed files for the current year and, at a minimum, the three preceding calendar years.

14VAC5-400-40. Misrepresentation of policy provisions.

A. No ~~person shall knowingly obscure or conceal from first party claimants, either directly or by omission, benefits, coverages or other provisions of any insurance policy or insurance contract when such~~ insurer shall fail to fully disclose to a first party claimant all pertinent benefits, coverages, or other provisions ~~are pertinent to a claim~~ of an insurance policy under which a claim is presented and document the claim file accordingly.

B. No person shall misrepresent benefits, coverages, or other provisions of any insurance policy when such benefits, coverages, or other provisions are pertinent to a claim.

C. No insurer shall deny a claim for failure of a first party claimant to submit to physical examination or for failure of ~~a~~ the first party claimant to exhibit ~~the~~ property ~~which is the subject of the claim without proof of demand by such insurer and unfounded refusal by a claimant to do so~~ unless there is documentation of breach of the policy provisions in the claim file.

~~C.~~ D. No insurer shall~~, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a~~ deny a claim based on the failure of a claimant to give written notice of loss ~~or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with~~ required ~~by the~~ or give notice of loss within a specified period of time unless either or both requirements are policy ~~provisions~~ conditions. [~~An~~ If a policy requires a demonstration of prejudice for a claimant's failure to comply with a notice condition, an] insurer shall not be relieved of its obligations under the policy unless the failure ~~of a claimant~~ to ~~comply with~~ [~~give either written notice of loss or meet time limit requirements for notice~~ comply with the notice condition] ~~such time limit in fact the notice requirements~~ prejudices the insurer's rights ~~in accordance with the policy~~.

~~D.~~ E. No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim ~~payment~~. An insurer shall not include with any payment or in any accompanying correspondence an indication that payment is "final" or "a release" of any claim unless the policy limit has been paid or a compromise settlement has been agreed to by the first party claimant.

~~E.~~ F. No insurer shall issue ~~checks or drafts~~ a payment in partial settlement of a loss or claim ~~under~~ for a specific coverage ~~which contain~~ that contains language ~~that purports~~ purporting to release the insurer or ~~its insured~~ the first party ~~claimant~~ its insured from ~~its~~ total liability.

14VAC5-400-50. ~~Failure to acknowledge~~ Acknowledgment of pertinent communications.

A. ~~Every~~ An insurer, upon receiving notification of a claim shall, within ~~10 working~~ 15 calendar days, acknowledge the receipt of such notice to the ~~first party~~ claimant unless payment is made within such period of time.

~~Acknowledgment may be sent to a provider claimant~~, except that if a provider submits a claim, acknowledgment of the claim is satisfied if payment or denial of the claim is made to the provider within 21 calendar days. If an ~~acknowledgement~~ acknowledgment is made by means other than writing, an appropriate notation of such ~~acknowledgement~~ acknowledgment shall be made in the claim file of the insurer and dated. Notification given by a claimant to an agent of an insurer shall be notification to the insurer.

B. ~~Every insurer, upon~~ Upon receipt of any inquiry from the ~~Commission~~ commission respecting a claim, an insurer shall~~, within 15 working days of receipt of such inquiry,~~ furnish ~~an adequate~~ a complete response to the inquiry within ~~14~~ 15 calendar days of receipt.

C. An appropriate reply shall be made within ~~10 working~~ 15 calendar days on all other pertinent communications from a claimant ~~which~~ that reasonably suggest that a response is expected.

D. ~~Every insurer, upon~~ Upon receiving notification of a ~~first party~~ claim, an insurer shall promptly provide necessary claim forms, instructions, and reasonable assistance ~~so that first party claimants can, including language translations,~~ in order for the claimant to comply with the [applicable] policy conditions and the insurer's reasonable requirements~~; provided, however, every insurer, upon receiving notification of a third party claim, shall promptly provide the third party claimant with all necessary claim forms~~. Compliance with this ~~subdivision~~ subsection within ~~10 working~~ 15 calendar days of notification of a claim shall constitute compliance with subsection A of this section.

14VAC5-400-60. Standards for prompt investigation of claims.

A. ~~Unless otherwise specified in the policy, within 15 working~~ Within ~~10~~ 15 calendar days after receipt by the insurer of any required properly executed ~~proofs~~ proof of loss, a first party claimant shall be advised of the acceptance or denial of the claim by the insurer. If the insurer needs more time to determine whether a ~~first party~~ claim should be accepted or denied, it shall notify the first party claimant within 15 ~~working 10~~ calendar days after receipt of the ~~proofs~~ proof of loss giving the reasons more time is needed.

B. ~~Unless otherwise specified in the policy, if~~ If an investigation of a first party claim has not been completed, ~~every~~ an insurer shall, within 45 calendar days from the date of the notification of a first party claim and every 45 calendar days thereafter, send to the first party claimant a ~~letter~~ written notice setting forth the reasons additional time is needed for investigation.

14VAC5-400-70. ~~Standards for prompt, fair and equitable settlement of claims~~ Claims settlement standards applicable to all insurers.

A. Any denial of a claim ~~must, including a partial denial,~~ shall be given to a claimant in writing and the claim file of the insurer shall contain a copy of the denial.

B. ~~No~~ An insurer shall ~~deny a claim unless~~ provide a reasonable written explanation of the basis for ~~such~~ any claim denial ~~is included in the written denial~~. ~~Specific~~ The written explanation shall provide a specific reference to a policy provision, condition, or exclusion ~~shall be made when a denial is based on such provision, condition or exclusion~~, if any.

C. ~~Insurers~~ An insurer shall not ~~fail to settle first party claims~~ deny a first party claim on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

D. In any case where there is no dispute as to coverage or liability, ~~every~~ an insurer ~~must~~ shall offer to a first party claimant~~, or to a first party claimant's authorized representative,~~ an amount ~~which~~ that is fair and reasonable as shown by the investigation of the claim, provided the amount so offered is within policy limits and in accordance with policy provisions.

E. An insurer shall not unreasonably refuse to pay any claim in accordance with the provisions of the policy.

~~F. An insurer shall not compel a first party claimant to institute a suit to recover amounts due under the policy by offering substantially less than the amounts ultimately recovered in a suit brought by the first party claimant.~~

14VAC5-400-80. ~~Standards for prompt, fair and equitable settlements~~ Claims settlement standards applicable to automobile insurance.

A. Where liability is reasonably clear, ~~insurers~~ an insurer shall not recommend that a third party ~~claimants~~ claimant make ~~claims~~ a claim under ~~their~~ its own ~~policies~~ policy solely to avoid paying ~~claims~~ a claim under ~~such insurer's insurance~~ the insured's policy ~~or insurance contract~~.

B. ~~Insurers~~ An insurer shall not require a claimant to travel unreasonably either to inspect a replacement automobile, to obtain a repair estimate, or to have the automobile repaired at a specific repair shop.

C. ~~Insurers~~ An insurer shall~~, upon the claimant's request,~~ include the ~~first party claimant's~~ insured's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the ~~first party claimant~~ insured, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense.

D. ~~If~~ When an insurer prepares an estimate of the cost of automobile repairs, ~~such~~ the estimate shall be ~~in~~ an amount

for which ~~it may be reasonably expected~~ the damage ~~can~~ may reasonably be expected to be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located qualified repair shops. A total loss valuation shall be provided to the claimant upon request.

E. When the amount claimed is reduced because of betterment or depreciation, all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

F. When an insurer elects to repair and the automobile is ~~in fact~~ repaired in a repair shop ~~selected by the insurer or~~ designated by the insurer as a repair shop that will repair the automobile for the amount offered by the insurer, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

G. An insurer shall provide reasonable notice to a claimant prior to termination of payment for automobile storage charges. The insurer shall provide reasonable time for the claimant to remove the automobile from storage prior to the termination of payment.

~~Unless~~ H. If towing is a result of a covered loss, unless the insurer has provided a claimant with the ~~name~~ names of ~~a~~ specific towing ~~company~~ companies prior to the claimant's use of another towing company, the insurer shall pay all reasonable towing charges irrespective of the towing company used by the claimant.

~~H.~~ I. Prior to termination of payment for transportation or rental reimbursement expenses, the insurer shall provide reasonable time for the claimant to receive payment for automobile repairs ~~or replacement~~. In the event of a total loss, the insurer shall provide reasonable time for a claimant to ~~acquire~~ receive payment for a replacement automobile.

14VAC5-400-90. Claims settlement standards applicable to property policies.

When an insurer prepares an estimate of the cost of repairs to property, the estimate shall be an amount for which the damage [~~can~~ may reasonably be expected to] be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant.

14VAC5-400-100. Claims settlement standards applicable to accident and sickness insurance, life insurance, and annuities.

A. ~~An~~ A life or annuity insurer shall review any notice of claim or proof of loss submitted against one policy to determine if such notice of claim or proof of loss may fulfill the insured's obligation under any other policy issued by that insurer.

B. For accident and sickness claims, an insurer shall provide to [~~a first party claimant~~ the insured] an explanation of benefits describing the coverage for which the claim is paid or denied within ~~10~~ [~~15~~ 21] calendar days of receipt of proof of loss, unless otherwise specified in the policy. [If an insurer needs additional time to make a determination, it shall send a notice giving the reasons more time is needed to the insured within the timeframe in this subsection.]

C. An insurer shall ~~provide an explanation of benefits for~~ make available a summary of prescription drug claims ~~that may be provided in the aggregate no less frequently than quarterly~~ electronically or provide a written summary at the request of the insured. A summary of prescription drugs shall describe the amounts covered under the policy, amounts denied, and amounts payable by the insured and insurer.

~~C.~~ D. An insurer shall not arbitrarily or unreasonably deny or delay payment of a claim in which liability has become reasonably clear.

14VAC5-400-110. Severability.

If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

VA.R. Doc. No. R17-4967; Filed June 1, 2017, 11:31 a.m.

VIRGINIA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION PROGRAM

Proposed Regulation

REGISTRAR'S NOTICE: The Virginia Birth-Related Neurological Injury Compensation Program 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 program will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **14VAC10-10. Virginia Birth-Related Neurological Injury Compensation Program.**

Statutory Authority: § 38.2-5002.1 of the Code of Virginia.

Public Comment Deadline: August 26, 2017.

Agency Contact: George Deebo, Executive Director, Virginia Birth-Related Neurological Injury Compensation Program, 7501 Boulders View Drive, Suite 210, Richmond, VA 23225, telephone (804) 330-2417, ext. 3041, FAX (804) 330-3054.

Notice is hereby given that the Virginia Birth-Related Neurological Injury Compensation Program seeks comment on proposed changes to the program's guidelines. This amendment is required to conform the guidelines to the Governor's amendments that were included in Item 4-5.01 of Chapter 836 of the 2017 Acts of the Assembly and requires each admitted claimant's parent or legal guardian to purchase private health insurance to provide coverage for the expenses

set forth in § 38.2-5009 A 1 of the Code of Virginia. The act further requires the program to reimburse, upon receipt of proof of payment, solely the portion of the premiums that is attributable to the admitted claimant's post-admission coverage from the effective date of the Governor's amendment forward and paid for by the admitted claimant's parent or legal guardian.

The proposed changes are shown below and may be viewed on the program's website at www.vabirthinjury.com on the "News & Information" page. A copy of the proposed changes is available for inspection during normal business hours at the program's office located at 7501 Boulders View Drive, Suite 210, Richmond, VA 23225. The program will provide a copy in response to written requests. All comments must be submitted in written form and be directed to the Board of Directors at the above address. Comments also may be emailed to admasst@vabirthinjury.com. All comments must include the name, address, and telephone number of the submitting party. This 60-day comment period ends August 26, 2017.

14VAC10-XX. Other Procedures - Insurance.

Because the Program generally is the payer of last resort, ~~it~~ each admitted claimant's parent or legal guardian must purchase private health insurance to provide coverage for the actual medically necessary and reasonable expenses as described in § 38.2-5009 A 1 of the Code of Virginia that were, or are, incurred as a result of the admitted claimant's birth-related neurological injury and for the admitted claimant's benefit. The admitted claimant's parent or legal guardian may request the Program's facilitator's assistance in obtaining a suitable health insurance policy for the admitted claimant if he or she has no pre-existing coverage for the admitted claimant upon the admitted claimant's admission into the Program. The Program will reimburse, upon receipt of proof of payment, solely the portion of the premiums that is attributable to the admitted claimant's post-admission coverage and paid for by the admitted claimant's parent or legal guardian. The Program must be provided with a copy of the applicable health insurance policy~~, if one exists, or a complete description of applicable coverage,~~ before benefits are paid by the Program. It is the responsibility of the parents or guardians to seek benefits for which an admitted claimant is eligible by submitting requests to the Program's Third Party Administrator or other appropriate staff person, as indicated on the Program's website. In addition, the parents or guardians of the admitted claimant must identify a primary care physician.

Claimants must utilize the primary insurer's in-network providers and facilities unless otherwise authorized by the Program. Utilizing non-network or non-participating providers or facilities may result in reduced payment or non-payment/non-reimbursement of incurred expenses.

VA.R. Doc. No. R17-19; Filed June 8, 2017, 11:03 a.m.

TITLE 15. JUDICIAL

VIRGINIA STATE BAR

Final Regulation

REGISTRAR'S NOTICE: The Virginia State Bar is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts agencies of the Supreme Court.

Title of Regulation: **15VAC5-30. Rules of Procedure of the Clients' Protection Fund of the Virginia State Bar (repealing 15VAC5-30-10 through 15VAC5-30-80).**

Statutory Authority: § 54.1-3910 of the Code of Virginia; Part 6, § IV, Paragraph 16 of the Rules of Supreme Court of Virginia.

Effective Date: June 26, 2017.

Agency Contact: Stephanie G Blanton, Executive Assistant, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219, telephone (804) 775-0576, or email blanton@vsb.org.

Summary:

The provisions for the Clients' Protection Fund are contained in Part 6, § IV, Paragraph 16 of the Rules of Supreme Court of Virginia; therefore, 15VAC5-30 is repealed.

VA.R. Doc. No. R17-4652; Filed June 2, 2017, 11:27 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia State Bar is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts agencies of the Supreme Court.

Title of Regulation: **15VAC5-70. Mandatory Continuing Legal Education Regulation (repealing 15VAC5-70-10 through 15VAC5-70-140).**

Statutory Authority: .§ 54.1-3910 of the Code of Virginia; Part 6, § IV, Paragraph 17 of the Rules of the Supreme Court of Virginia.

Effective Date: June 26, 2017.

Agency Contact: Stephanie G Blanton, Executive Assistant, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219, telephone (804) 775-0576, or email blanton@vsb.org.

Summary:

Mandatory continuing legal education requirements for attorneys are contained in Part 6, § IV, Paragraph 17 of the Rules of Supreme Court of Virginia; therefore, 15VAC5-70 is repealed.

VA.R. Doc. No. R17-5153; Filed May 31, 2017, 3:20 p.m.

STATE AIR POLLUTION CONTROL BOARD

State Implementation Plan Proposed Revision

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to attain and maintain the national ambient air quality standard for ozone in the Northern Virginia Ozone Nonattainment Area. The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comments on the overall plan and on the issue of whether the plan demonstrates Virginia's ability to implement EPA's emissions statement requirements for ozone nonattainment areas.

Public comment period: June 26, 2017, to July 26, 2017.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed at the end of this notice. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Description of proposal: The proposed revision consists of a certification that Virginia's existing emissions statement requirements, covering the Washington, DC-MD-VA nonattainment area for the 2008 ozone National Ambient Air Quality Standards (NAAQS), are at least as stringent as the requirements at § 182(a)(3)(B) of the federal Clean Air Act. The nonattainment area consists of the Counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (§ 182(a)(3)(B) of the federal Clean Air Act). It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All materials received are part of the public record.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website at http://www.deq.virginia.gov/Programs/Air/PublicNotices/airplansandprograms.aspx. The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070, and

2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

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

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Proposed Renewal of Variances to Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services

Notice of action: The Department of Behavioral Health and Developmental Services (DBHDS), in accordance with 12VAC35-115-220 (Variances), of the Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115), hereafter referred to as the "Human Rights Regulations," is announcing an opportunity for public comment on the applications for proposed renewal of existing variances to the Human Rights Regulations. The purpose of the regulations is to ensure and protect the legal and human rights of individuals receiving services in facilities or programs operated, licensed, or funded by DBHDS.

Each variance application references the specific part of these regulations to which a variance is needed, the proposed wording of the substitute rule or procedure, and the justification for a variance. Such application also describes time limits and other conditions for duration and the circumstances that will end the applicability of the variance. After considering all available information including comments, DBHDS intends to submit a written decision deferring, disapproving, modifying, or approving each variance renewal application. All variances shall be approved for a specific time period. The decision and reasons for variance will be published in a later issue of the Virginia Register of Regulations.

Purpose of notice: DBHDS is seeking comment on the applications for proposed renewal of the following existing variances to the Human Rights Regulations at four private providers.

Variance to Procedures to Ensure Dignity:

12VAC35-115-50 C 7 and C 8: In order to maintain the safety and security of residents (youth) the programs restrict communication via telephone and visitation to only those placed on a list generated at admission by the parent/legal guardian and the resident.

1. Holiday House (C 8 only).

2. James Barry Robinson Center.

3. Kempsville Center for Behavioral Health. (The Clinical Treatment Team is also involved in the creation of the list.)

4. Newport News Behavioral Health Center. (The visitation list is generated by the Admissions Coordinator.)

5. Virginia Beach Department of Human Services Residential Crisis Stabilization Program (The Recovery Center). (Through the first level of the program, individuals are limited from visits with family and friends, and phone calls are limited to five minutes per shift. There is no limitation on private communication with attorneys, judges, legislators, clergy, licensed health care practitioners, authorized representatives, advocates, the inspector general, or employees of the protection and advocacy agency.)

Variance to Procedures for Restrictions on Freedoms of Everyday Life:

12VAC35-115-100 A 1 a and A 1 g: In order to utilize a point level system (Behavior Management Model) affecting movement of an individual within the service setting (grounds, community, purchases in program store).

1. Harbor Point Behavioral Health Center

2. Kempsville Center for Behavioral Health (Requiring an individual earn points through a level system in order to access the store.)

Variance to Procedures for Use of Seclusion, Restraint, and Time Out

12VAC35-115-110 C 16: In order to utilize time out as part of the unit restriction policy.

Kempsville Center for Behavioral Health. (At times deemed necessary due to unsafe behaviors, to provide additional safety and security measures by preventing movement by an individual from their assigned unit for periods longer than 30 minutes.)

Variances to these regulations by the providers listed above are reviewed by the State Human Rights Committee (SHRC) at least annually, with reports to the SHRC regarding the variances as requested. These proposed variance renewals are expected to be considered by the SHRC at its meeting on September 15, 2017, at the DBHDS Central Office in Richmond at the address listed at the end of this notice.

Public comment period: June 26, 2017, through July 26, 2017.

Description of proposal: The proposed variance applications for renewal must comply with the general requirements of 12VAC35-115-220 (Variances), of the Human Rights Regulations.

How to comment: DBHDS accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DBHDS by the last day of the comment period. All information received is part of the public record.

To review a proposal: Variance applications and any supporting documentation may be obtained by contacting the DBHDS representative named below.

Contact Information: Deborah Lochart, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, 1220 East Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0032, FAX (804) 804-371-2308, or email deb.lochart@dbhds.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Core Solar SPV XIII, LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Chesapeake

Core Solar SPV XIII, LLC has provided notice to the Department of Environmental Quality of its intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar). The project will be located on 908 acres across multiple parcels off Shillelagh Road, approximately five miles south of Chesapeake. The project is anticipated to have a nameplate capacity of 100 megawatts and be comprised of approximately 350,000 solar panels.

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

Sigora Solar Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Wythe County

Sigora Solar has provided notice to the Department of Environmental Quality of its intent to submit the necessary documentation for a permit by rule for a small renewable energy (solar) project in Wythe County. The proposed site for development in the district of Fort Chiswell of Wythe County

is located about a mile from the confluence of I-81 and I-77 South, near the Town of Wytheville. The parcel is identified as #26-39 and can be found using GPS coordinates 36.964, -81.050. Irregularly shaped, the 3300-foot by 1700-foot site measures 126.26 acres and is accessible via Lovers Lane and Pepsi Way. The proposed solar photovoltaic plant will consist of around 115,000 photovoltaic modules with a total rated capacity of approximately 40 megawatts.

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

FORENSIC SCIENCE BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Forensic Science Board conducted a small business impact review of **6VAC40-20, Regulations for Breath Alcohol Testing**, and determined that this regulation should be retained in its current form. The Forensic Science Board is publishing its report of findings dated May 30, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation does not have an economic impact on small businesses. Small businesses are eligible to submit their preliminary breath test devices for evaluation by the Department of Forensic Science. The criteria for approval of preliminary breath devices are set forth in 6VAC40-20-170. No fees are solicited by the Department for this approval process, and devices that are approved are periodically published in the Virginia Register of Regulations. Because it is implementing Code of Virginia mandated requirements imposed on the department, there is a continued need for the regulation. No complaints have been received concerning this regulation. While future changes in technology may require amendments to this regulation, it currently meets Code of Virginia requirements and user agencies' needs.

Contact Information: Amy M. Curtis, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-2281, FAX (804) 786-6857, or email amy.curtis@dfs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Forensic Science Board conducted a small business impact review of **6VAC40-30, Regulations for the Approval of Field Tests for Detection of Drugs**, and determined that this regulation should be retained in its current form. The Forensic Science Board is publishing its report of findings dated May 30, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation has no significant economic impact on small businesses. Small businesses are eligible to submit their product for evaluation and approval by the Department of Forensic Science. Fees for approval are de minimis: $50 for each drug for which individual evaluation is requested and the actual cost of the street drug preparation (if any). Field test kits that are approved are periodically published in the Virginia Register of Regulations. Because it is Code of Virginia mandated, there is a continued need for the regulation. No complaints have been received concerning this regulation. The regulation meets Code of Virginia requirements and user agency and manufacturer needs.

Contact Information: Amy M. Curtis, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-2281, FAX (804) 786-6857, or email amy.curtis@dfs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Forensic Science Board conducted a small business impact review of **6VAC40-40, Regulations for the Implementation of the Law Permitting DNA Analysis upon Arrest for all Violent Felonies and Certain Burglaries**, and determined that this regulation should be retained in its current form. The Forensic Science Board is publishing its report of findings dated May 30, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation has no significant economic impact on small businesses. Because it was mandated by legislation, there is a continued need for the regulation. No complaints have been received concerning this regulation. The regulation meets Code of Virginia requirements and user agency needs. Changes in technology, particularly the eventual move to rapid DNA technology, may eventually require amendment of this regulation, but those technological advancements have not been deployed at the time of this review.

Contact Information: Amy M. Curtis, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-2281, FAX (804) 786-6857, or email amy.curtis@dfs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Forensic Science Board conducted a small business impact review of **6VAC40-50, Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material**, and determined that this regulation should be retained in its current form. The Forensic Science Board is publishing its report of findings dated May 30, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation has no significant economic impact on small businesses. Small businesses are eligible to submit their

product for evaluation and approval by the Department of Forensic Science. Fees for approval are de minimis: $50 for each marijuana field test for which individual evaluation is requested. Marijuana field tests that are approved are periodically published in the Virginia Register of Regulations. Because it is Code of Virginia mandated, there is a continued need for the regulation. No complaints have been received concerning this regulation. The regulation meets Code of Virginia requirements and user agency and manufacturer needs.

Contact Information: Amy M. Curtis, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-2281, FAX (804) 786-6857, or email amy.curtis@dfs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Forensic Science Board conducted a small business impact review of **6VAC40-60, DNA Data Bank Regulations**, and determined that this regulation should be retained in its current form. The Forensic Science Board is publishing its report of findings dated May 30, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation has no significant economic impact on small businesses. Because it is Code of Virginia mandated, there is a continued need for the regulation. No complaints have been received concerning this regulation. The regulation meets Code of Virginia requirements and user agency needs. Changes in technology may eventually require amendment of this regulation, but those technological advancements have not been deployed at the time of this review.

Contact Information: Amy M. Curtis, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-2281, FAX (804) 786-6857, or email amy.curtis@dfs.virginia.gov.

BOARD OF MEDICAL ASSISTANCE SERVICES

Notice of Intent to Amend the Virginia State Plan for Medical Assistance (Pursuant to § 1902(a)(13) of the Social Security Act (42 USC § 1396a(a)(13)))

Public Comment Period: May 31, 2017, through June 30, 2017.

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (12VAC30-70).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, or via email at william.lessard@dmas.virginia.gov.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impacts of the items listed below, particularly the potential impact on access for the following (i) no inflation for hospitals, graduate medical education payments, indirect medical education payments, disproportionate share hospital payments, and outpatient hospital rates; and (ii) the limit on inflation for home health and outpatient rehabilitation agencies for fiscal year 2018. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Lessard and such comments are available for review upon request. Comments may also be submitted, in writing, on the Virginia Regulatory Town Hall public comment forum at www.townhall.virginia.gov, on the General Notices page at **https://townhall.virginia.gov/L/generalnotice.cfm.**

Reimbursement Changes Affecting Hospitals (12VAC30-70)

1. With one exception, there will be no inflation adjustment for inpatient operating rates for hospitals (including freestanding, psychiatric, and long stay hospitals), graduate medical education (GME) payments, indirect medical education (IME) payments, disproportionate share hospital (DSH) payments in fiscal year 2018 (July 1, 2017, through June 30, 2018). Children's Hospital of the King's Daughters will receive an inflation adjustment.

The expected decrease in annual aggregate expenditures is $25,812,741.

2. Effective July 1, 2017, the Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to increase the formula for indirect medical education (IME) for freestanding children's hospitals with greater than 50% Medicaid utilization in 2009. The formula for these hospitals for indirect medical education for inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers shall be identical to the formula for Type One hospitals. The IME payments shall continue to be limited such that total payments do not exceed the federal uncompensated care cost limit to which disproportionate share hospital payments are subject, excluding third party reimbursement for Medicaid eligible patients.

The expected increase in annual aggregate expenditures is $8 million.

3. Effective July 1, 2017, supplemental payments shall be made for 15 new medical residency slots beginning in fiscal year 2018. The department shall make supplemental payments to the following hospitals for the specified number of primary care residencies: Sentara Norfolk General (two residencies), Carilion Medical Center (six residencies), Centra Lynchburg General Hospital (one residency),

Riverside Regional Medical Center (two residencies), Bon Secours St. Francis Medical Center (two residencies). The department shall make supplemental payments to Carilion Medical Center for two psychiatric residencies.

The supplemental payment for each new qualifying residency slot shall be $100,000 annually minus any Medicare residency payment for which the hospital is eligible. Supplemental payments shall be made for up to four years for each new qualifying resident. The hospital will be eligible for the supplemental payments as long as the hospital maintains the number of residency slots in total and by category as a result of the increase in fiscal year 2018. Payments shall be made quarterly following the same schedule for other medical education payments.

Subsequent to the award of a supplemental payment, the hospital must provide documentation annually by June 1 that they continue to meet the criteria for the supplemental payments and report any changes during the year to the number of residents.

The expected increase in annual aggregate expenditures is $1.5 million.

4. Effective July 1, 2017, supplemental payments shall be made to the primary teaching hospitals affiliated with an Liaison Committee on Medical Education (LCME) accredited medical school located in Planning District 23 that is a political subdivision of the Commonwealth and an LCME-accredited medical school located in Planning District 5 that has a partnership with a public university.

The supplemental payment for each qualifying hospital shall be the difference between the hospital's Medicaid payments and the hospitals disproportionate share limit (OBRA 93 DSH limit) for the most recent year for which its disproportionate share limit has been calculated.

The expected increase in annual aggregate expenditures is approximately $82 million.

Reimbursement Changes Affecting Nursing Facilities (12VAC30-90)

1. Effective July 1, 2017, the price for each nursing facility peer group shall be based on the following adjustment factors:

Direct costs will increase from 105% to 106.8% of the peer group day-weighted median neutralized and inflated cost per day for freestanding nursing facilities.

Indirect costs will increase from 100.7% to 101.3% of the peer group day-weighted median inflated cost per day for freestanding nursing facilities.

The expected increase in annual aggregate expenditures is $6,521,366.

2. Effective July 1, 2017, through June 30, 2020, nursing facilities located in the former Danville Metropolitan Statistical Area (MSA) shall be paid the operating rates calculated for the Other MSA peer group. For purposes of calculating rates under the rebasing effective July 1, 2017, DMAS shall use the peer groups based on the existing regulations. For future rebasings, DMAS shall permanently move these facilities to the Other MSA peer group.

The expected increase in annual aggregate expenditures is $3,207,820.

3. Effective July 1, 2017, DMAS shall increase the direct and indirect operating rates under the nursing facility price based reimbursement methodology by 15% for nursing facilities where at least 80% of the resident population has one or more of the following diagnoses: quadriplegia, traumatic brain injury, multiple sclerosis, paraplegia, or cerebral palsy. In addition, a qualifying facility must have at least 90% Medicaid utilization and a case mix index of 1.15 or higher in fiscal year 2014.

The expected increase in annual aggregate expenditures is $1,239,022.

Reimbursement Changes Affecting Other Services (12VAC30-80)

1. With one exception, there will be no inflation adjustment for outpatient hospital rates for hospitals in fiscal year 2018 (July 1, 2017, through June 30, 2018). Children's Hospital of the King's Daughters will receive an inflation adjustment.

The expected decrease in annual aggregate expenditures is $6,453,185.

2. Add rates for new peer support services for children and adults with mental health conditions or substance use disorders.

The expected increase in annual expenditures is $5,797,290.

3. DMAS shall limit inflation to 50% of the inflation factor for home health and outpatient rehabilitation agencies for FY2018.

The expected decrease in annual aggregate expenditures is $221,624.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

Residential Treatment Services Manual Draft for Stakeholder Input

The Residential Treatment Services Provider Manual is posted on the DMAS website at http://www.dmas.virginia.gov/Content_pgs/obh-home.aspx for public comment through June 16, 2017.

The Residential Treatment Services Provider Manual will be finalized and officially posted by June 30, 2017, at https://www.virginiamedicaid.dmas.virginia.gov/wps/portal/ProviderManual.

Public Comment Period: June 1, 2017, through June 16, 2017.

Contact Information: Emily McClellan, Regulatory Manager, Department of Medical Assistance Services, Division of Policy and Research, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Special Order for Appalachian EXPO Center

An enforcement action has been proposed for Wythe County for violations at the Appalachian EXPO Center in Wythe County, Virginia. The State Water Control Board proposes to issue a special order by consent to Wythe County to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Kristen Sadtler will accept comments by email at kristen.sadtler@deq.virginia.gov, FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from June 26, 2017, to July 26, 2017.

Proposed Consent Special Order for Burnt Chimney Dairy, LLC

An enforcement action has been proposed with Burnt Chimney Dairy, LLC for violations in Franklin County, Virginia. The special order by consent will address and resolve violations of environmental law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jerry Ford, Jr. will accept comments by email at jerry.ford@deq.virginia.gov, or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from June 26, 2017, to July 26, 2017.

Proposed Consent Order for the Town of Edinburg

An enforcement action has been proposed for the Town of Edinburg for violations at the Edinburg sewage treatment plant in Edinburg, Virginia. The State Water Control Board proposes to issue a consent order to the Town of Edinburg to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Tamara Ambler will accept comments by email at tamara.ambler@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, from June 26, 2017, to July 26, 2017.

Proposed Enforcement Action for Hills Coal Company, Inc.

An enforcement action has been proposed for Hills Coal Company, Inc. for violations of the State Water Control Law and regulations and the company's VPDES General Permit for Stormwater Discharges (Registration No. VAR050090) at 7080 Carrollton Pike, U.S. Highway 58 West, near Galax, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Ralph T. Hilt will accept comments by email at ralph.hilt@deq.virginia.gov, FAX at (276) 676-4899, or postal mail at Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, from June 27, 2017, to July 27, 2017.

Proposed Consent Special Order for Perkinson Construction, LLC

An enforcement action has been proposed for Perkinson Construction, LLC for violations at the Buren Property in Prince George County, Virginia. The State Water Control Board proposes to issue a special order by consent to Perkinson Construction, LLC to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Kristen Sadtler will accept comments by email at kristen.sadtler@deq.virginia.gov, FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from May 29, 2017, to July 26, 2017.

Modification of Water Quality Management Planning Regulation

Notice of action: The State Water Control Board (board) is considering amendments to the regulation on water quality management planning in accordance with the Public Participation Procedures for Water Quality Management Planning. A regulation is a general rule governing people's rights or conduct that is upheld by a state agency.

Purpose of notice: The board is seeking comments through the Department of Environmental Quality on the proposed amendments. The purpose of the amendments to the state's Water Quality Management Planning Regulation (9VAC25-720) is to revise the Town of South Hill's wastewater treatment plant (WWTP) wasteload allocations for $CBOD_5$ and TKN.

Public comment period: June 26, 2017, through July 26, 2017.

Description of proposed action: The proposed amendments are to 9VAC25-720-80 B and would modify the existing wasteload allocation for the South Hill WWTP (VA0069337), located in the Roanoke River Basin. The current water quality management plan (WQMP) was adopted by the board at its August 31, 2004, meeting. As dictated in the WQMP, the South Hill WWTP is currently limited by an Apr-Nov, $CBOD_5$ wasteload allocation of 60.6 kg/d. The basis of the limit was a stream analysis and modeling effort conducted in 1991. In 1978, the Steady State CBOXYSAG model was calibrated and verified the South Hill discharge to Flat Creek. To be consistent with previous modeling efforts, the CBOXYSAG model was executed to generate effluent limits. The VPDES permit includes an expanded design flow of three MGD and corresponding seasonal limits for $CBOD_5$ and TKN. The basis of these limits is the utilization of the Regional Model for Free Flowing Streams Version 4.10. In order to be consistent with previous modeling efforts, the same parameters were used in the updated modeling software. DEQ staff recommends that the board adopt the following modification for 9VAC25-720-80 B, for the South Hill WWTP (VA0069337): revise the $CBOD_5$, Apr-Nov wasteload allocation of 60.6 kg/d to $CBOD_5$, Apr-Nov – 113.5 kg/d; and add $CBOD_5$, Dec-Mar – 204 kg/d; TKN, Apr-Nov – 45 kg/d; and TKN, Dec-Mar – 56.8 kg/d.

Affected waterbodies and localities through the modified wasteload allocations: Roanoke River Basin (9VAC25-720-80 B):

South Hill WWTP (VA0069337) – Flat Creek Revise the $CBOD_5$, Apr-Nov waste load allocation of 60.6 kg/d to $CBOD_5$, Apr-Nov – 113.5 kg/d; and add $CBOD_5$, Dec-Mar – 204 kg/d; TKN, Apr-Nov – 45 kg/d; and TKN, Dec-Mar – 56.8 kg/d.

How to comment: The DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens that submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

To review documents: Contact the DEQ representative named below for any information.

Contact for public comments, document requests, and additional information: Amanda Gray, Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (434) 582-6227, or email amanda.gray@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 11th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *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 https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in 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.