



# VIRGINIA

## REGISTER OF REGULATIONS

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Virginia Code Commission

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# VIRGINIA REGISTER INFORMATION PAGE

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**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**

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing 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 proposed regulation 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 of Regulations 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 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 the final regulation contains changes made after publication of the proposed regulation that 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*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, 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 alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

## **EMERGENCY REGULATIONS**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at [register.dls.virginia.gov](http://register.dls.virginia.gov).

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. 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. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

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

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **Jennifer L. McClellan**; **Ward L. Armstrong**; **Nicole Cheuk**; **Rita Davis**; **Leslie L. Lilley**; **Christopher R. Nolen**; **Don L. Scott, Jr.**; **Charles S. Sharp**; **Marcus B. Simon**; **Samuel T. Towell**; **Malfourd W. Trumbo**.

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

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# PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the Virginia Register of Regulations website (<http://register.dls.virginia.gov>).

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## August 2020 through August 2021

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
37:1	August 12, 2020	August 31, 2020
37:2	August 26, 2020	September 14, 2020
37:3	September 9, 2020	September 28, 2020
37:4	September 23, 2020	October 12, 2020
37:5	October 7, 2020	October 26, 2020
37:6	October 21, 2020	November 9, 2020
37:7	November 4, 2020	November 23, 2020
37:8	November 16, 2020 ( <b>Monday</b> )	December 7, 2020
37:9	December 2, 2020	December 21, 2020
37:10	December 14, 2020 ( <b>Monday</b> )	January 4, 2021
37:11	December 28, 2020 ( <b>Monday</b> )	January 18, 2021
37:12	January 13, 2021	February 1, 2021
37:13	January 27, 2021	February 15, 2021
37:14	February 10, 2021	March 1, 2021
37:15	February 24, 2021	March 15, 2021
37:16	March 10, 2021	March 29, 2021
37:17	March 24, 2021	April 12, 2021
37:18	April 7, 2021	April 26, 2021
37:19	April 21, 2021	May 10, 2021
37:20	May 5, 2021	May 24, 2021
37:21	May 19, 2021	June 7, 2021
37:22	June 2, 2021	June 21, 2021
37:23	June 16, 2021	July 5, 2021
37:24	June 30, 2021	July 19, 2021
37:25	July 14, 2021	August 2, 2021
37:26	July 28, 2021	August 16, 2021

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHARMACY

#### Initial Agency Notice

**Title of Regulation: 18VAC110-60. Regulations Governing Pharmaceutical Processors.**

**Statutory Authority:** § 54.1- 3442.5 of the Code of Virginia.

**Name of Petitioner:** Virginia Medical Cannabis Coalition.

**Nature of Petitioner's Request:** "18VAC110-60-170: Remove the two-year requirement for pharmacy technicians employed by a pharmaceutical processor. 18VAC110-60-220(F, G): Visitors Policy: Remove the requirement that the Board must approve or waive all visitors. Also, allow younger minor children to accompany their parent into the dispensing area and allow visitors to assist someone into the facility that might have mobility issues. 18VAC110-60-230(A)(1), (B): Inventory: Remove requirement that a pharmacist or pharmacy technician must conduct inventory. Change to require a pharmacist or pharmacy technician to verify the inventory, not conduct. 18VAC110-60-290: Product Label: Remove requirements for duplicative information between the product label and patient label. 18VAC110-60-290(B)(2)(e): Expiration Dates: Set a specific expiration date range for products until stability testing is feasible. Specifically consider between 6 and 12 months. 18VAC110-60-300(F): Remediation: Allow for remediation if a sample does not pass testing requirements. 18VAC110-60-310(A)(1): VCPRL: Allow non-licensed personnel to access the VCPRL to allow access to the processor. 18VAC110-60-310(C): Patient Labels: Remove requirements for duplicative information between the product label and patient label (same request as product label)."

**Agency Plan for Disposition of Request:** In accordance with Virginia law, the petition has been filed with the Registrar of Regulations and will be published on August 3, 2020. Public comment on the petition may be sent by email or postal mail, or posted on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Comment will be accepted until August 25, 2020. Following receipt of all comments on the petition to amend the regulation, the board will decide whether to make any change to the regulatory language in Regulations Governing Pharmaceutical Processors. This matter will be on the board's agenda for its meeting scheduled for September 9, 2020, and the petitioner will be informed of the board's decision after that meeting.

**Public Comment Deadline:** August 25, 2020.

**Agency Contact:** Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300,

Richmond, VA 23233, telephone (804) 367-4456, or email [caroline.juran@dhp.virginia.gov](mailto:caroline.juran@dhp.virginia.gov).

VA.R. Doc. No. R20-59 Filed July 15, 2020, 11:29 a.m.

### BOARD OF COUNSELING

#### Initial Agency Notice

**Title of Regulation: 18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants.**

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

**Name of Petitioner:** Sharon Watson.

**Nature of Petitioner's Request:** To amend regulations to specify that certified substance abuse counselors (CSACs) cannot engage in independent or autonomous practice regardless of supervision and that such practice may be grounds for disciplinary action.

**Agency Plan for Disposition of Request:** In accordance with Virginia law, the petition will be filed with the Registrar of Regulations and published on August 3, 2020, with public comment requested until September 2, 2020. It will also be placed on the Virginia Regulatory Town Hall and available for comments to be posted electronically. At its first meeting following the close of comment, which is scheduled for November 6, 2020, the board will consider the request to amend regulations and all comment received in support or opposition. The petitioner will be informed of the board's response and any action it approves.

**Public Comment Deadline:** September 2, 2020.

**Agency Contact:** Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, or email [jaime.hoyle@dhp.virginia.gov](mailto:jaime.hoyle@dhp.virginia.gov).

VA.R. Doc. No. R20-58 Filed July 9, 2020, 8:21 a.m.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-410, Occoquan Policy**, and determined that this regulation should be amended to make technical corrections.

The final regulatory action to amend 9VAC25-410, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (803) 698-4238, or email [melissa.porterfield@deq.virginia.gov](mailto:melissa.porterfield@deq.virginia.gov).

The final regulatory action to repeal 24VAC30-570, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Jo Anne Maxwell, Director, Governance and Legislative Affairs, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, or email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).



## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### DEPARTMENT OF TRANSPORTATION

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Transportation conducted a periodic review and a small business impact review of **24VAC30-17, Solicitation and Use of VDOT Buildings and Grounds for Nonwork Purposes**, and determined that this regulation should be repealed.

The final regulatory action to repeal 24VAC30-17, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Jo Anne Maxwell, Director, Governance and Legislative Affairs, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, or email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

### COMMONWEALTH TRANSPORTATION BOARD

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and a small business impact review of **24VAC30-570, Procedures for Inclusion of Routes into the Non-Interstate Qualifying Network and Virginia Access Systems**, and determined that this regulation should be repealed.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 9. ENVIRONMENT

### STATE WATER 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 Water Control Board intends to consider amending **9VAC25-194, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities**. The purpose of the proposed action is to amend and reissue the existing general permit that expires on October 15, 2022. This general permit regulation establishes limitations, monitoring requirements, and other special conditions for point source discharge of vehicle wash wastewater from vehicle wash operations, such as car wash and rental car businesses, car and truck dealerships, and local or government fleet vehicle and equipment washing, to surface waters in order to maintain surface water quality.

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

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

Public Comment Deadline: September 2, 2020.

Agency Contact: Elleanore Daub, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4178, or email [elleanore.daub@deq.virginia.gov](mailto:elleanore.daub@deq.virginia.gov).

V.A.R. Doc. No. R20-6442; Filed July 6, 2020, 10:22 a.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### Final Regulation

**REGISTRAR NOTICE:** This action is exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to subsection A of § 10.1-1330 of the Code of Virginia, which states that the provisions of Article 4 (§ 10.1-1329 et seq.) of Title 10.1 of the Code of Virginia shall be incorporated by the Department of Environmental Quality, without further action by the State Water Control Board, into the final regulation adopted on April 19, 2019, and published in the Virginia Register on May 27, 2019.

**Title of Regulation:** 9VAC5-140. Regulation for Emissions Trading Programs (amending 9VAC5-140-6020, 9VAC5-140-6040, 9VAC5-140-6050, 9VAC5-140-6150, 9VAC5-140-6170, 9VAC5-140-6190, 9VAC5-140-6200, 9VAC5-140-6210, 9VAC5-140-6220, 9VAC5-140-6230, 9VAC5-140-6250, 9VAC5-140-6260, 9VAC5-140-6330, 9VAC5-140-6380, 9VAC5-140-6420; adding 9VAC5-140-6325; repealing 9VAC5-140-6045, 9VAC5-140-6211, 9VAC5-140-6215, 9VAC5-140-6430, 9VAC5-140-6435).

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

**Effective Date:** July 10, 2020.

**Agency Contact:** Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4178, or email [karen.sabasteanski@deq.virginia.gov](mailto:karen.sabasteanski@deq.virginia.gov).

#### Summary:

*Chapters 1219 and 1280 of the 2020 Acts of Assembly establish the Clean Energy and Community Flood Preparedness Act (§ 10.1-1329 et seq. of the Code of Virginia). Subsection A of § 10.1-1330 of the Code of Virginia requires the Department of Environmental Quality, without further action by the State Air Pollution Control Board, amend Part VII of 9VAC5-140, Regulation for Emissions Trading Program, to comport with the full Regional Greenhouse Gas Initiative CO<sub>2</sub> emissions trading program and associated auction. The amendments fulfill this requirement.*

#### 9VAC5-140-6020. Definitions.

A. As used in this part, all words or terms not defined here shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by the context.

B. For the purpose of this part and any related use, the words or terms shall have the meanings given them in this section.

C. Terms defined.

"Account number" means the identification number given by the department or its agent to each COATS account.

"Acid ~~rain~~ Rain emission limitation" means, as defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide (SO<sub>2</sub>) or nitrogen oxides (NO<sub>x</sub>) under the Acid Rain Program under Title IV of the CAA.

"Acid Rain Program" means a multistate SO<sub>2</sub> and NO<sub>x</sub> air pollution control and emission reduction program established by the administrator under Title IV of the CAA and 40 CFR Parts 72 through 78.

"Adjustment for banked allowances" means an adjustment applied to the Virginia CO<sub>2</sub> Budget Trading Program base budget for allocation years 2021 through 2025 to address allowances held in general and compliance accounts, including compliance accounts established pursuant to the CO<sub>2</sub> Budget Trading Program, but not including accounts opened by participating states, ~~that are in addition to the aggregate quantity of emissions from all CO<sub>2</sub> budget sources in all of the participating states at the end of the initial control period in 2020 and as reflected in the CO<sub>2</sub> Allowance Tracking System on March 15, 2021.~~

"Administrator" means the administrator of the U.S. Environmental Protection Agency or the administrator's authorized representative.

"Allocate" or "allocation" means the determination by the department of the number of ~~conditional~~ conditional CO<sub>2</sub> allowances recorded in the ~~conditional~~ conditional CO<sub>2</sub> allowance account of a CO<sub>2</sub> budget unit ~~or to the Department of Mines, Minerals and Energy (DMME) pursuant to 9VAC5-140-6211.~~

"Allocation year" means a calendar year for which the department allocates ~~conditional~~ conditional CO<sub>2</sub> allowances pursuant to Article 5 (9VAC5-140-6190 et seq.) of this part. The allocation year of each ~~conditional~~ conditional CO<sub>2</sub> allowance is reflected in the unique identification number given to the allowance pursuant to 9VAC5-140-6250 C.

"Allowance auction" or "auction" means an auction in which the department or its agent offers ~~conditional~~ CO<sub>2</sub> allowances for sale.

"Attribute" means a characteristic associated with electricity generated using a particular renewable fuel, such as its generation date, facility geographic location, unit vintage, emissions output, fuel, state program eligibility, or other characteristic that can be identified, accounted for, and tracked.

"Attribute credit" means a credit that represents the attributes related to one megawatt-hour of electricity generation.

"Automated Data Acquisition and Handling System" or "DAHS" means that component of the Continuous Emissions Monitoring System (CEMS), or other emissions monitoring system approved for use under Article 8 (9VAC5-140-6330 et seq.) of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Article 8 (9VAC5-140-6330 et seq.) of this part.

"Billing meter" means a measurement device used to measure electric or thermal output for commercial billing under a contract. The facility selling the electric or thermal output shall have different owners from the owners of the party purchasing the electric or thermal output.

"Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

"CO<sub>2</sub> allowance" means a limited authorization by the department or ~~another~~ participating state under the CO<sub>2</sub> Budget Trading Program to emit up to one ton of CO<sub>2</sub>, subject to all applicable limitations contained in this part. ~~CO<sub>2</sub> offset allowances generated by other participating states will be recognized by the department.~~

"CO<sub>2</sub> allowance deduction" or "deduct CO<sub>2</sub> allowances" means the permanent withdrawal of CO<sub>2</sub> allowances by the department or its agent from a COATS compliance account to account for the number of tons of CO<sub>2</sub> emitted from a CO<sub>2</sub> budget source for ~~the initial control period~~, a control period, or an interim control period determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, or for the forfeit or retirement of CO<sub>2</sub> allowances as provided by this part.

"CO<sub>2</sub> Allowance Tracking System" or "COATS" means the system by which the department or its agent records allocations, deductions, and transfers of CO<sub>2</sub> allowances under the CO<sub>2</sub> Budget Trading Program. The tracking

system may also be used to track CO<sub>2</sub> allowance prices and emissions from affected sources.

"CO<sub>2</sub> Allowance Tracking System account" means an account in COATS established by the department or its agent for purposes of recording the allocation, holding, transferring, or deducting of CO<sub>2</sub> allowances.

"CO<sub>2</sub> allowance transfer deadline" means midnight of March 1 occurring after the end of the ~~initial~~ relevant control period, ~~the control period~~, and each relevant interim control period, or if that March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which CO<sub>2</sub> allowances shall be submitted for recordation in a CO<sub>2</sub> budget source's compliance account for the source to meet the CO<sub>2</sub> requirements of 9VAC5-140-6050 C for ~~the initial control period~~, a control period, and each interim control period immediately preceding such deadline.

"CO<sub>2</sub> allowances held" or "hold CO<sub>2</sub> allowances" means the CO<sub>2</sub> allowances recorded by the department or its agent, or submitted to the department or its agent for recordation, in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 7 (9VAC5-140-6300 et seq.) of this part, in a COATS account.

"CO<sub>2</sub> authorized account representative" means, for a CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source, the natural person who is authorized by the owners and operators of the source and all CO<sub>2</sub> budget units at the source, in accordance with Article 2 (9VAC5-140-6080 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the CO<sub>2</sub> Budget Trading Program or, for a general account, the natural person who is authorized, under Article 6 (9VAC5-140-6220 et seq.) of this part, to transfer or otherwise dispose of CO<sub>2</sub> allowances held in the general account. If the CO<sub>2</sub> budget source is also subject to the Acid Rain Program, CSAPR NO<sub>x</sub> Annual Trading Program, CSAPR NO<sub>x</sub> Ozone Season Trading Program, CSAPR SO<sub>2</sub> Group 1 Trading Program, or CSAPR SO<sub>2</sub> Group 2 Trading Program, then for a CO<sub>2</sub> Budget Trading Program compliance account, this natural person shall be the same person as the designated representative as defined in the respective program.

"CO<sub>2</sub> authorized alternate account representative" means, for a CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source, the alternate natural person who is authorized by the owners and operators of the source and all CO<sub>2</sub> budget units at the source, in accordance with Article 2 (9VAC5-140-6080 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the CO<sub>2</sub> Budget Trading Program or, for a general account, the alternate natural person who is authorized, under Article 6 (9VAC5-140-6220 et seq.) of this part, to transfer or otherwise dispose of CO<sub>2</sub> allowances held in the general

# Regulations

account. If the CO<sub>2</sub> budget source is also subject to the Acid Rain Program, CSAPR NO<sub>x</sub> Annual Trading Program, CSAPR NO<sub>x</sub> Ozone Season Trading Program, CSAPR SO<sub>2</sub> Group 1 Trading Program, or CSAPR SO<sub>2</sub> Group 2 Trading Program then, for a CO<sub>2</sub> Budget Trading Program compliance account, this alternate natural person shall be the same person as the alternate designated representative as defined in the respective program.

"CO<sub>2</sub> budget emissions limitation" means, for a CO<sub>2</sub> budget source, the tonnage equivalent, in CO<sub>2</sub> emissions in ~~the initial control period~~, a control period, or an interim control period of the CO<sub>2</sub> allowances available for compliance deduction for the source for a control period or an interim control period.

"CO<sub>2</sub> budget permit" means the portion of the legally binding permit issued by the department pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) to a CO<sub>2</sub> budget source or CO<sub>2</sub> budget unit that specifies the CO<sub>2</sub> Budget Trading Program requirements applicable to the CO<sub>2</sub> budget source, to each CO<sub>2</sub> budget unit at the CO<sub>2</sub> budget source, and to the owners and operators and the CO<sub>2</sub> authorized account representative of the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit.

"CO<sub>2</sub> budget source" means a source that includes one or more CO<sub>2</sub> budget units.

"CO<sub>2</sub> Budget Trading Program" means a multistate CO<sub>2</sub> air pollution control and emissions reduction program established according to this part and corresponding regulations in other states as a means of reducing emissions of CO<sub>2</sub> from CO<sub>2</sub> budget sources.

"CO<sub>2</sub> budget unit" means a unit that is subject to the CO<sub>2</sub> Budget Trading Program requirements under 9VAC5-140-6040.

"CO<sub>2</sub> cost containment reserve allowance" or "CO<sub>2</sub> CCR allowance" means an allowance that has been sold at an auction for the purpose of containing the cost of CO<sub>2</sub> allowances. CO<sub>2</sub> CCR allowances offered for sale at an auction are separate from and additional to CO<sub>2</sub> allowances allocated from the Virginia CO<sub>2</sub> Budget Trading Program base and adjusted budgets. CO<sub>2</sub> CCR allowances are subject to all applicable limitations contained in this part.

"CO<sub>2</sub> cost containment reserve trigger price" or "CCR trigger price" means the minimum price at which CO<sub>2</sub> CCR allowances are offered for sale by the department or its agent at an auction. The CCR trigger price in calendar year ~~2020~~ 2021 shall be ~~\$10.77~~ \$13. The CCR trigger price in calendar year ~~2024~~ 2022 shall be ~~\$13~~ \$13.91. Each calendar year thereafter, the CCR trigger price shall be 1.07 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 140-1A.

Year	Price
2020	\$10.77
2021	\$13.00
2022	\$13.91
2023	\$14.88
2024	\$15.92
2025	\$17.03
2026	\$18.22
2027	\$19.50
2028	\$20.87
2029	\$22.33
2030	\$23.89

"CO<sub>2</sub> emissions containment reserve allowance" or "CO<sub>2</sub> ECR allowance" means a ~~conditional~~ CO<sub>2</sub> allowance that is withheld from sale at an auction by the department for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs.

"CO<sub>2</sub> emissions containment reserve trigger price" or "ECR trigger price" means the price below which ~~conditional~~ CO<sub>2</sub> allowances will be withheld from sale by the department or its agent at an auction. The ECR trigger price in calendar year 2021 shall be \$6.00. Each calendar year thereafter, the ECR trigger price shall be 1.07 multiplied by the ECR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 140-1B.

Year	Price
2021	\$ 6.00
2022	\$ 6.42
2023	\$ 6.87
2024	\$ 7.35
2025	\$ 7.86
2026	\$ 8.41
2027	\$ 9.00
2028	\$ 9.63
2029	\$10.30
2030	\$11.02

"CO<sub>2</sub> offset allowance" means a CO<sub>2</sub> allowance that is awarded to the sponsor of a CO<sub>2</sub> emissions offset project by a participating state and is subject to the relevant compliance deduction limitations of the participating state's corresponding offset regulations as a means of reducing CO<sub>2</sub> from CO<sub>2</sub> budget sources.

"Combined cycle system" means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

"Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor (if applicable), a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

"Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. For a unit that is a CO<sub>2</sub> budget unit under 9VAC5-140-6040 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO<sub>2</sub> budget unit under 9VAC5-140-6040 on the date the unit commences commercial operation, the date the unit becomes a CO<sub>2</sub> budget unit under 9VAC5-140-6040 shall be the unit's date of commencement of commercial operation.

"Commence operation" means to begin any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. For a unit that is a CO<sub>2</sub> budget unit under 9VAC5-140-6040 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO<sub>2</sub> budget unit under 9VAC5-140-6040 on the date of commencement of operation, the date the unit becomes a CO<sub>2</sub> budget unit under 9VAC5-140-6040 shall be the unit's date of commencement of operation.

"Compliance account" means a COATS account, established by the department or its agent for a CO<sub>2</sub> budget source under Article 6 (9VAC5-140-6220 et seq.) of this part, in which CO<sub>2</sub> allowances available for use by the source for the initial control period, a control period, and each interim control period are held for the purpose of meeting the CO<sub>2</sub> requirements of 9VAC5-140-6050 C.

~~"Conditional allowance" means an allowance allocated by the department to a CO<sub>2</sub> budget source or to DMME. Such conditional allowance shall be consigned by the entity to~~

~~whom it is allocated to the consignment auction as specified under Article 9 (9VAC5-140-6410 et seq.) of this part, after which the conditional allowance becomes a CO<sub>2</sub> allowance once it is sold to an auction participant.~~

~~"Conditional allowance account" means a general COATS account established by the department for CO<sub>2</sub> budget sources and DMME or its contractor where conditional allowances allocated to CO<sub>2</sub> budget sources and DMME are held until auction.~~

~~"Conditional cost containment reserve allowance" or "conditional CCR allowance" means an allowance that may be offered for sale when the CCR is triggered. If any conditional CCR allowances are unsold, they may be offered for sale in future auctions during the same year. Conditional CCR allowances offered for sale at an auction are separate from and additional to conditional allowances allocated from the Virginia CO<sub>2</sub> Budget Trading Program base and adjusted budgets. Conditional CCR allowances are subject to all applicable limitations contained in this part.~~

~~"Consignment auction" or "auction" means the CO<sub>2</sub> auction conducted on a quarterly basis by the CO<sub>2</sub> Budget Trading Program, in which CO<sub>2</sub> budget sources and DMME are allocated a share of allowances by the department that CO<sub>2</sub> budget sources and the holder of a public contract with DMME consign into the auction, and auction revenue is returned to CO<sub>2</sub> budget sources and the holder of a public contract with DMME in accordance with procedures established by the department.~~

"Continuous Emissions Monitoring System" or "CEMS" means the equipment required under Article 8 (9VAC5-140-6330 et seq.) of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated DAHS), a permanent record of stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75 and Article 8 (9VAC5-140-6330 et seq.) of this part. The following systems are types of CEMS required under Article 8 (9VAC5-140-6330 et seq.) of this part:

- a. A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour;
- b. A NO<sub>x</sub> emissions rate (or NO<sub>x</sub>-diluent) monitoring system, consisting of a NO<sub>x</sub> pollutant concentration monitor, a diluent gas (CO<sub>2</sub> or O<sub>2</sub>) monitor, and an automated DAHS and providing a permanent, continuous record of NO<sub>x</sub> concentration, in parts per million (ppm), diluent gas concentration, in percent CO<sub>2</sub> or O<sub>2</sub>, and NO<sub>x</sub>

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emissions rate, in pounds per million British thermal units (lb/MMBtu);

c. A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H<sub>2</sub>O;

d. A CO<sub>2</sub> monitoring system, consisting of a CO<sub>2</sub> pollutant concentration monitor (or an O<sub>2</sub> monitor plus suitable mathematical equations from which the CO<sub>2</sub> concentration is derived) and an automated DAHS and providing a permanent, continuous record of CO<sub>2</sub> emissions, in percent CO<sub>2</sub>; and

e. An O<sub>2</sub> monitoring system, consisting of an O<sub>2</sub> concentration monitor and an automated DAHS and providing a permanent, continuous record of O<sub>2</sub>, in percent O<sub>2</sub>.

"Control period" means a three-calendar-year time period. The fifth control period is from January 1, 2021, to December 31, 2023, inclusive, which is the first control period of Virginia's participation in the CO<sub>2</sub> Budget Trading Program. The first two calendar years of each control period are each defined as an interim control period, beginning on January 1, 2021.

"Cross State Air Pollution Rule (CSAPR) NO<sub>x</sub> Annual Trading Program" means a multistate NO<sub>x</sub> air pollution control and emission reduction program established in accordance with Subpart AAAAA of 40 CFR Part 97 and 40 CFR 52.38(a), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.38(a)(3) or (4) or that is established in a SIP revision approved by the administrator under 40 CFR 52.38(a)(5), as a means of mitigating interstate transport of fine particulates and NO<sub>x</sub>.

"Cross State Air Pollution Rule (CSAPR) NO<sub>x</sub> Ozone Season Trading Program" means a multistate NO<sub>x</sub> air pollution control and emission reduction program established in accordance with Subpart BBBBB of 40 CFR Part 97 and 40 CFR 52.38(b), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.38(b)(3) or (4) or that is established in a SIP revision approved by the administrator under 40 CFR 52.38(b)(5), as a means of mitigating interstate transport of ozone and NO<sub>x</sub>.

"Cross State Air Pollution Rule (CSAPR) SO<sub>2</sub> Group 1 Trading Program" means a multistate SO<sub>2</sub> air pollution control and emission reduction program established in accordance with Subpart CCCCC of 40 CFR Part 97 and 40 CFR 52.39(a), (b), (d) through (f), (j), and (k), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.39(d) or (e) or that is established in a SIP revision approved by the administrator under 40 CFR 52.39(f), as a means of mitigating interstate transport of fine particulates and SO<sub>2</sub>.

"Cross State Air Pollution Rule (CSAPR) SO<sub>2</sub> Group 2 Trading Program" means a multistate SO<sub>2</sub> air pollution control and emission reduction program established in accordance with Subpart DDDDD of 40 CFR Part 97 and 40 CFR 52.39(a), (c), and (g) through (k), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.39(g) or (h) or that is established in a SIP revision approved by the administrator under 40 CFR 52.39(i), as a means of mitigating interstate transport of fine particulates and SO<sub>2</sub>.

"Department" means the Virginia Department of Environmental Quality.

~~"DMME" means the Virginia Department of Mines, Minerals and Energy.~~

"Excess emissions" means any tonnage of CO<sub>2</sub> emitted by a CO<sub>2</sub> budget source during ~~the initial~~ an interim control period or a control period that exceeds the CO<sub>2</sub> budget emissions limitation for the source.

"Excess interim emissions" means any tonnage of CO<sub>2</sub> emitted by a CO<sub>2</sub> budget source during an interim control period multiplied by 0.50 that exceeds the CO<sub>2</sub> budget emissions limitation for the source.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fossil fuel-fired" means the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or is projected to comprise, more than 5.0% of the annual heat input on a Btu basis during any year.

"General account" means a COATS account established under Article 6 (9VAC5-140-6220 et seq.) of this part that is not a compliance account.

"Gross generation" means the electrical output in MWe at the terminals of the generator.

~~"Initial control period" means the period beginning January 1, 2020, and ending December 31, 2020.~~

"Interim control period" means a one-calendar-year time period during each of the first and second calendar years of each three-year control period. The first interim control period starts January 1, 2021, and ends December 31, 2021, inclusive. The second interim control period starts January 1, 2022, and ends December 31, 2022, inclusive. Each successive three-year control period will have two interim control periods, comprised of each of the first two calendar years of that control period.

"Life-of-the-unit contractual arrangement" means a either:

a. A unit participation power sales agreement under which a customer reserves, or is entitled to receive, a

specified amount or percentage of nameplate capacity or associated energy from any specified unit pursuant to a contract:

~~a-~~ (1) For the life of the unit;

~~b-~~ (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

~~e-~~ (3) For a period equal to or greater than 25 years or 70% of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period; or

b. Any energy conversion or energy tolling agreement that has a primary term of 20 years or more and pursuant to which the purchaser is required to deliver fuel to the CO<sub>2</sub> budget source or CO<sub>2</sub> budget unit and is entitled to receive all of the nameplate capacity and associated energy generated by such source or unit for the entire contractual period. Such agreements shall be subject to 9VAC5-140-6325. Such purchaser shall not be considered an "owner" as defined under this section.

"Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR Part 75 to report heat input, this value shall be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value shall be reported, in accordance with 40 CFR Part 75, using the maximum potential flow rate and either the maximum CO<sub>2</sub> concentration in percent CO<sub>2</sub> or the minimum O<sub>2</sub> concentration in percent O<sub>2</sub>.

"Minimum reserve price" means, in calendar year 2020, \$2.32; 2021, \$2.38. Each calendar year thereafter, the minimum reserve price shall be 1.025 multiplied by the minimum reserve price from the previous calendar year, rounded to the nearest whole cent.

"Monitoring system" means any monitoring system that meets the requirements of Article 8 (9VAC5-140-6330 et seq.) of this part, including a CEMS, an excepted monitoring system, or an alternative monitoring system.

"Nameplate capacity" means the maximum electrical output in MWe that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the U.S. Department of Energy standards.

"Net-electric output" means the amount of gross generation in MWh the generators produce, including output from steam turbines, combustion turbines, and gas expanders, as

measured at the generator terminals, less the electricity used to operate the plant (i.e., auxiliary loads); such uses include fuel handling equipment, pumps, fans, pollution control equipment, other electricity needs, and transformer losses as measured at the transmission side of the step up transformer (e.g., the point of sale).

"Non-CO<sub>2</sub> budget unit" means a unit that does not meet the applicability criteria of 9VAC5-140-6040.

"Operator" means any person who operates, controls, or supervises a CO<sub>2</sub> budget unit or a CO<sub>2</sub> budget source and shall include any holding company, utility system, or plant manager of such a unit or source.

"Owner" means any of the following persons:

a. Any holder of any portion of the legal or equitable title in a CO<sub>2</sub> budget unit;

b. Any holder of a leasehold interest in a CO<sub>2</sub> budget unit, other than a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the CO<sub>2</sub> budget unit;

c. Any purchaser of power from a CO<sub>2</sub> budget unit under a life-of-the-unit contractual arrangement in which the purchaser controls the dispatch of the unit; or

d. With respect to any general account, any person who has an ownership interest with respect to the CO<sub>2</sub> allowances held in the general account and who is subject to the binding agreement for the CO<sub>2</sub> authorized account representative to represent that person's ownership interest with respect to the CO<sub>2</sub> allowances.

"Participating state" means a state that ~~participates in~~ has established a corresponding regulation as part of the CO<sub>2</sub> Budget Trading Program.

"Receive" or "receipt of" means, when referring to the department or its agent, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission) as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence by the department or its agent in the regular course of business.

"Recordation," "record," or "recorded" means, with regard to CO<sub>2</sub> allowances, the movement of CO<sub>2</sub> allowances by the department or its agent from one COATS account to another; for purposes of allocation, transfer, or deduction.

"Reserve price" means the minimum acceptable price for each ~~conditional~~ CO<sub>2</sub> allowance in a specific auction. The reserve price at an auction is either the minimum reserve price or the CCR trigger price, as specified in Article 9 (9VAC5-140-6410 et seq.) of this part.

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"Serial number" means, when referring to CO<sub>2</sub> allowances, the unique identification number assigned to each CO<sub>2</sub> allowance by the department or its agent under 9VAC5-140-6250 C.

"Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any air pollutant. A source, including a source with multiple units, shall be considered a single facility.

"Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- a. In person;
- b. By United States Postal Service; or
- c. By other means of dispatch or transmission and delivery.

Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Ton" or "tonnage" means any short ton, or 2,000 pounds. For the purpose of determining compliance with the CO<sub>2</sub> requirements of 9VAC5-140-6050 C, total tons for ~~the initial control period~~; an interim control period; or a control period shall be calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons. A short ton is equal to 0.9072 metric tons.

"Total useful energy" means the sum of gross electrical generation and useful net thermal energy.

"Undistributed ~~conditional~~ CO<sub>2</sub> allowances" means ~~conditional~~ CO<sub>2</sub> allowances originally allocated to a set aside account as pursuant to 9VAC5-140-6210 that were not distributed.

"Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

"Unit operating day" means a calendar day in which a unit combusts any fuel.

"Unsold ~~conditional~~ CO<sub>2</sub> allowances" means ~~conditional~~ CO<sub>2</sub> allowances that have been made available for sale in an auction conducted by the department or its agent, but not sold.

"Useful net thermal energy" means energy:

- ~~+~~ a. In the form of direct heat, steam, hot water, or other thermal form that is used in the production and beneficial measures for heating, cooling, humidity control, process

use, or other thermal end use energy requirements, excluding thermal energy used in the power production process (e.g., house loads and parasitic loads); and

- ~~2.~~ b. For which fuel or electricity would otherwise be consumed.

"Virginia CO<sub>2</sub> Budget Trading Program adjusted budget" means an adjusted budget determined in accordance with 9VAC5-140-6210 and is the annual amount of CO<sub>2</sub> tons available in Virginia for allocation in a given allocation year, in accordance with the CO<sub>2</sub> Budget Trading Program. ~~Conditional~~ CO<sub>2</sub> CCR allowances offered for sale at an auction are separate from and additional to ~~conditional~~ CO<sub>2</sub> allowances allocated from the Virginia CO<sub>2</sub> Budget Trading Program adjusted budget.

"Virginia CO<sub>2</sub> Budget Trading Program base budget" means the budget specified in 9VAC5-140-6190. ~~Conditional~~ CO<sub>2</sub> CCR allowances offered for sale at an auction are separate from and additional to ~~conditional~~ CO<sub>2</sub> allowances allocated from the Virginia CO<sub>2</sub> Budget Trading Program base budget.

## 9VAC5-140-6040. Applicability.

A. Any fossil fuel-fired unit that serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe shall be a CO<sub>2</sub> budget unit, and any source that includes one or more such units shall be a CO<sub>2</sub> budget source, subject to the requirements of this part.

B. Exempt from the requirements of this part is any fossil fuel CO<sub>2</sub> budget source located at or adjacent to and physically interconnected with a manufacturing facility that, prior to January 1, ~~2019~~ 2020, and in every subsequent calendar year, met either of the following requirements:

1. Supplies less than or equal to 10% of its annual net electrical generation to the electric grid; or
2. Supplies less than or equal to 15% of its annual total useful energy to any entity other than the manufacturing facility to which the CO<sub>2</sub> budget source is interconnected.

For the purpose of subdivision 1 of this subsection, annual net electrical generation shall be determined as follows:

$$(ES - EP) / EG \times 100$$

Where:

ES = electricity sales to the grid from the CO<sub>2</sub> budget source

EP = electricity purchases from the grid by the CO<sub>2</sub> budget source and the manufacturing facility to which the CO<sub>2</sub> budget source is interconnected

EG = electricity generation

Such exempt CO<sub>2</sub> budget source shall have an operating permit containing the applicable restrictions under this

subsection. An application for such operating permit shall be submitted to the department no later than January 1, 2022.

**9VAC5-140-6045. CO<sub>2</sub> Budget Trading Program implementation. (Repealed.)**

~~In the event the allocation of conditional allowances by the department as required by 9VAC5-140-6190-B has not occurred by January 1, 2020, the program will be considered to be operating and effective as of the calendar year following the date on which the department allocates the conditional allowances as it corresponds to the schedule of 9VAC5-140-6190-A. Permitting and compliance dates, including the due date for a permit as required by 9VAC5-140-6150, shall be adjusted to be in force six months after the date the department allocates the conditional allowances. Any excess emissions tonnage identified by the new program implementation date may be addressed through program review and regulatory action as necessary to ensure compliance with the final compliance date. The department will notify the board and each affected CO<sub>2</sub> budget source accordingly.~~

**9VAC5-140-6050. Standard requirements.**

A. Permit requirements shall be as follows.

1. The CO<sub>2</sub> authorized account representative of each CO<sub>2</sub> budget source required to have an operating permit pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) and each CO<sub>2</sub> budget unit required to have an operating permit pursuant to 9VAC5-85 shall:

- a. Submit to the department a complete CO<sub>2</sub> budget permit application under 9VAC5-140-6160 in accordance with the deadlines specified in 9VAC5-140-6150; and
- b. Submit in a timely manner any supplemental information that the department determines is necessary in order to review the CO<sub>2</sub> budget permit application and issue or deny a CO<sub>2</sub> budget permit.

2. The owners and operators of each CO<sub>2</sub> budget source required to have an operating permit pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) and each CO<sub>2</sub> budget unit required to have an operating permit pursuant to 9VAC5-85 for the source shall have a CO<sub>2</sub> budget permit and operate the CO<sub>2</sub> budget source and the CO<sub>2</sub> budget unit at the source in compliance with such CO<sub>2</sub> budget permit.

B. Monitoring requirements shall be as follows.

1. The owners and operators and, to the extent applicable, the CO<sub>2</sub> authorized account representative of each CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source shall comply with the monitoring requirements of Article 8 (9VAC5-140-6330 et seq.) of this part.

2. The emissions measurements recorded and reported in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part shall be used to determine compliance by the unit with the CO<sub>2</sub> requirements under subsection C of this section.

C. CO<sub>2</sub> requirements shall be as follows.

1. The owners and operators of each CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source shall hold CO<sub>2</sub> allowances available for compliance deductions under 9VAC5-140-6260, as of the CO<sub>2</sub> allowance transfer deadline, in the source's compliance account in an amount not less than the total CO<sub>2</sub> emissions that have been generated as a result of combusting fossil fuel for ~~the initial control period~~, an interim control period; or control period from all CO<sub>2</sub> budget units at the source, less the CO<sub>2</sub> allowances deducted to meet the requirements of subdivision 2 of this subsection, with respect to the previous two interim control periods as determined in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 8 (9VAC5-140-6330 et seq.) of this part.

2. The owners and operators of each CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source shall hold CO<sub>2</sub> allowances available for compliance deductions under 9VAC5-140-6260, as of the CO<sub>2</sub> allowance transfer deadline, in the source's compliance account in an amount not less than the total CO<sub>2</sub> emissions that have been generated as a result of combusting fossil fuel for ~~the initial control period, an interim control period, or for the interim control period~~ multiplied by 0.50, as determined in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 8 (9VAC5-140-6330 et seq.) of this part.

3. Each ton of CO<sub>2</sub> emitted in excess of the CO<sub>2</sub> budget emissions limitation for ~~the initial control period or a control period~~ shall constitute a separate violation of this part and applicable state law.

4. Each ton of excess interim emissions shall constitute a separate violation of this part and applicable state law.

5. A CO<sub>2</sub> budget unit shall be subject to the requirements under subdivision 1 of this subsection starting on the later of January 1, ~~2020~~ 2021, or the date on which the unit commences operation.

6. CO<sub>2</sub> allowances shall be held in, deducted from, or transferred among COATS accounts in accordance with Article 5 (9VAC5-140-6190 et seq.), Article 6 (9VAC5-140-6220 et seq.), and Article 7 (9VAC5-140-6300 et seq.) of this part.

7. A CO<sub>2</sub> allowance shall not be deducted, to comply with the requirements under subdivision 1 or 2 of this subsection, for a control period that ends prior to the year for which the CO<sub>2</sub> allowance was allocated.

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8. A CO<sub>2</sub> allowance under the CO<sub>2</sub> Budget Trading Program is a limited authorization by the department to emit one ton of CO<sub>2</sub> in accordance with the CO<sub>2</sub> Budget Trading Program. No provision of the CO<sub>2</sub> Budget Trading Program, the CO<sub>2</sub> budget permit application, or the CO<sub>2</sub> budget permit or any provision of law shall be construed to limit the authority of the department or a participating state to terminate or limit such authorization.

9. A CO<sub>2</sub> allowance under the CO<sub>2</sub> Budget Trading Program does not constitute a property right.

D. The owners and operators of a CO<sub>2</sub> budget source that has excess emissions in ~~an initial control period~~ or a control period shall:

1. Forfeit the CO<sub>2</sub> allowances required for deduction under 9VAC5-140-6260 D 1; and

2. Pay any fine, penalty, or assessment or comply with any other remedy imposed under 9VAC5-140-6260 D 2.

E. Recordkeeping and reporting requirements shall be as follows:

1. Unless otherwise provided, the owners and operators of the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source shall keep on site at the source each of the following documents for a period of 10 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 10 years, in writing by the department.

a. The account certificate of representation for the CO<sub>2</sub> authorized account representative for the source and each CO<sub>2</sub> budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with 9VAC5-140-6110, provided that the certificate and documents shall be retained on site at the source beyond such 10-year period until such documents are superseded because of the submission of a new account certificate of representation changing the CO<sub>2</sub> authorized account representative.

b. All emissions monitoring information, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part and 40 CFR 75.57.

c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the CO<sub>2</sub> Budget Trading Program.

d. Copies of all documents used to complete a CO<sub>2</sub> budget permit application and any other submission under the CO<sub>2</sub> Budget Trading Program or to demonstrate compliance with the requirements of the CO<sub>2</sub> Budget Trading Program.

2. The CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source shall

submit the reports and compliance certifications required under the CO<sub>2</sub> Budget Trading Program, including those under Article 4 (9VAC5-140-6170 et seq.) of this part.

F. Liability requirements shall be as follows.

1. No permit revision shall excuse any violation of the requirements of the CO<sub>2</sub> Budget Trading Program that occurs prior to the date that the revision takes effect.

2. Any provision of the CO<sub>2</sub> Budget Trading Program that applies to a CO<sub>2</sub> budget source, including a provision applicable to the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget source, shall also apply to the owners and operators of such source and of the CO<sub>2</sub> budget units at the source.

3. Any provision of the CO<sub>2</sub> Budget Trading Program that applies to a CO<sub>2</sub> budget unit, including a provision applicable to the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit, shall also apply to the owners and operators of such unit.

G. No provision of the CO<sub>2</sub> Budget Trading Program, a CO<sub>2</sub> budget permit application, or a CO<sub>2</sub> budget permit shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CO<sub>2</sub> authorized account representative of the CO<sub>2</sub> budget source or CO<sub>2</sub> budget unit from compliance with any other provisions of applicable state and federal law or regulations.

## **9VAC5-140-6150. Submission of CO<sub>2</sub> budget permit applications.**

For any CO<sub>2</sub> budget source, the CO<sub>2</sub> authorized account representative shall submit a complete CO<sub>2</sub> budget permit application under 9VAC5-140-6160 covering such CO<sub>2</sub> budget source to the department by the later of January 1, ~~2020~~ 2021, or 12 months before the date on which the CO<sub>2</sub> budget source, or a new unit at the source, commences operation.

### Article 4

#### Compliance Certification

## **9VAC5-140-6170. Compliance certification report.**

A. For ~~the initial control period~~ and each control period in which a CO<sub>2</sub> budget source is subject to the CO<sub>2</sub> requirements of 9VAC5-140-6050 C, the CO<sub>2</sub> authorized account representative of the source shall submit to the department by March 1 following the relevant control period, a compliance certification report. A compliance certification report is not required as part of the compliance obligation during an interim control period.

B. The CO<sub>2</sub> authorized account representative shall include in the compliance certification report under subsection A of this section the following elements, in a format prescribed by the department:

1. Identification of the source and each CO<sub>2</sub> budget unit at the source;

2. At the CO<sub>2</sub> authorized account representative's option, the serial numbers of the CO<sub>2</sub> allowances that are to be deducted from the source's compliance account under 9VAC5-140-6260 for the control period; and

3. The compliance certification under subsection C of this section.

C. In the compliance certification report under subsection A of this section, the CO<sub>2</sub> authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the CO<sub>2</sub> budget units at the source in compliance with the CO<sub>2</sub> Budget Trading Program, whether the source and each CO<sub>2</sub> budget unit at the source for which the compliance certification is submitted was operated during the calendar years covered by the report in compliance with the requirements of the CO<sub>2</sub> Budget Trading Program, including:

1. Whether the source was operated in compliance with the CO<sub>2</sub> requirements of 9VAC5-140-6050 C;

2. Whether the monitoring plan applicable to each unit at the source has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute CO<sub>2</sub> emissions to the unit, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part;

3. Whether all the CO<sub>2</sub> emissions from the units at the source were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

4. Whether the facts that form the basis for certification under Article 8 (9VAC5-140-6330 et seq.) of this part of each monitor at each unit at the source, or for using an excepted monitoring method or alternative monitoring method approved under Article 8 (9VAC5-140-6330 et seq.) of this part, if any, have changed; and

5. If a change is required to be reported under subdivision 4 of this subsection, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

Article 5  
CO<sub>2</sub> Allowance Allocations

**9VAC5-140-6190. Base budgets.**

A. The Virginia CO<sub>2</sub> Budget Trading Program base budget shall be as follows:

~~1. For 2020, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 28 million tons.~~

~~2.~~ For 2021, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 27.16 million tons.

~~3.~~ 2. For 2022, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 26.32 million tons.

~~4.~~ 3. For 2023, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 25.48 million tons.

~~5.~~ 4. For 2024, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 24.64 million tons.

~~6.~~ 5. For 2025, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 23.80 million tons.

~~7.~~ 6. For 2026, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 22.96 million tons.

~~8.~~ 7. For 2027, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 22.12 million tons.

~~9.~~ 8. For 2028, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 21.28 million tons.

~~10.~~ 9. For 2029, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 20.44 million tons.

~~11.~~ 10. For 2030, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 19.60 million tons.

~~B. The department will allocate conditional allowances to CO<sub>2</sub> budget units and to DMME. After a conditional allowance has been consigned in an auction by a CO<sub>2</sub> budget unit or the holder of a public contract with DMME as specified under Article 9 (9VAC5-140-6410 et seq.) of this part, the conditional allowance becomes a CO<sub>2</sub> allowance once it is sold to an auction participant.~~

~~C.~~ For 2031 and each succeeding calendar year, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 19.60 million tons unless modified as a result of a program review and future regulatory action.

**9VAC5-140-6200. Undistributed and unsold conditional CO<sub>2</sub> allowances.**

A. The department will retire undistributed conditional CO<sub>2</sub> allowances at the end of the initial control period and each subsequent control period.

B. The department will retire unsold conditional CO<sub>2</sub> allowances at the end of the initial control period and each subsequent control period.

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## 9VAC5-140-6210. Conditional CO<sub>2</sub> allowance allocations.

A. The department will allocate the Virginia CO<sub>2</sub> Budget Trading Program base budget conditional CO<sub>2</sub> allowances to CO<sub>2</sub> budget sources to be consigned to auction to the Virginia Consignment Auction Account.

B. For allocation years 2020 through 2030, the Virginia CO<sub>2</sub> Budget Trading Program adjusted budget shall be the maximum number of allowances available for allocation in a given allocation year, except for conditional CO<sub>2</sub> CCR allowances.

C. Conditional allowances allocated for a calendar year will be automatically transferred to the Virginia Consignment Auction Account to be consigned to auction. Following each auction, all conditional allowances sold at the auction will be transferred from the Virginia Consignment Auction Account to winning bidders' accounts as CO<sub>2</sub> allowances.

D. The cost containment reserve (CCR) allocation shall be managed as follows. In the event that the CCR is triggered during an auction, the department will allocate conditional CO<sub>2</sub> CCR allowances, separate from and additional to the Virginia CO<sub>2</sub> Budget Trading Program base budget set forth in 9VAC5-140-6190 to the Virginia Consignment Auction Account. The CCR allocation is for the purpose of containing the cost of CO<sub>2</sub> allowances. The department will allocate conditional CO<sub>2</sub> CCR allowances as follows:

1. Beginning in calendar year 2020, the department will initially allocate, on a pro rata basis to CO<sub>2</sub> budget sources, 2.8 million conditional CO<sub>2</sub> CCR allowances.

2. On or before January 1, 2021, and each year thereafter, the department will allocate, on a pro rata basis to CO<sub>2</sub> budget sources, current vintage year conditional CO<sub>2</sub> CCR allowances equal to the quantity in Table 140-5A.

Table 140-5A Conditional CO <sub>2</sub> CCR Allowances from 2021 Forward	
2021	2.716 million tons
2022	2.632 million tons
2023	2.548 million tons
2024	2.464 million tons
2025	2.380 million tons
2026	2.296 million tons
2027	2.212 million tons
2028	2.128 million tons
2029	2.044 million tons
2030 and each year thereafter	1.960 million tons

3. The pro rata calculation to be used for the distribution of conditional CO<sub>2</sub> CCR allowances is as follows:

$$SAA/TAA * CCR = SCCR$$

Where:

SAA = source adjusted allocation

TAA = total adjusted allocation

SCCR = source CCR

4. Conditional CO<sub>2</sub> CCR allowances allocated for a calendar year will be automatically transferred to the Virginia Consignment Auction Account to be consigned to auction. Following each auction, all conditional CO<sub>2</sub> CCR allowances sold at auction will be transferred to winning bidders' accounts as CO<sub>2</sub> CCR allowances.

5. Unsold conditional CO<sub>2</sub> CCR allowances will remain in the Virginia Consignment Auction Account to be re-offered for sale at auction within the same calendar year. Conditional CO<sub>2</sub> CCR allowances remaining unsold at the end of the calendar year in which they were originated will be made unavailable for sale at future auctions.

D. In the event that the ECR is triggered during an auction, the department will authorize its agent to withhold conditional CO<sub>2</sub> allowances as needed. The department will further authorize its agent to convert and transfer any conditional CO<sub>2</sub> allowances that have been withheld from any auction into the Virginia ECR account. The ECR withholding is for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs. The department's agent will withhold CO<sub>2</sub> ECR allowances as follows:

1. If the condition in 9VAC5-140-6420 D C 1 is met at an auction, then the maximum number of CO<sub>2</sub> ECR allowances that will be withheld from that auction will be equal to the quantity shown in Table 140-5B minus the total quantity of CO<sub>2</sub> ECR allowances that have been withheld from any prior auction in that calendar year. Any CO<sub>2</sub> ECR allowances withheld from an auction will be transferred into the Virginia ECR account.

Table 140-5B ECR Allowances from 2021 Forward	
2021	2.716 million tons
2022	2.632 million tons
2023	2.548 million tons
2024	2.464 million tons
2025	2.380 million tons
2026	2.296 million tons
2027	2.212 million tons

2028	2.128 million tons
2029	2.044 million tons
2030 and each year thereafter	1.960 million tons

2. Allowances that have been transferred into the Virginia ECR account shall not be withdrawn.

~~F.~~ E. The adjustment for banked allowances will be as follows. On March 15, 2021, the department may determine the adjustment for banked allowances quantity for allocation years 2021 through 2025 through the application of the following formula:

$$TABA = ((TA - TAE)/5) \times RS\%$$

Where:

TABA is the adjustment for banked allowances quantity in tons.

TA, adjustment, is the total quantity of allowances of vintage years prior to 2021 held in general and compliance accounts, including compliance accounts established pursuant to the CO<sub>2</sub> Budget Trading Program but not including accounts opened by participating states, as reflected in the CO<sub>2</sub> Allowance Tracking System on March 15, 2021.

TAE, adjustment emissions, is the total quantity of 2018, 2019, and 2020 emissions from all CO<sub>2</sub> budget sources in all participating states, reported pursuant to CO<sub>2</sub> Budget Trading Program as reflected in the CO<sub>2</sub> Allowance Tracking System on March 15, 2021.

RS% is Virginia budget divided by the regional budget.

~~G.~~ F. CO<sub>2</sub> Budget Trading Program adjusted budgets for 2021 through 2025 shall be determined as follows: on April 15, 2021, the department will determine the Virginia CO<sub>2</sub> Budget Trading Program adjusted budgets for the 2021 through 2025 allocation years by the following formula:

$$AB = BB - TABA$$

Where:

AB is the Virginia CO<sub>2</sub> Budget Trading Program adjusted budget.

BB is the Virginia CO<sub>2</sub> Budget Trading Program base budget.

TABA is the adjustment for banked allowances quantity in tons.

~~H.~~ G. The department or its agent will publish the CO<sub>2</sub> trading program adjusted budgets for the 2021 through 2025 allocation years.

~~I.~~ H. Timing requirements for conditional allowance allocations shall be as follows:

~~1.~~ By August 25, 2019, the department will submit to its agent the conditional allowance allocations in accordance with 9VAC5-140-6215 A and B, for the initial control period, 2020.

~~2.~~ By the month and day established by subdivision 1 of this subsection, 2020, the department will submit to its agent 50% of the conditional allowance allocations in accordance with 9VAC5-140-6215 A and B, for the 2021 control period. By the month and day one month before the date established by subdivision 1 of this subsection, 2021, the department will submit to its agent the remainder of the conditional allowance allocations in accordance with 9VAC5-140-6215 A and B, for 2021.

~~3.~~ By the month and day established by subdivision 1 of this subsection, 2021, and the month and day established by subdivision 1 of this subsection of every subsequent year thereafter, the department will submit to its agent the conditional allowance allocations for the applicable control period in accordance with 9VAC5-140-6215 A and B.

~~J.~~ Implementation of the CCR (subsection C of this section), the ECR (subsection D of this section) and the banking adjustment (subsection E of this section) shall be determined based on the extent of the CO<sub>2</sub> trading program.

~~K.~~ Conditional allowances and conditional CCR allowances allocated for a calendar year will be automatically transferred to the Virginia Consignment Auction Account to be consigned to auction. Following each auction, all conditional allowances sold at the auction will be transferred from the Virginia Consignment Auction Account to winning bidders' accounts as CO<sub>2</sub> allowances. Conditional CCR allowances sold at auction will be transferred to winning bidders' accounts as CO<sub>2</sub> CCR allowances. Unsold conditional CCR allowances will remain in the Virginia Consignment Auction Account to be re-offered for sale at auction within the same calendar year. Conditional CCR allowances remaining unsold at the end of the calendar year in which they were originated will be made unavailable for sale at future auctions.

**9VAC5-140-6211. Conditional allowance allocations, DMME allowances. (Repealed.)**

~~Notwithstanding 9VAC5-140-6210, the department will allocate 5.0% of the Virginia CO<sub>2</sub> Budget Trading Program base or adjusted budget allowances, as applicable, to DMME to be consigned to auction by the holder of a public contract with DMME to assist the department for the abatement and control of air pollution, specifically CO<sub>2</sub>, by the implementation of programs that lower base and peak electricity demand and reduce the cost of the program to consumers and budget sources.~~

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## **9VAC5-140-6215. ~~Conditional allocation methodology. (Repealed.)~~**

~~A. The net electric output in MWh used with respect to conditional allowance allocations under subsection B of this section for each CO<sub>2</sub> budget unit shall be:~~

~~1. For units operating on or before January 1, 2020, the average of the three amounts of the unit's net electric output during 2016, 2017, and 2018 to determine allocations for the initial control period.~~

~~2. For all units operating in each control period after 2020, the average of the three amounts of the unit's total net electric output during the three most recent years for which data are available prior to the start of the control period.~~

~~B. 1. For each control period beginning in 2020 and thereafter, the department will allocate to all CO<sub>2</sub> budget units that have a net electric output, as determined under subsection A of this section, a total amount of conditional allowances equal to the CO<sub>2</sub> base budget.~~

~~2. The department will allocate conditional allowances to each conditional budget unit under subdivision 1 of this subsection in an amount determined by multiplying the total amount of CO<sub>2</sub> allowances allocated under subdivision 1 of this subsection by the ratio of the baseline electrical output of such CO<sub>2</sub> budget unit to the total amount of baseline electrical output of all such CO<sub>2</sub> budget units and rounding to the nearest whole allowance as appropriate.~~

~~3. New CO<sub>2</sub> budget units will be allocated conditional allowances once they have established electrical output data to be used in the conditional allowance allocation process.~~

~~C. For the purpose of the allocation process as described in subsections A and B of this section, CO<sub>2</sub> budget units shall report the unit's net electric output to the department on a yearly basis as follows:~~

~~1. By August 25, 2019, each CO<sub>2</sub> budget unit shall report yearly net electric output data during 2016, 2017, and 2018.~~

~~2. By the month and day established by subdivision 1 of this subsection, 2020, and each year thereafter, each CO<sub>2</sub> budget unit shall report yearly net electric output data for the previous year.~~

### Article 6

### CO<sub>2</sub> Allowance Tracking System

## **9VAC5-140-6220. CO<sub>2</sub> Allowance Tracking System accounts.**

A. Consistent with 9VAC5-140-6230 A, the department or its agent will establish one compliance account for each CO<sub>2</sub> budget source. Allocations of ~~conditional~~ CO<sub>2</sub> allowances

pursuant to Article 5 (9VAC5-140-6190 et seq.) of this part and deductions or transfers of ~~conditional~~ CO<sub>2</sub> allowances pursuant to 9VAC5-140-6180, 9VAC5-140-6260, 9VAC5-140-6280, or Article 7 (9VAC5-140-6300 et seq.) of this part will be recorded in the compliance accounts in accordance with this section.

B. Consistent with 9VAC5-140-6230 B, the department or its agent will establish, upon request, a general account for any person. Transfers of CO<sub>2</sub> allowances pursuant to Article 7 (9VAC5-140-6300 et seq.) of this part will be recorded in the general account in accordance with this article.

## **9VAC5-140-6230. Establishment of accounts.**

A. Upon receipt of a complete account certificate of representation under 9VAC5-140-6110, the department or its agent will establish a ~~conditional~~ an allowance account and a compliance account for each CO<sub>2</sub> budget source for which an account certificate of representation was submitted ~~and a conditional allowance account for DMME.~~

B. General accounts shall operate as follows.

1. Any person may apply to open a general account for the purpose of holding and transferring CO<sub>2</sub> allowances. An application for a general account may designate one and only one CO<sub>2</sub> authorized account representative and one and only one CO<sub>2</sub> authorized alternate account representative who may act on behalf of the CO<sub>2</sub> authorized account representative. The agreement by which the CO<sub>2</sub> authorized alternate account representative is selected shall include a procedure for authorizing the CO<sub>2</sub> authorized alternate account representative to act in lieu of the CO<sub>2</sub> authorized account representative. A complete application for a general account shall be submitted to the department or its agent and shall include the following elements in a format prescribed by the department or its agent:

a. Name, address, email address, telephone number, and facsimile transmission number of the CO<sub>2</sub> authorized account representative and any CO<sub>2</sub> authorized alternate account representative;

b. At the option of the CO<sub>2</sub> authorized account representative, organization name and type of organization;

c. A list of all persons subject to a binding agreement for the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative to represent their ownership interest with respect to the CO<sub>2</sub> allowances held in the general account;

d. The following certification statement by the CO<sub>2</sub> authorized account representative and any CO<sub>2</sub> authorized alternate account representative: "I certify that I was selected as the CO<sub>2</sub> authorized account representative or the CO<sub>2</sub> authorized alternate account

representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CO<sub>2</sub> allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO<sub>2</sub> Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the department or its agent or a court regarding the general account.";

e. The signature of the CO<sub>2</sub> authorized account representative and any CO<sub>2</sub> authorized alternate account representative and the dates signed; and

f. Unless otherwise required by the department or its agent, documents of agreement referred to in the application for a general account shall not be submitted to the department or its agent. Neither the department nor its agent shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

2. Authorization of the CO<sub>2</sub> authorized account representative shall be as follows:

a. Upon receipt by the department or its agent of a complete application for a general account under subdivision 1 of this subsection:

(1) The department or its agent will establish a general account for the person for whom the application is submitted.

(2) The CO<sub>2</sub> authorized account representative and any CO<sub>2</sub> authorized alternate account representative for the general account shall represent and, by his representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CO<sub>2</sub> allowances held in the general account in all matters pertaining to the CO<sub>2</sub> Budget Trading Program, notwithstanding any agreement between the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative and such person. Any such person shall be bound by any order or decision issued to the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative by the department or its agent or a court regarding the general account.

(3) Any representation, action, inaction, or submission by any CO<sub>2</sub> authorized alternate account representative shall be deemed to be a representation, action, inaction, or submission by the CO<sub>2</sub> authorized account representative.

b. Each submission concerning the general account shall be submitted, signed, and certified by the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative for the persons having an

ownership interest with respect to CO<sub>2</sub> allowances held in the general account. Each such submission shall include the following certification statement by the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CO<sub>2</sub> allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

c. The department or its agent will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subdivision 2 b of this subsection.

3. Changing CO<sub>2</sub> authorized account representative and CO<sub>2</sub> authorized alternate account representative, and changes in persons with ownership interest, shall be accomplished as follows:

a. The CO<sub>2</sub> authorized account representative for a general account may be changed at any time upon receipt by the department or its agent of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO<sub>2</sub> authorized account representative, or the previous CO<sub>2</sub> authorized alternate account representative, prior to the time and date when the department or its agent receives the superseding application for a general account shall be binding on the new CO<sub>2</sub> authorized account representative and the persons with an ownership interest with respect to the CO<sub>2</sub> allowances in the general account.

b. The CO<sub>2</sub> authorized alternate account representative for a general account may be changed at any time upon receipt by the department or its agent of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO<sub>2</sub> authorized account representative, or the previous CO<sub>2</sub> authorized alternate account representative, prior to the time and date when the department or its agent receives the superseding application for a general account shall be binding on the new alternate CO<sub>2</sub> authorized account representative and

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the persons with an ownership interest with respect to the CO<sub>2</sub> allowances in the general account.

c. In the event a new person having an ownership interest with respect to CO<sub>2</sub> allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representations, actions, inactions, and submissions of the CO<sub>2</sub> authorized account representative and any CO<sub>2</sub> authorized alternate account representative, and the decisions, orders, actions, and inactions of the department or its agent, as if the new person were included in such list.

d. Within 30 days following any change in the persons having an ownership interest with respect to CO<sub>2</sub> allowances in the general account, including the addition or deletion of persons, the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CO<sub>2</sub> allowances in the general account to include the change.

4. Objections concerning CO<sub>2</sub> authorized account representative shall be governed as follows:

a. Once a complete application for a general account under subdivision 1 of this subsection has been submitted and received, the department or its agent will rely on the application unless and until a superseding complete application for a general account under subdivision 1 of this subsection is received by the department or its agent.

b. Except as provided in subdivisions 3 a and 3 b of this subsection, no objection or other communication submitted to the department or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative for a general account shall affect any representation, action, inaction, or submission of the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative or the finality of any decision or order by the department or its agent under the CO<sub>2</sub> Budget Trading Program.

c. Neither the department nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative for a general account, including private legal disputes concerning the proceeds of CO<sub>2</sub> allowance transfers.

5. Delegation by CO<sub>2</sub> authorized account representative and CO<sub>2</sub> authorized alternate account representative shall be accomplished as follows:

a. A CO<sub>2</sub> authorized account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent provided for under this article and Article 7 (9VAC5-140-6300 et seq.) of this part.

b. A CO<sub>2</sub> authorized alternate account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent provided for under this article and Article 7 (9VAC5-140-6300 et seq.) of this part.

c. To delegate authority to make an electronic submission to the department or its agent in accordance with subdivisions 5 a and 5 b of this subsection, the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative, as appropriate, shall submit to the department or its agent a notice of delegation, in a format prescribed by the department that includes the following elements:

(1) The name, address, email address, telephone number, and facsimile transmission number of such CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative;

(2) The name, address, email address, telephone number, and facsimile transmission number of each such natural person, referred to as "electronic submission agent";

(3) For each such natural person, a list of the type of electronic submissions under subdivision 5 c (1) or 5 c (2) of this subsection for which authority is delegated to him; and

(4) The following certification statement by such CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative: "I agree that any electronic submission to the department or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6230 B 5 d shall be deemed to be an electronic submission by me. Until this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6230 B 5 d, I agree to maintain an email account and to notify the department or its agent immediately of any change in my email address unless all delegation authority by me under 9VAC5-140-6230 B 5 is terminated."

d. A notice of delegation submitted under subdivision 5 c of this subsection shall be effective, with regard to the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative identified in such notice,

upon receipt of such notice by the department or its agent and until receipt by the department or its agent of a superseding notice of delegation by such CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative as appropriate. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.

e. Any electronic submission covered by the certification in subdivision 5 c (4) of this subsection and made in accordance with a notice of delegation effective under subdivision 5 d of this subsection shall be deemed to be an electronic submission by the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative submitting such notice of delegation.

C. The department or its agent will assign a unique identifying number to each account established under subsection A or B of this section.

**9VAC5-140-6250. Recordation of conditional CO<sub>2</sub> allowance allocations.**

A. By January 1 of each calendar year, the department or its agent will record in the following accounts:

1. In each CO<sub>2</sub> budget source's ~~and DMME's conditional~~ allowance account, the ~~conditional CO<sub>2</sub>~~ allowances allocated to those sources ~~and DMME~~ by the department prior to being ~~consigned to auction~~ auctioned; and
2. In each CO<sub>2</sub> budget source's compliance account, the ~~CO<sub>2</sub>~~ allowances purchased at auction by CO<sub>2</sub> budget units at the source under 9VAC5-140-6210 A.

B. Each year the department or its agent will record ~~conditional CO<sub>2</sub>~~ allowances, as allocated to the unit under Article 5 (9VAC5-140-6190 et seq.) of this part, in the compliance account for the year after the last year for which ~~conditional CO<sub>2</sub>~~ allowances were previously allocated to the compliance account. Each year, the department or its agent will also record ~~conditional CO<sub>2</sub>~~ allowances, as allocated under Article 5 (9VAC5-140-6190 et seq.) of this part, in an allocation set-aside for the year after the last year for which ~~conditional CO<sub>2</sub>~~ allowances were previously allocated to an allocation set-aside.

C. Serial numbers for allocated ~~conditional CO<sub>2</sub>~~ allowances shall be managed as follows. When allocating ~~conditional CO<sub>2</sub>~~ allowances to and recording them in an account, the department or its agent will assign each ~~conditional CO<sub>2</sub>~~ allowance a unique identification number that will include digits identifying the year for which the ~~conditional CO<sub>2</sub>~~ allowance is allocated.

**9VAC5-140-6260. Compliance.**

A. CO<sub>2</sub> allowances that meet the following criteria are available to be deducted for a CO<sub>2</sub> budget source to comply with the CO<sub>2</sub> requirements of 9VAC5-140-6050 C for ~~the initial control period~~, a control period; or an interim control period.

1. The CO<sub>2</sub> allowances are of allocation years that fall within ~~an initial control period~~, a prior control period, the same control period, or the same interim control period for which the allowances will be deducted.
2. The CO<sub>2</sub> allowances are held in the CO<sub>2</sub> budget source's compliance account as of the CO<sub>2</sub> allowance transfer deadline for that ~~initial control period~~, control period; or interim control period or are transferred into the compliance account by a CO<sub>2</sub> allowance transfer correctly submitted for recordation under 9VAC5-140-6300 by the CO<sub>2</sub> allowance transfer deadline for that ~~initial control period~~, control period; or interim control period.
3. For CO<sub>2</sub> offset allowances generated by other participating states, the number of CO<sub>2</sub> offset allowances that are available to be deducted in order for a CO<sub>2</sub> budget source to comply with the CO<sub>2</sub> requirements of 9VAC5-140-6050 C for a control period or an ~~initial interim~~ control period shall not exceed 3.3% of the CO<sub>2</sub> budget source's CO<sub>2</sub> emissions for that control period, or may not exceed 3.3% of 0.50 times the CO<sub>2</sub> budget source's CO<sub>2</sub> emissions for an interim control period, as determined in accordance with this article and Article 8 (9VAC5-140-6330 et seq.) of this part.
4. The CO<sub>2</sub> allowances are not necessary for deductions for excess emissions for a prior ~~initial control period~~ or a control period under subsection D of this section.

B. Following the recordation, in accordance with 9VAC5-140-6310, of CO<sub>2</sub> allowance transfers submitted for recordation in the CO<sub>2</sub> budget source's compliance account by the CO<sub>2</sub> allowance transfer deadline for ~~the initial control period~~, a control period ; or an interim control period, the department or its agent will deduct CO<sub>2</sub> allowances available under subsection A of this section to cover the source's CO<sub>2</sub> emissions, as determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, for the ~~initial control period~~, control period; or interim control period, as follows:

1. Until the amount of CO<sub>2</sub> allowances deducted equals the number of tons of total CO<sub>2</sub> emissions, or 0.50 times the number of tons of total CO<sub>2</sub> emissions for an interim control period, determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, from all CO<sub>2</sub> budget units at the CO<sub>2</sub> budget source for the ~~initial control period~~, control period; or interim control period; or
2. If there are insufficient CO<sub>2</sub> allowances to complete the deductions in subdivision 1 of this subsection, until no

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more CO<sub>2</sub> allowances available under subsection A of this section remain in the compliance account.

C. Identification of available CO<sub>2</sub> allowances by serial number and default compliance deductions shall be managed as follows:

1. The CO<sub>2</sub> authorized account representative for a source's compliance account may request that specific CO<sub>2</sub> allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for ~~the initial control period~~, a control period, or interim control period in accordance with subsection B or D of this section. Such identification shall be made in the compliance certification report submitted in accordance with 9VAC5-140-6170.

2. The department or its agent will deduct CO<sub>2</sub> allowances for ~~the initial control period~~, an interim control period, or a control period from the CO<sub>2</sub> budget source's compliance account, in the absence of an identification or in the case of a partial identification of available CO<sub>2</sub> allowances by serial number under subdivision 1 of this subsection, as follows: Any CO<sub>2</sub> allowances that are available for deduction under subdivision 1 of this subsection. CO<sub>2</sub> allowances shall be deducted in chronological order (i.e., CO<sub>2</sub> allowances from earlier allocation years shall be deducted before CO<sub>2</sub> allowances from later allocation years). In the event that some, but not all, CO<sub>2</sub> allowances from a particular allocation year are to be deducted, CO<sub>2</sub> allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

D. Deductions for excess emissions shall be managed as follows.

1. After making the deductions for compliance under subsection B of this section, the department or its agent will deduct from the CO<sub>2</sub> budget source's compliance account a number of CO<sub>2</sub> allowances equal to three times the number of the source's excess emissions. In the event that a source has insufficient CO<sub>2</sub> allowances to cover three times the number of the source's excess emissions, the source shall be required to immediately transfer sufficient allowances into its compliance account.

2. Any CO<sub>2</sub> allowance deduction required under subdivision 1 of this subsection shall not affect the liability of the owners and operators of the CO<sub>2</sub> budget source or the CO<sub>2</sub> budget units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under applicable state law. The following guidelines will be followed in assessing fines, penalties, or other obligations:

a. For purposes of determining the number of days of violation, if a CO<sub>2</sub> budget source has excess emissions for a control period, each day in the control period

constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

b. Each ton of excess emissions is a separate violation.

c. For purposes of determining the number of days of violation, if a CO<sub>2</sub> budget source has excess interim emissions for an interim control period, each day in the interim control period constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

d. Each ton of excess interim emissions is a separate violation.

3. The propriety of the department's determination that a CO<sub>2</sub> budget source had excess emissions and the concomitant deduction of CO<sub>2</sub> allowances from that CO<sub>2</sub> budget source's account may be later challenged in the context of the initial administrative enforcement, or any civil or criminal judicial action arising from or encompassing that excess emissions violation. The commencement or pendency of any administrative enforcement, or civil or criminal judicial action arising from or encompassing that excess emissions violation will not act to prevent the department or its agent from initially deducting the CO<sub>2</sub> allowances resulting from the department's original determination that the relevant CO<sub>2</sub> budget source has had excess emissions. Should the department's determination of the existence or extent of the CO<sub>2</sub> budget source's excess emissions be revised either by a settlement or final conclusion of any administrative or judicial action, the department will act as follows:

a. In any instance where the department's determination of the extent of excess emissions was too low, the department will take further action under subdivisions 1 and 2 of this subsection to address the expanded violation.

b. In any instance where the department's determination of the extent of excess emissions was too high, the department will distribute to the relevant CO<sub>2</sub> budget source a number of CO<sub>2</sub> allowances equaling the number of CO<sub>2</sub> allowances deducted which are attributable to the difference between the original and final quantity of excess emissions. Should such CO<sub>2</sub> budget source's compliance account no longer exist, the CO<sub>2</sub> allowances will be provided to a general account selected by the owner or operator of the CO<sub>2</sub> budget source from which they were originally deducted.

E. The department or its agent will record in the appropriate compliance account all deductions from such an account pursuant to subsections B and D of this section.

F. Action by the department on submissions shall be as follows:

1. The department may review and conduct independent audits concerning any submission under the CO<sub>2</sub> Budget Trading Program and make appropriate adjustments of the information in the submissions.
2. The department may deduct CO<sub>2</sub> allowances from or transfer CO<sub>2</sub> allowances to a source's compliance account based on information in the submissions, as adjusted under subdivision 1 of this subsection.

**9VAC5-140-6325. Life-of-the-unit contractual arrangements.**

A. A power purchaser entered into a life-of-the-unit contractual arrangement as described in subdivision b of the definition of "life-of-the-unit contractual arrangement" with a CO<sub>2</sub> budget source or unit shall be responsible for acquiring and transferring all allowances to the CO<sub>2</sub> budget source or unit that are necessary for demonstrating compliance with the CO<sub>2</sub> budget trading program.

B. The CO<sub>2</sub> budget source or unit shall provide a copy of the energy conversion or energy tolling agreement to the department within six months of July 10, 2020. If such agreement is subject to third-party disclosure restrictions, the CO<sub>2</sub> budget source or unit shall provide purchaser within 10 days prior written notice of its intention to disclose the agreement to the department and request confidential treatment from the public disclosure of such agreement. The department will grant a request for confidential treatment pursuant to applicable statutory and regulatory requirements addressing confidential information.

C. The CO<sub>2</sub> budget source or unit shall be responsible for compliance with and otherwise be subject to all other requirements of this part and the CO<sub>2</sub> budget trading program.

Article 8

Monitoring, Reporting, and Recordkeeping

**9VAC5-140-6330. General requirements.**

A. The owners and operators, and to the extent applicable, the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this section and all applicable sections of 40 CFR Part 75. Where referenced in this article, the monitoring requirements of 40 CFR Part 75 shall be adhered to in a manner consistent with the purpose of monitoring and reporting CO<sub>2</sub> mass emissions pursuant to this part. For purposes of complying with such requirements, the definitions in 9VAC5-140-6020 and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "CEMS" in 40 CFR Part 75 shall be replaced by the terms "CO<sub>2</sub> budget unit," "CO<sub>2</sub> authorized account representative," and "CEMS," respectively, as defined in 9VAC5-140-6020. For units not subject to an ~~acid~~

~~rain Acid Rain~~ emissions limitation, the term "administrator" in 40 CFR Part 75 shall be replaced with "the department or its agent." Owners or operators of a CO<sub>2</sub> budget unit who monitor a non-CO<sub>2</sub> budget unit pursuant to the common, multiple, or bypass stack procedures in 40 CFR 75.72(b)(2)(ii), or 40 CFR 75.16 (b)(2)(ii)(B) pursuant to 40 CFR 75.13, for purposes of complying with this part, shall monitor and report CO<sub>2</sub> mass emissions from such non-CO<sub>2</sub> budget units according to the procedures for CO<sub>2</sub> budget units established in this article.

B. The owner or operator of each CO<sub>2</sub> budget unit shall meet the following general requirements for installation, certification, and data accounting.

1. Install all monitoring systems necessary to monitor CO<sub>2</sub> mass emissions in accordance with 40 CFR Part 75, except for equation G-1. Equation G-1 in Appendix G shall not be used to determine CO<sub>2</sub> emissions under this part. This may require systems to monitor CO<sub>2</sub> concentration, stack gas flow rate, O<sub>2</sub> concentration, heat input, and fuel flow rate.
2. Successfully complete all certification tests required under 9VAC5-140-6340 and meet all other requirements of this section and 40 CFR Part 75 applicable to the monitoring systems under subdivision 1 of this subsection.
3. Record, report, and quality-assure the data from the monitoring systems under subdivision 1 of this subsection.

C. The owner or operator shall meet the monitoring system certification and other requirements of subsection B of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under subdivision B 1 of this section on and after the following dates:

1. The owner or operator of a CO<sub>2</sub> budget unit, except for a CO<sub>2</sub> budget unit under subdivision 2 of this subsection, shall comply with the requirements of this section by January 1, ~~2020~~ 2021.
2. The owner or operator of a CO<sub>2</sub> budget unit that commences commercial operation July 1, ~~2020~~ 2021, shall comply with the requirements of this section by (i) January 1, ~~2021~~ 2022, or (ii) the earlier of 90 unit operating days after the date on which the unit commences commercial operation or 180 calendar days after the date on which the unit commences commercial operation.
3. For the owner or operator of a CO<sub>2</sub> budget unit for which construction of a new stack or flue installation is completed after the applicable deadline under subdivision 1 or 2 of this subsection by the earlier of (i) 90 unit operating days after the date on which emissions first exit to the atmosphere through the new stack or flue or (ii) 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue.

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## D. Data shall be reported as follows:

1. Except as provided in subdivision 2 of this subsection, the owner or operator of a CO<sub>2</sub> budget unit that does not meet the applicable compliance date set forth in subsection C of this section for any monitoring system under subdivision B 1 of this section shall, for each such monitoring system, determine, record, and report maximum potential, or as appropriate minimum potential, values for CO<sub>2</sub> concentration, CO<sub>2</sub> emissions rate, stack gas moisture content, fuel flow rate, heat input, and any other parameter required to determine CO<sub>2</sub> mass emissions in accordance with 40 CFR 75.31(b)(2) or (c)(3) or Section 2.4 of Appendix D of 40 CFR Part 75 as applicable.

2. The owner or operator of a CO<sub>2</sub> budget unit that does not meet the applicable compliance date set forth in subdivision C 3 of this section for any monitoring system under subdivision B 1 of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in Subpart D, or Appendix D of 40 CFR Part 75, in lieu of the maximum potential, or as appropriate minimum potential, values for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under subdivision C 3 of this section.

a. CO<sub>2</sub> budget units subject to an ~~acid-rain~~ Acid Rain emissions limitation or CSAPR NO<sub>x</sub> Ozone Season Trading Program that qualify for the optional SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub> (for ~~acid-rain~~ Acid Rain) or NO<sub>x</sub> (for CSAPR NO<sub>x</sub> Ozone Season Trading Program) emissions calculations for low mass emissions (LME) units under 40 CFR 75.19 and report emissions for such programs using the calculations under 40 CFR 75.19, shall also use the CO<sub>2</sub> emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with these regulations.

b. CO<sub>2</sub> budget units subject to an ~~acid-rain~~ Acid Rain emissions limitation that do not qualify for the optional SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub> (for ~~acid-rain~~ Acid Rain) or NO<sub>x</sub> (for CSAPR NO<sub>x</sub> Ozone Season Trading Program) emissions calculations for LME units under 40 CFR 75.19 shall not use the CO<sub>2</sub> emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with these regulations.

c. CO<sub>2</sub> budget units not subject to an ~~acid-rain~~ Acid Rain emissions limitation shall qualify for the optional CO<sub>2</sub> emissions calculation for LME units under 40 CFR 75.19, provided that they emit less than 100 tons of NO<sub>x</sub> annually and no more than 25 tons of SO<sub>2</sub> annually.

3. The owner or operator of a CO<sub>2</sub> budget unit shall report net-electric output data to the department as required by Article 5 (9VAC5-140-6190 et seq.) of this part.

## E. Prohibitions shall be as follows.

1. No owner or operator of a CO<sub>2</sub> budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required CEMS without having obtained prior written approval in accordance with 9VAC5-140-6380.

2. No owner or operator of a CO<sub>2</sub> budget unit shall operate the unit so as to discharge, or allow to be discharged, CO<sub>2</sub> emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this article and 40 CFR Part 75.

3. No owner or operator of a CO<sub>2</sub> budget unit shall disrupt the CEMS, any portion thereof, or any other approved emissions monitoring method, and thereby avoid monitoring and recording CO<sub>2</sub> mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this article and 40 CFR Part 75.

4. No owner or operator of a CO<sub>2</sub> budget unit shall retire or permanently discontinue use of the CEMS, any component thereof, or any other approved emissions monitoring system under this article, except under any one of the following circumstances:

a. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this article and 40 CFR Part 75, by the department for use at that unit that provides emissions data for the same pollutant or parameter as the retired or discontinued monitoring system; or

b. The CO<sub>2</sub> authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with 9VAC5-140-6340 D 3 a.

### **9VAC5-140-6380. Petitions.**

A. Except as provided in subsection C of this section, the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that is subject to an ~~acid-rain~~ Acid Rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 and to the department requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this article only to the extent that the petition is approved in writing by the administrator, and subsequently approved in writing by the department.

B. Petitions for a CO<sub>2</sub> budget unit that is not subject to an ~~acid-rain~~ Acid Rain emissions limitation shall meet the following requirements.

1. The CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that is not subject to an ~~acid-rain~~ Acid Rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 and to the department requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this article only to the extent that the petition is approved in writing by the administrator and subsequently approved in writing by the department.

2. In the event that the administrator declines to review a petition under subdivision 1 of this subsection, the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that is not subject to an ~~acid-rain~~ Acid Rain emissions limitation may submit a petition to the department requesting approval to apply an alternative to any requirement of this article. That petition shall contain all of the relevant information specified in 40 CFR 75.66. Application of an alternative to any requirement of this article is in accordance with this article only to the extent that the petition is approved in writing by the department.

C. The CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that is subject to an ~~acid-rain~~ Acid Rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 and to the department requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a CO<sub>2</sub> concentration CEMS used under 40 CFR 75.71(a)(2). Application of an alternative to any such requirement is in accordance with this article only to the extent the petition is approved in writing by the administrator and subsequently approved in writing by the department.

#### **9VAC5-140-6420. General requirements.**

A. The department's agent will include the following information in the auction notice for each auction:

1. The number of ~~conditional~~ CO<sub>2</sub> allowances offered for sale at the auction, not including any ~~conditional~~ CO<sub>2</sub> CCR allowances;
2. The number of ~~conditional~~ CO<sub>2</sub> CCR allowances that will be offered for sale at the auction if the condition of subdivision B 1 of this section is met;
3. The minimum reserve price for the auction;
4. The CCR trigger price for the auction;
5. The maximum number of ~~conditional~~ CO<sub>2</sub> allowances that may be withheld from sale at the auction if the condition of subdivision D 1 of this section is met; and
6. The ECR trigger price for the auction.

B. The department's agent will follow these rules for the sale of ~~conditional~~ CO<sub>2</sub> CCR allowances.

1. ~~Conditional~~ CO<sub>2</sub> CCR allowances shall only be sold at an auction in which total demand for allowances, above the CCR trigger price, exceeds the number of ~~conditional~~ CO<sub>2</sub> allowances available for purchase at the auction, not including any ~~conditional~~ CO<sub>2</sub> CCR allowances.

2. If the condition of subdivision 1 of this subsection is met at an auction, then the number of ~~conditional~~ CO<sub>2</sub> CCR allowances offered for sale by the department or its agent at the auction shall be equal to the number of ~~conditional~~ CO<sub>2</sub> CCR allowances in the Virginia ~~Consignment~~ Auction Account at the time of the auction.

3. After all of the ~~conditional~~ CO<sub>2</sub> CCR allowances in the Virginia ~~Consignment~~ Auction Account have been sold in a given calendar year, no additional ~~conditional~~ CO<sub>2</sub> CCR allowances will be sold at any auction for the remainder of that calendar year, even if the condition of subdivision 1 of this subsection is met at an auction.

4. At an auction in which ~~conditional~~ CO<sub>2</sub> CCR allowances are sold, the reserve price for the auction shall be the CCR trigger price.

5. If the condition of subdivision 1 of this subsection is not satisfied, no ~~conditional~~ CO<sub>2</sub> CCR allowances shall be offered for sale at the auction, and the reserve price for the auction shall be equal to the minimum reserve price.

C. The department's agent shall implement the reserve price as follows: (i) no allowances shall be sold at any auction for a price below the reserve price for that auction and (ii) if the total demand for allowances at an auction is less than or equal to the total number of allowances made available for sale in that auction, then the auction clearing price for the auction shall be the reserve price.

D. The department's agent will meet the following rules for the withholding of CO<sub>2</sub> ECR allowances from an auction.

1. CO<sub>2</sub> ECR allowances shall only be withheld from an auction if the demand for allowances would result in an auction clearing price that is less than the ECR trigger price prior to the withholding from the auction of any ECR allowances.

2. If the condition in subdivision 1 of this subsection is met at an auction, then the maximum number of CO<sub>2</sub> ECR allowances that may be withheld from that auction will be equal to the quantity shown in Table 140-5B of 9VAC5-140-6210 E minus the total quantity of CO<sub>2</sub> ECR allowances that have been withheld from any prior auction in that calendar year. Any CO<sub>2</sub> ECR allowances withheld from an auction will be transferred into the Virginia ECR Account.

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# Regulations

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## **9VAC5-140-6430. Consignment auction. (Repealed.)**

~~In accordance with Article 5 (9VAC5-140-6190 et seq.) of this part, one quarter of the annual conditional allowance allocation shall be consigned by the CO<sub>2</sub> budget source to whom they are allocated or the holder of a public contract with DMME to each auction in accordance with procedures specified by the department. At the completion of the consignment auction, a conditional allowance sold at auction shall become a CO<sub>2</sub> allowance.~~

## **9VAC5-140-6435. Other auction. (Repealed.)**

~~Notwithstanding the requirements of 9VAC5-140-6430, the department may participate in a direct auction of allowances without consignment in accordance with requirements established by the Virginia General Assembly. A "direct auction" means a CO<sub>2</sub> auction conducted by a CO<sub>2</sub> Budget Trading Program in which Virginia is a participating state.~~

VA.R. Doc. No. R20-6340; Filed July 10, 2020, 8:05 a.m.

## **STATE WATER CONTROL BOARD**

### **Proposed Regulation**

**REGISTRAR'S NOTICE:** The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **9VAC25-110. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day (amending 9VAC25-110-10 through 9VAC25-110-80).**

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

## Public Hearing Information:

September 9, 2020 - 10:00 am - GoToWebinar - Register at: <https://attendee.gotowebinar.com/register/74261423508106255>.

If a determination is made to provide an in person option, it will be announced on the Virginia Regulatory Town Hall and the Department of Environmental Quality website.

## Public Comment Deadline: October 3, 2020.

Agency Contact: Peter Sherman, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4044, FAX (804) 698-4032, or email [peter.sherman@deq.virginia.gov](mailto:peter.sherman@deq.virginia.gov).

## Summary:

*The proposed amendments to the general permit include (i) clarifying the definition of "individual single family dwelling"; (ii) revising the term of the general permit to August 2, 2021, through July 1, 2026; (iii) requiring that the owner of an individual single family dwelling must submit a combined application; (iv) making certain language more generic so that dates do not have to be changed each reissuance; (v) adding language regarding continuation of permit coverage to address automatic renewal; (vi) adding latitude and longitude data requirement to the registration statement; (vii) adding State Corporation Commission entity identification data requirement to the registration statement for non-single-family homes (NSFHs); (viii) clarifying the Virginia Department of Health (VDH) notification and documentation necessary for the registration statement that an onsite system is not available; (ix) revising the discharge limits for E. coli and enterococci to reflect revised water quality standards that became effective October 21, 2019; (x) changing the operation and maintenance (O&M) requirements for NSFHs to be consistent with VDH requirements for single family homes to require NSFHs to engage a licensed operator, specify that persons who perform maintenance on discharging systems must hold a Class IV or higher wastewater work operator license or an alternative onsite sewage system operator license, require the licensed operator to visit the system two times per year, remove the requirement for NSFHs to have a maintenance contract, and remove the alternative for NSFHs to conduct O&M under an approved O&M plan; (xi) adding signature requirements for the combined application; (xii) adding conditional requirements for the electronic submission of registration statements; and (xiii) adding conditional requirements for the electronic submission of discharge monitoring reports. The general permit is being amended in order to reissue it.*

## CHAPTER 110

## VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT REGULATION FOR DOMESTIC SEWAGE DISCHARGES OF LESS THAN OR EQUAL TO 1,000 GALLONS PER DAY

**9VAC25-110-10. Definitions.**

The words and terms used in this chapter shall have the same meanings as given in the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the VPDES Permit Regulation (9VAC25-31), unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"7Q10" means the lowest flow averaged over a period of seven consecutive days that can be statistically expected to occur once every 10 years.

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

"Combined application" means the Virginia Department of Health Discharging System Application for Single Family Dwellings Discharging Sewage Less Than or Equal to 1,000 Gallons per Day and State Water Control Board Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Domestic Sewage Discharges Less Than or Equal to 1,000 Gallons per Day. This application combines the VDH Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings (12VAC5-640) requirements with the board's registration statement requirements.

"Department" or "DEQ" means the Virginia Department of Environmental Quality.

"Domestic sewage" means the water-carried human wastes from residences, buildings, industrial establishments, or other places.

"Individual single family dwelling" means a ~~residence housing one family or household~~ structure, including any accessory structure such as a garage or pool house, housing one family or household or one that is designed for one family only. When a treatment works serving an individual single family dwelling has additional unused connections, it remains a treatment works serving an individual single family dwelling until such time that an additional single family dwelling is connected to the treatment works.

"Receiving water" means a creek, stream, river, lake, estuary, groundwater formation, or other body of water into which treated waste or untreated waste is discharged.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point

source discharges, and load allocations (LAs) for nonpoint sources or natural background or both, and must include a margin of safety (MOS) and account for seasonal variations.

"VDH" means the Virginia Department of Health.

**9VAC25-110-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated herein, that regulation shall be as it exists and has been published as of July 1, ~~2015~~ 2021.

**9VAC25-110-20. Purpose; delegation of authority; effective date of permit.**

A. This general permit regulation governs domestic sewage discharges to surface waters from treatment works with a design discharge flow of less than or equal to 1,000 gallons per day on a monthly average.

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

C. This general VPDES permit will become effective on August 2, ~~2016~~ 2021, and it expires on ~~August 1, 2024~~ July 31, 2026. With respect to a particular dwelling, building, or site served, this general permit shall become effective upon the dwelling, building, or site served owner's compliance with the provisions of 9VAC25-110-60.

**9VAC25-110-60. Authorization to discharge.**

A. Any owner of a treatment works governed by this general permit is hereby authorized to discharge treated domestic sewage to surface waters of the Commonwealth of Virginia provided that:

1. The owner submits a registration statement, if required to do so, in accordance with 9VAC25-110-70 and that registration statement is accepted by the board. For an individual single family dwelling, the owner ~~may~~ shall submit a combined application in place of a registration statement;
2. The owner complies with the effluent limitations and other requirements of 9VAC25-110-80; and
3. The board has not notified the owner, in accordance with subsection B of this section, that the discharge is not eligible for coverage under this permit.

B. The board will notify an owner that the discharge is not eligible for coverage under this permit in the event of any of the following:

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1. The owner is required to obtain an individual VPDES permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;
  2. The owner is proposing to discharge to surface waters specifically named in other board regulations that prohibit such discharges;
  3. The owner is proposing to discharge to surface waters in an area where there are central sewage facilities reasonably available, as determined by the board;
  4. The owner of any proposed treatment works or any treatment works that has not previously been issued a VPDES permit has applied to the Virginia Department of Health for an onsite sewage disposal system permit, and the Virginia Department of Health has determined that an onsite system is available to serve that parcel of land in accordance with the criteria in 12VAC5-640;
  5. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards; or
  6. The discharge is not consistent with the assumptions and requirements of an approved TMDL.
- C. Compliance with this general permit constitutes compliance, for purposes of enforcement, with the federal Clean Water Act §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b), and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general VPDES permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation, including, for owners of sewage treatment works that serve individual single family dwellings, the Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings (12VAC5-640) of the Virginia Department of Health adopted pursuant to §§ 32.1-12, 32.1-163, and 32.1-164 of the Code of Virginia and, for owners of sewage treatment works that serve buildings or dwellings other than individual single family dwellings, the Sewage Collection and Treatment Regulations (9VAC25-790) adopted by the State Water Control Board pursuant to § 62.1-44.19 of the Code of Virginia.

D. Continuation of permit coverage.

1. ~~Any owner that was authorized to discharge under the domestic sewage discharges general permit issued in 2011 and who is required to and submits a complete registration statement, or for an individual single family dwelling a combined application, on or before August 1, 2016, is authorized to continue to discharge treated domestic sewage under the terms of the 2011 general permit~~ Permit coverage shall expire at the end of the applicable permit term. However, expiring permit coverages are continued if

the owner has submitted a complete registration statement or, for an individual single family dwelling, a combined application, at least 60 days prior to the expiration date of the permit, or a later submittal date established by the board, which cannot extend beyond the expiration date of the permit. Where the expiring permit coverage was originally based on automatic renewal as found in 9VAC25-110-70 A 2 b, such coverage is continued provided the owner continues to meet the automatic renewal criteria. The permittee is authorized to continue to discharge until such time as the board either:

- a. Issues coverage to the owner under this general permit; or
- b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

- a. Initiate enforcement action based upon the ~~2011~~ general permit coverage that has been continued;
- b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the administratively continued coverage ~~under the terms of the 2011 general permit~~ or be subject to enforcement action for operating without a permit;
- c. Issue an individual permit with appropriate conditions; or
- d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

## **9VAC25-110-70. Registration statement.**

A. Deadlines for submitting registration statement. Any owner seeking coverage under this general permit, and who is required to submit a registration statement, shall submit a complete VPDES general ~~VPDES~~ permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the VPDES General ~~VPDES~~ Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons per Day. For an individual single family dwelling, the owner ~~may~~ shall submit a combined application in place of the registration statement.

1. New treatment works. Any owner proposing a new discharge shall submit a complete registration statement, or for an individual single family dwelling a combined application, to the department at least 60 days prior to the date planned for commencing operation of the treatment works or a later submittal date established by the board.

2. Existing treatment works.

a. Any owner of an existing treatment works covered by an VPDES individual ~~VPDES~~ permit who is proposing to be covered by this general permit shall ~~notify the department and~~ submit a complete registration statement, or for an individual single family dwelling a combined application, at least 240 days prior to the expiration date of the individual VPDES permit or a later submittal date established by the board.

b. Any owner of a treatment works that was authorized to discharge under the expiring general permit ~~issued in 2014~~, and who intends to continue coverage under this general permit, is automatically covered by this general permit and is not required to submit a registration statement, or for an individual single family dwelling a combined application, if:

(1) The ownership of the treatment works has not changed since the registration statement or combined application for coverage under the ~~2014~~ expiring general permit was submitted, or, if the ownership has changed (i) a new registration statement or combined application or (ii) VPDES Change of Ownership form was submitted to the department by the new owner at the time of the title transfer;

(2) There has been no change in the design or operation, or both, of the treatment works since the registration statement or combined application for coverage under the ~~2014~~ expiring general permit was submitted;

(3) For treatment works serving individual single family dwellings, VDH has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the board. If VDH objects to the automatic renewal for this treatment works, the owner will be notified by the board in writing; and

(4) For treatment works serving buildings or dwellings other than individual single family dwellings, the board has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the board. If the board objects to the automatic renewal for this treatment works, the owner will be notified by the board in writing.

c. Any owner of a treatment works that was authorized to discharge under the expiring general permit ~~issued in 2014~~ that does not qualify for automatic permit coverage renewal shall submit a complete registration statement, or for an individual single family dwelling a combined application, to the department ~~on or before June 2, 2016~~ at least 60 days prior to the expiration of the existing general permit or a later submittal date established by the board.

3. Late registration statements. Registration statements, or for individual single family dwellings combined applications, for existing treatment works covered under subdivision 2 b of this subsection will be accepted after ~~August 1, 2016, but authorization to discharge will not be retroactive. Owners described in subdivision 2 b of this subsection that submit registration statements or combined applications after June 2, 2016, are authorized to discharge under the provisions of 9VAC25-110-60 D if a complete registration statement, or combined application, is submitted before August 2, 2016~~ the expiration date of this permit.

B. Registration statement. The registration statement shall contain the following information:

1. a. Indicate if the building served by the treatment works is an individual single family dwelling. (If it is an individual single family dwelling, see the requirement to submit a combined application in 9VAC25-110-60 A 1.) If the building is not an individual single family dwelling, describe the use of the building or site served.

b. Name and street address of the building or site served by the treatment works.

2. a. Name, mailing address, email address (where available), and telephone number of the owner of the treatment works. Indicate if the owner is or will be the occupant of the dwelling or building served by the treatment works.

b. If the owner is not or will not be the occupant of the dwelling or building, provide an alternate contact name, mailing address, email address (where available), and telephone number of the dwelling or building, if available.

3. Name of the water body receiving the discharge. Outfall latitude and longitude. Indicate if the discharge point is on a stream that usually flows during dry weather.

4. The amount of discharge from the treatment works, in gallons per day, on a monthly average, and the design flow of the treatment works, in gallons per day.

5. A description of any pollutants, other than domestic sewage, to be discharged.

6. For a proposed treatment works, indicate if there are central sewage facilities available to serve the building or site.

7. If the treatment works currently has a VPDES permit, provide the permit number. Indicate if the treatment works has been built and begun discharging.

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8. For the owner of any proposed treatment works or any treatment works that has not previously been issued a VPDES permit:

a. A 7.5 minute U.S. Geological Survey (USGS) topographic map or equivalent (e.g., a computer generated map) that indicates the discharge point, the location of the property to be served by the treatment works, and the location of any wells, springs, other water bodies, and any residences within 1/2 mile downstream from the discharge point;

b. A site diagram of the existing or proposed treatment works; to include the property boundaries, the location of the dwelling, building, or site served, the individual sewage treatment units, the receiving water body, and the discharge line location; and

c. A copy of the notification from the Virginia Department of Health that an onsite sewage disposal system permit ~~has been~~ was applied for and that the Virginia Department of Health has determined that ~~there is no an~~ onsite system available cannot be constructed to serve that parcel of land.

9. Operation and maintenance.

a. For the owner of a treatment works serving an individual single family dwelling, operation and maintenance requirements are specified in VDH regulations at ~~12VAC5-640-500~~ 12VAC5-640;

b. For the owner of a treatment works serving a building or dwelling other than an individual single family dwelling, ~~indicate if a valid maintenance contract has been obtained, or if an exception to the maintenance contract requirement has been requested and granted in accordance with subdivision 10 of this subsection. Provide the name of the individual or company contracted to perform the treatment works maintenance and the expiration date of the current contract, if applicable. If the treatment works has not been constructed yet, provide the name after the certificate to construct (CTC) is issued, and prior to requesting a certificate to operate (CTO)~~ operation and maintenance must be consistent with Part I D 2 b, which requires that such owners engage a licensed operator.

10. ~~The owner of a treatment works serving a building or dwelling other than an individual single family dwelling may request an exception to the maintenance contract requirement by submitting an operation and maintenance plan to the board for review and approval. If an operation and maintenance plan has been approved by the board previously and remains current and complete, then it does not need to be resubmitted. In such cases, the owner shall provide the date of approval of the operation and maintenance plan and identify any changes that have been made to the approved plan~~ State Corporation Commission

entity identification number for dwellings other than individual single family dwellings if the facility is required to obtain an entity identification number by law.

11. The following certification: "I hereby grant to duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property where the treatment works is located for the purpose of determining compliance with or the suitability of coverage under the General Permit. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The registration statement or combined application shall be signed in accordance with 9VAC25-31-110 A of the VPDES Permit Regulation.

D. The registration statement ~~may be~~ or combined application shall be delivered to the ~~department~~ department's regional office serving the area where the treatment facility is located by either postal or electronic mail ~~and shall be submitted to the DEQ regional office serving the area where the treatment works is located.~~ Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements or combined applications), as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms must be submitted electronically.

## **9VAC25-110-80. General permit.**

Any owner whose registration statement is accepted by the board, or whose permit coverage is automatically renewed, shall comply with the requirements contained herein and be subject to all requirements of 9VAC25-31-170.

General Permit No.: VAG40  
 Effective Date: August 2, ~~2016~~ 2021  
 Expiration Date: ~~August 1 July 31, 2024~~ 2026

**GENERAL PERMIT FOR DOMESTIC SEWAGE  
 DISCHARGES OF LESS THAN OR EQUAL TO 1,000  
 GALLONS PER DAY**

**AUTHORIZATION TO DISCHARGE UNDER THE  
 VIRGINIA POLLUTANT DISCHARGE ELIMINATION  
 SYSTEM AND THE VIRGINIA STATE WATER  
 CONTROL LAW**

In compliance with the provisions of the Clean Water Act (33 USC § 1251 et seq.), as amended, and pursuant to the

State Water Control Law and regulations adopted pursuant thereto, owners of treatment works with domestic sewage discharges of a design flow of less than or equal to 1,000 gallons per day on a monthly average are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with the information submitted with the registration statement or combined application, this cover page, Part I-Effluent Limitations, Monitoring Requirements and Special Conditions, and Part II-Conditions Applicable to All VPDES Permits, as set forth herein.

Part I  
 Effluent Limitations, Monitoring Requirements and Special Conditions

A. Effluent limitations and monitoring requirements - receiving waters where the 7Q10 flows are less than 0.2 MGD.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters where the 7Q10 flows are less than 0.2 MGD.

The discharge shall be limited and monitored by the permittee as specified ~~below~~ below in the following table:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD) <sup>(1)</sup>	NA	NL	1/year	Estimate
BOD <sub>5</sub>	NA	30 mg/l	1/year	Grab
Total Suspended Solids	NA	30 mg/l	1/year	Grab
Total Residual Chlorine <sup>(2)</sup>				
After contact tank	1.0 mg/l	NA	1/year	Grab
Final effluent	NA	0.016 mg/l <sup>(6)</sup>	1/year	Grab
E. coli <sup>(3)</sup>	NA	<del>235</del> <u>126</u> CFU/100 ml	1/year	Grab
enterococci <sup>(4)</sup>	NA	<del>404</del> <u>35</u> CFU/100 ml	1/year	Grab
Fecal Coliform Bacteria <sup>(5)</sup>	NA	200 CFU/100 ml	1/year	Grab
pH (standard units)	6.0	9.0	1/year	Grab
Dissolved Oxygen	5.0 mg/l <sup>(6)</sup>	NA	1/year	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

<sup>(1)</sup>The design flow of this treatment works is less than or equal to 1,000 gallons per day.

<sup>(2)</sup>Applies only when chlorine is used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).

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<sup>(3)</sup>Applies only when methods other than chlorine are used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

<sup>(4)</sup>Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

<sup>(5)</sup>Applies only when the discharge is into shellfish waters (see 9VAC25-260-160 for the description of what are shellfish waters). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

<sup>(6)</sup>Does not apply when the receiving stream is an ephemeral stream. "Ephemeral streams" are drainage ways, ditches, hollows, or swales that contain only (i) flowing water during or immediately following periods of rainfall or (ii) water supplied by the discharger. These waterways would normally have no active aquatic community.

2. All monitoring data required by Part I A 1 shall be maintained on site in accordance with Part II B. Monitoring results for treatment works serving buildings or dwellings other than individual single family dwellings shall be submitted to the department on a Discharge Monitoring Report (DMR) no later than the 10th of September following the monitoring period. The monitoring period is September 1 through August 31. A copy of the maintenance log required by Part I D 2 b ~~(4)~~ (2) ~~(e)~~ shall also be submitted with the DMR. Monitoring results for treatment works serving individual single family dwellings are submitted to the Virginia Department of Health in accordance with 12VAC5-640.

3. The 30-day average percent removal for BOD<sub>5</sub> and total suspended solids shall not be less than 85%.

B. Effluent limitations and monitoring requirements - receiving waters where the 7Q10 flows are equal to or greater than 0.2 MGD.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters where the 7Q10 flows are equal to or greater than 0.2 MGD.

The discharge shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD) <sup>(1)</sup>	NA	NL	1/year	Estimate
BOD <sub>5</sub>	NA	30 mg/l	1/year	Grab
Total Suspended Solids	NA	30 mg/l	1/year	Grab
Total Residual Chlorine <sup>(2)</sup>				
After contact tank	1.0 mg/l	NA	1/year	Grab
Final effluent	NA	2.0 mg/l	1/year	Grab
E. coli <sup>(3)</sup>	NA	<del>235</del> <u>126</u> CFU/100 ml	1/year	Grab
enterococci <sup>(4)</sup>	NA	<del>404</del> <u>35</u> CFU/100 ml	1/year	Grab
Fecal Coliform Bacteria <sup>(5)</sup>	NA	200 CFU/100 ml	1/year	Grab
pH (standard units)	6.0	9.0	1/year	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

- <sup>(1)</sup>The design flow of this treatment works is less than or equal to 1,000 gallons per day.
- <sup>(2)</sup>Applies only when chlorine is used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).
- <sup>(3)</sup>Applies only when methods other than chlorine are used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.
- <sup>(4)</sup>Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.
- <sup>(5)</sup>Applies only when the discharge is into shellfish waters (see 9VAC25-260-160 for the description of what are shellfish waters). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

2. All monitoring data required by Part I B 1 shall be maintained on site in accordance with Part II B. Monitoring results for treatment works serving buildings or dwellings other than individual single family dwellings shall be submitted to the department on a Discharge Monitoring Report (DMR) no later than the 10th of September following the monitoring period. The monitoring period is September 1 through August 31. A copy of the maintenance log required by Part I D 2 b ~~(4)~~ (2) ~~(e)~~ shall also be submitted with the DMR. Monitoring results for treatment works serving individual single family dwellings are submitted to the Virginia Department of Health in accordance with 12VAC5-640.

3. The 30-day average percent removal for BOD<sub>5</sub> and total suspended solids shall not be less than 85%.

C. Effluent limitations and monitoring requirements - discharges to receiving waters subject to the Policy for the Potomac River Embayments (9VAC25-415).

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters subject to the Policy for the Potomac River Embayments (9VAC25-415).

~~The discharge~~ Discharges subject to the requirements in 9VAC25-415-40<sup>(1)</sup> shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD) <sup>(4)(2)</sup>	NA	NL	1/3 months	Estimate
pH (standard units)	6.0	9.0	1/3 months	Grab
cBOD <sub>5</sub>	NA	5 mg/l	1/3 months	Grab
Total Suspended Solids	NA	6.0 mg/l	1/3 months	Grab
Ammonia as N (Apr 1 – Oct 31)	NA	1.0 mg/l	1/3 months	Grab
Ammonia as N (Nov 1 – Mar 31)	NA	3.1 mg/l	1/3 months	Grab
Dissolved Oxygen	6.0 mg/l	NA	1/3 months	Grab
E. coli <sup>(4)</sup> <del>(4)</del>	NA	<del>235</del> <u>126</u> CFU/100 ml	1/3 months	Grab
enterococci <sup>(4)(5)</sup>	NA	<del>404</del> <u>35</u> CFU/100 ml	1/3 months	Grab

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Total Phosphorus	NA	0.18 mg/l	1/3 months	Grab
Total Residual Chlorine <sup>(2)</sup> (3)				
After contact tank	1.0 mg/l	NA	1/3 months	Grab
Final effluent	NA	0.016 mg/l	1/3 months	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

<sup>(1)</sup>Note conditional exemptions in 9VAC25-415-30.

<sup>(2)</sup>The design flow of this treatment works is less than or equal to 1,000 gallons per day.

<sup>(3)</sup>Applies only when chlorine is used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).

<sup>(4)</sup>Applies only when methods other than chlorine are used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

<sup>(5)</sup>Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

2. All monitoring data required by Part I C 1 shall be maintained on site in accordance with Part II B. Monitoring results shall be submitted to the department on a Discharge Monitoring Report (DMR) no later than the 10th day of the month following the monitoring period. The quarterly monitoring periods shall be January through March, April through June, July through September, and October through December. A copy of the maintenance log required by Part I D 2 b (4) (2) (e) shall also be submitted with the DMR. Monitoring results for treatment works serving individual single family dwellings shall also be submitted to the Virginia Department of Health in accordance with 12VAC5-640.

3. The 30-day average percent removal for BOD<sub>5</sub> and total suspended solids shall not be less than 85%.

## D. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.

### 2. Operation and maintenance.

a. Treatment works serving individual single family dwellings. Operation and maintenance requirements for treatment works serving individual single family dwellings are specified in the Virginia Department of Health regulations at ~~12VAC5-640-500~~ 12VAC5-640.

b. Treatment works serving buildings or dwellings other than individual single family dwellings.

~~(1) For existing treatment works, the permittee shall keep a maintenance contract in force during the permit term, unless an exception to the maintenance contract requirement has been requested and granted in~~

~~accordance with Part I D 3. A copy of the maintenance contract, if applicable, shall be kept at the site of the treatment works and made available to DEQ for examination upon request. To ensure the treatment works is operated, maintained, monitored, and reported properly, the permittee shall engage a licensed operator as defined in subdivision D 3 of this section.~~

~~(2) For proposed treatment works, the permittee shall submit a certification that the permittee has a valid maintenance contract to DEQ prior to operation of the treatment works, unless an exception to the maintenance contract requirement has been requested and granted in accordance with Part I D 3. A maintenance contract shall be kept in force during the permit term. A copy of the maintenance contract shall be kept at the site of the treatment works, and shall be made available to DEQ for examination upon request. The permittee shall:~~

~~(a) Have the system operated and maintained by a licensed operator, including the responsibilities specified in Part I D 2 b (3);~~

~~(b) Have a licensed operator visit the system at least semiannually;~~

~~(c) Have a licensed operator collect, analyze, and submit to the department any samples required under Part I A, Part I B, or Part I C, as appropriate, of this general permit;~~

~~(d) Provide prompt maintenance and repair of the treatment works once notified by the operator that repair or maintenance is necessary. The owner is responsible for all costs associated with the maintenance or repair. Immediately upon receipt of notice that repair or~~

maintenance is required, the owner shall begin emergency pump and haul of all sewage generated from the building or dwelling or otherwise ensure that no discharge occurs if full and complete repairs cannot be accomplished within 48 hours;

(e) Maintain a copy of the log provided by the operator on the property where the system is located in electronic or hard copy form, make the log available to the department upon request, and make a reasonable effort to transfer the log to any future owner;

(f) Follow the treatment works operation and maintenance (O&M) manual (where available) and keep a copy of the O&M manual in electronic or hard copy form on the property where the system is located, make the O&M manual available to the department upon request, and make a reasonable effort to transfer the O&M manual to any future owner;

~~(3) At a minimum, the maintenance contract shall provide for the following~~ The licensed operator has the following responsibilities:

~~(a) Performance of~~ Perform all testing monitoring required in accordance with either Part I A, Part I B, or Part I C, as appropriate, and periodic (at least ~~annual~~ semiannually) inspections of the treatment works. Note: Discharges from the treatment works should to the maximum extent feasible be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that treatment works). ~~The owner or maintenance provider should not force a discharge in order to collect a sample;~~

(b) During visits required by this subsection, fulfill the operator responsibilities specified in this subsection through observing the system and through laboratory or field tests required by this permit or that the operator deems appropriate. In performing a required visit, the operator is responsible for the entire system and, where applicable, shall follow the O&M manual;

~~(b) A (c) Provide a written or electronic notification to the owner within 24 hours whenever the contract provider operator becomes aware that maintenance or repair of the owner's treatment works is necessary. The owner is responsible for prompt maintenance and repair of the treatment works including all costs associated with the maintenance or repair. Immediately upon receipt of notice that repair or maintenance is required, the owner shall begin emergency pump and haul of all sewage generated from the building or dwelling or otherwise ensure that no discharge occurs if full and complete repairs cannot be accomplished within 48 hours;~~

~~(e) A log of the following items shall be maintained at the treatment works by the contract provider:~~ (d) Report monitoring results to DEQ as required in Part I A 2, Part

I B 2, and Part I C 2, as applicable, as well as Part II C, and maintain at the treatment works and provide to the permittee a log of the following items:

(i) Results of all tests and sampling. Note: If sampling is attempted, but no sample was taken or possible, the log shall show all sampling attempts and document and explain why no sample was taken or possible;

(ii) Alarm activation incidents, including the date and time of equipment failure and return to service;

(iii) Maintenance, ~~corrective,~~ including the date and amount of disinfection chemicals added to the chlorinator, the date and amount of dechlorination chemicals added if applicable, the date and approximate volume of sludge removed, and date receipts for chemicals and equipment purchased and maintenance performed;

(iv) Corrective or repair activities performed;

~~(iv)~~ (v) Recommended repair or replacement items; and

~~(v)~~ (vi) Copies of all reports prepared by the contract provider operator; and

~~(d) An~~ (vii) Sludge or solids removal; and

~~(e) Conduct an inspection shall be conducted by the contract provider~~ within 48 hours after notification by the owner that a problem may be occurring.

~~(4) The permittee shall keep a log of all maintenance performed on the treatment works including, but not limited to, the following:~~

~~(a) The date and amount of disinfection chemicals added to the chlorinator.~~

~~(b) If dechlorination is used, the date and amount of any dechlorination chemicals that are added.~~

~~(c) The date and time of equipment failure and the date and time the equipment was restored to service.~~

~~(d) The date and approximate volume of sludge removed.~~

~~(e) Dated receipts for chemicals purchased, equipment purchased, and maintenance performed.~~

~~3. Operation and maintenance plan. The owner of any treatment works serving a building or dwelling other than an individual single family dwelling may request an exception to the maintenance contract requirement by submitting an operation and maintenance plan to the board for review and approval. At a minimum, the operation and maintenance plan shall contain the following information:~~

~~a. An up-to-date operation and maintenance manual for the treatment works;~~

~~b. A log of all maintenance performed on the treatment works including, but not limited to, the following:~~

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~~(1) The date and amount of disinfection chemicals added to the chlorinator (if applicable).~~

~~(2) If dechlorination is used, the date and amount of any dechlorination chemicals that are added.~~

~~(3) The date and time of equipment failure and the date and time the equipment was restored to service.~~

~~(4) The date and approximate volume of sludge removed.~~

~~(5) Results of all tests and sampling. Note: If sampling is attempted, but no sample was taken or possible, the log shall show all sampling attempts and document and explain why no sample was taken or possible;~~

~~e. Dated receipts for chemicals purchased, equipment purchased, and maintenance performed; and~~

~~d. An effluent monitoring plan to conform with the requirements of Part I A, Part I B, or Part I C, as appropriate, including all sample collection, preservation, and analysis procedures. Note: Discharges from the treatment works should be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that treatment works). The owner or maintenance provider should not force a discharge in order to collect a sample.~~

~~Should the permittee fail to implement the approved operation and maintenance plan, or if there are violations of effluent limitations, the board reserves the right to require the permittee to obtain a maintenance contract.~~

3. All individuals who perform maintenance on discharging systems pursuant to this general permit are required to hold a valid Class IV or higher wastewater works operator license or an alternative onsite sewage system operator license issued by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. For purposes of this general permit, this requirement is satisfied where an individual is directly supervised by and under the direction of a licensed operator who remains responsible for such maintenance.

4. Compliance recordkeeping under Part I A, Part I B, and Part I C.

a. The quantification levels (QL) shall be less than or equal to the following concentrations:

Effluent Parameter	Quantification Level
BOD <sub>5</sub>	2 mg/l
cBOD <sub>5</sub>	2 mg/l
Ammonia as N	0.20 mg/l
Total Phosphorus	0.10 mg/l
TSS	1.0 mg/l
Chlorine	0.10 mg/l

The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method.

b. Recording results. Any concentration data below the QL used in the analysis shall be recorded as "<QL" if it is less than the QL in subdivision 4 a of this subsection. Otherwise the numerical value shall be recorded.

c. Monitoring results shall be recorded using the same number of significant digits as listed in the permit. Regardless of the rounding convention used by the permittee (e.g., 5 always rounding up or to the nearest even number), the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

5. The discharges authorized by this permit shall be controlled as necessary to meet water quality standards.

## Part II

### Conditions Applicable to All VPDES Permits

#### A. Monitoring.

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

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

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

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

#### B. Records.

1. Records of monitoring information shall include:

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

b. The ~~individual(s)~~ individuals who performed the sampling or measurements;

c. The ~~date(s)~~ dates and ~~time(s)~~ times analyses were performed;

d. The ~~individual(s)~~ individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results. Monitoring results under this permit ~~are not required to be submitted to the department~~ must be submitted consistent with the requirements in Part I A 2, Part I B 2, and Part I C 2, as applicable. However, should the board request that the permittee submit monitoring results, the following subsections would apply.

~~1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.~~

~~2. 1. Monitoring results submitted to the department shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department. Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.~~

~~3. 2. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.~~

~~4. 3. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.~~

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

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

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee ~~who~~ that discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F, or ~~who~~ that discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and

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8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include, ~~but are not limited to,~~ any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

## I. Reports of noncompliance.

1. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

~~1. a.~~ a. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this paragraph:

- ~~a.~~ (1) Any unanticipated bypass; and
  - ~~b.~~ (2) Any upset that causes a discharge to surface waters.
- ~~2. b.~~ b. A written report shall be submitted within five days and shall contain:
- ~~a.~~ (1) A description of the noncompliance and its cause;
  - ~~b.~~ (2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
  - ~~c.~~ (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

~~3. 2.~~ 2. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

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

NOTE: The immediate (within 24 hours) reports required in Parts II G, H, and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx>. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

## J. Notice of planned changes.

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

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act (33 USC § 1251 et seq.) that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of

additional use or of 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 that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the 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 which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

2. Reports, etc. All reports required by permits and other information requested by the board shall be signed by a person described in Part II K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field,

superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification:

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

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; or for permit coverage termination, ~~revocation and reissuance, or modification~~; or for denial of a permit coverage renewal application.

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

M. Duty to reapply.

1. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, and the permittee does not qualify for automatic permit

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coverage renewal, the permittee shall submit a new registration statement, or for an individual single family dwelling a combined application, at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements or combined applications to be submitted later than the expiration date of the existing permit.

2. A permittee qualifies for automatic permit coverage renewal and is not required to submit a registration statement, or for an individual single family dwelling a combined application, if:

a. The ownership of the treatment works has not changed since this general permit went into effect on August 2, 2016, or, if the ownership has changed, (i) a new registration statement or for an individual single family dwelling a combined application or (ii) a VPDES Change of Ownership form was submitted to the department by the new owner at the time of the title transfer;

b. There has been no change in the design or operation, or both, of the treatment works since this general permit went into effect on August 2, 2016;

c. For treatment works serving individual single family dwellings, the Virginia Department of Health does not object to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the board. If the Virginia Department of Health objects to the automatic renewal for this treatment works, the permittee will be notified by the board in writing; and

d. For treatment works serving buildings or dwellings other than single family dwellings, the board has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the board. If the board objects to the automatic renewal for this treatment works, the permittee will be notified by the board in writing.

3. Any permittee that does not qualify for automatic permit coverage renewal shall submit a new registration statement, or for an individual single family dwelling a combined application, in accordance with Part II M 1.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state, or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or

under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part II U) and "upset" (Part II V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

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

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

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of ~~Parts~~ Part II U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

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

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

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

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass after considering its adverse effects if the board determines that it will meet the three conditions listed in Part II U 3 a.

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

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

a. An upset occurred and that the permittee can identify the ~~cause(s)~~ cause of the upset;

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

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

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

W. Inspection and entry. The permittee shall allow the director, or an authorized representative (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 this permit;

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

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

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

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

Y. Transfer of ~~permits~~ permit coverage. ~~Permits are~~ Permit coverage is not transferable to any person except after notice to the department. Coverage under this permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the board;

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

3. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid,

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the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

VA.R. Doc. No. R19-5864; Filed July 14, 2020, 3:29 p.m.

## Proposed Regulation

**REGISTRAR'S NOTICE:** The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **9VAC25-115. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Seafood Processing Facilities (amending 9VAC25-115-10 through 9VAC25-115-50).**

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

**Public Hearing Information:**

September 9, 2020 - 2:00 pm - GoToWebinar - Register at: <https://attendee.gotowebinar.com/register/7580128128055952399>. If a determination is made to provide an in-person option, it will be announced through the Virginia Regulatory Town Hall and the Department of Environmental Quality website.

**Public Comment Deadline:** October 2, 2020.

**Agency Contact:** Elleanore M. Daub, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4032, or email [elleanore.daub@deq.virginia.gov](mailto:elleanore.daub@deq.virginia.gov).

**Summary:**

*The proposed amendments (i) update the industrial stormwater requirements to be consistent with other industries subject to stormwater permitting and to be consistent with other VPDES general permits, including adding quarterly visual monitoring and annual*

*inspections for nonstormwater discharges; (ii) exclude aquaculture from the requirements of the permit; and (iii) update definitions, including the definition of "seafood processing" to exclude shellfish aquaculture and to include NAICS (North American Industry Classification System) codes. The general permit is being amended in order to reissue it.*

**GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT REGULATION FOR SEAFOOD PROCESSING FACILITIES**

**9VAC25-115-10. Definitions.**

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) unless the context clearly indicates otherwise. Additionally, for the purposes of this chapter:

"Best management practices" or "BMPs" means schedules of activities, practices, prohibitions of practices, structures, vegetation, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the discharge of pollutants to surface waters.

"Control measure" means any best management practice or other method, including effluent limitations, used to prevent or reduce the discharge of pollutants to surface waters.

"Corrective action" means any action to (i) repair, modify, or replace any stormwater control used at the facility; (ii) clean up and properly dispose of spills, releases, or other deposits at the facility; or (iii) return to compliance with permit requirements.

"Industrial activity" means the facilities classified under NAICS 311710 and SIC Code 2091 or 2092.

"Minimize" means reduce or eliminate to the extent achievable using control measures, including best management practices, that are technologically available and economically practicable and achievable in light of best industry practice.

"NAICS" means North American Industry Classification System from the U.S. Office of Management and Budget, 2017 edition.

"No exposure" means all industrial materials or activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff.

"Seafood" includes crabs, oysters, hand-shucked clams, scallops, squid, eels, turtles, fish, conchs, and crayfish.

"Seafood processing facility" means any facility ~~classified under SIC Code 2091, 2092, 5142, or 5146, which that~~ processes or handles seafood intended for human consumption or as bait, except a mechanized clam facility. ~~Seafood includes but is not limited to crabs, oysters, hand-shucked clams, scallops, squid, eels, turtles, fish, conchs and crayfish, where the primary purpose is classified under the following NAICS and SIC codes:~~

1. NAICS Code 311710 – Seafood Product Preparation and Packaging and SIC Code 2091 – Canned and Cured Fish and Seafoods, 2092 – Prepared Fresh or Frozen Fish and Seafoods;

2. NAICS Code 424420 – Packaged Frozen Food Merchant Wholesalers and SIC Code 5142 – Packaged Frozen Foods; and

3. NAICS Code 424460 – Fish and Seafood Merchant Wholesalers and SIC Code 5146 – Fish and Seafoods.

This definition does not include aquaculture facilities (including hatcheries) classified under SIC Code 0272 or 0921 and NAICS Code 112512.

"SIC" means the Standard Industrial Classification ~~Code or Industrial Grouping~~ from the U.S. Office of Management and Budget Standard Industrial Classification Manual, 1987 edition.

"Significant materials" includes, ~~but is not limited to,~~ raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production (except oyster, clam or scallop shells); hazardous substances designated under § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601); any chemical the facility is required to report pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

"Stormwater discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term includes, ~~but is not limited to,~~ stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts (except for oyster, clam or scallop shells) used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for

the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials and intermediate and ~~finished final~~ products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this ~~paragraph definition~~, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, ~~finished final~~ product, byproduct, or waste product (except for oyster, clam or scallop shells). The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas. Industrial facilities, including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in the "industrial activity" definition, include those facilities designated under the provisions of 9VAC25-31-120 A 1 c or A 7 a (1) or (2) of the VPDES Permit Regulation.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background, or both, and must include a margin of safety (MOS) and account for seasonal variations.

"Virginia Environmental Excellence Program" or "VEEP" means a voluntary program established by the department to provide public recognition and regulatory incentives to encourage higher levels of environmental performance for program participants that develop and implement environmental management systems (EMSs). The program is based on the use of EMSs that improve compliance, prevent pollution, and utilize other measures to improve environmental performance.

**9VAC25-115-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, ~~2015~~ 2020.

**9VAC25-115-20. Purpose; delegation of authority; effective date of permit.**

A. This general permit regulation governs the discharge of wastewater from seafood processing facilities and stormwater associated with industrial activity from seafood processing

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facilities classified NAICS Code 311710 and as ~~SIC Code~~ Codes 2091 and 2092.

B. The director, or an authorized representative, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general permit will become effective on July 24, ~~2016~~ 2021, and will expire on ~~July 23, 2021~~ June 30, 2026. For any covered owner, this general permit is effective upon compliance with all the provisions of 9VAC25-115-30.

## **9VAC25-115-30. Authorization to discharge.**

A. Any owner governed by this general permit is hereby authorized to discharge process wastewater and stormwater as described in 9VAC25-115-20 A to surface waters of the Commonwealth of Virginia provided that:

1. The owner files a registration statement, in accordance with 9VAC25-115-40, and that registration statement is accepted by the board;
2. The owner submits the required permit fee;
3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-115-50; and
4. The owner has not been notified by the board that the discharge is not eligible for coverage under this permit in accordance with subsection B of this section.

B. The board will notify an owner that the discharge is not eligible for coverage under this permit in the event of any of the following:

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;
2. The owner is proposing to discharge to state waters specifically named in other board regulations that prohibit such discharges;
3. The owner is proposing to discharge annual mass loadings of total nitrogen in excess of 2,300 pounds per year or of total phosphorus in excess of 300 pounds per year;
4. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the ~~Virginia~~ Water Quality Standards; or
5. The discharge is not consistent with the assumptions and requirements of an approved TMDL.

C. Conditional exclusion for no exposure to stormwater. Any owner covered by this permit that becomes eligible for a no exposure exclusion from stormwater permitting under 9VAC25-31-120 E may file a no exposure certification. Upon submission and acceptance by the board of a complete and accurate no exposure certification, the permit requirements

for stormwater no longer apply. A no exposure certification must be submitted to the board once every five years.

D. Compliance with this general permit constitutes compliance, for purposes of enforcement, with the federal Clean Water Act §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

~~D.~~ E. Continuation of permit coverage.

1. Any owner that was authorized to discharge under the seafood processing facilities general permit issued in 2011, and who submits a complete registration statement on or before July 23, 2016, is authorized to continue to discharge under the terms of the 2011 general permit. Permit coverage shall expire at the end of the applicable permit term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least 60 days prior to the expiration date of the permit or a later submittal date established by the board, which cannot extend beyond the expiration date of the permit. The permittee is authorized to continue to discharge until such time as the board either:

- a. Issues coverage to the owner under this general permit; or
- b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

- a. Initiate enforcement action based upon the ~~2011~~ general permit coverage that has been continued;
- b. Issue a notice of intent to deny coverage under the ~~reissued~~ amended general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by ~~coverage under the 2011~~ the continued general permit coverage or be subject to enforcement action for discharging without a permit;
- c. Issue an individual permit with appropriate conditions; or
- d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

## **9VAC25-115-40. Registration statement.**

A. Deadlines for submitting registration statement. Any owner seeking coverage under this general permit shall submit a complete general VPDES permit registration

statement in accordance with this chapter, which shall serve as a notice of intent for coverage under the ~~general~~ VPDES general permit regulation for seafood processing facilities.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement to the board at least ~~30~~ 60 days prior to the date planned for commencement of the discharge.

2. Existing facilities.

a. Any owner of an existing seafood processing facility covered by an individual VPDES permit that is proposing to be covered by this general permit shall submit a complete registration statement at least 240 days prior to the expiration date of the individual VPDES permit or a later submittal established by the board.

b. Any owner that was authorized to discharge under ~~the general~~ an expiring or expired VPDES general permit for seafood processing facilities ~~that became effective on July 24, 2011,~~ and that intends to continue coverage under this general permit shall submit a complete registration statement to the board ~~on or before June 24, 2016~~ at least 60 days prior to the expiration date of the existing permit or a later submittal established by the board.

c. Any owner of an existing seafood processing facility adding a new process after coverage under the general permit is obtained shall submit an amended registration statement to the board at least ~~30~~ 60 days prior to commencing operation of the new process or a later submittal established by the board.

3. Late registration statements. Registration statements for existing facilities covered under subdivision 2 b of this subsection will be accepted after ~~July 23, 2016~~ the expiration date of the permit, but authorization to discharge will not be retroactive. ~~Owners described in subdivision 2 b of this subsection that submit registration statements after June 24, 2016, are authorized to discharge under the provisions of 9VAC25-115-30-D if a complete registration statement is submitted before July 24, 2016.~~

B. The registration statement shall contain the following information:

1. Facility name, owner name, mailing address, email address (where available), and telephone number;
2. Facility street address (if different from mailing address);
3. Facility operator name, mailing address, email address, and telephone number if different than owner;
4. Does the facility discharge to surface waters? Name of receiving stream or streams if yes and, if no, describe the discharge or discharges;

5. Does the facility have a current VPDES Permit? Include the permit number if yes;

6. The original date of construction of the seafood processing facility building and dates and description of all subsequent facility construction;

7. A U.S. Geological Survey (USGS) 7.5 minute topographic map or other equivalent computer generated map with sufficient resolution to clearly show the facility location, the discharge location or locations, and the receiving water body;

8. Facility SIC code or codes;

9. Nature of business at the facility;

10. Discharge outfall information including latitude and longitude, seafood process, receiving stream, discharge flow, and days per year of discharge for each outfall;

11. Facility maximum production information;

12. Facility line (water balance) drawing;

13. Discharge and outfall descriptions for different seafood processes that operate simultaneously;

14. Treatment and solid waste disposal information;

15. Information on use of chemicals at the facility; ~~and~~

16. State Corporation Commission entity identification number if the facility is required to obtain an entity identification number by law; and

17. 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."

The registration statement shall be signed in accordance with 9VAC25-31-110 of the VPDES Permit Regulation.

C. The registration statement ~~may~~ shall be delivered to the ~~department~~ department's regional office where the seafood processing facility is located by either postal or electronic mail ~~and shall be submitted to the DEQ regional office serving the area where the seafood processing facility is located.~~ Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements) as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in

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compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms must be submitted electronically.

## 9VAC25-115-50. General permit.

Any owner whose registration statement is accepted by the board shall comply with the requirements of the general permit and be subject to all requirements of 9VAC25-31-170 of the VPDES Permit Regulation.

General Permit No.: VAG52

Effective Date: July 24, ~~2016~~ 2021

Expiration Date: ~~July 23, 2021~~ June 30, 2026

### GENERAL PERMIT FOR SEAFOOD PROCESSING FACILITIES

### AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION

#### Part I

#### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

##### 1. SEAFOOD PROCESSING NOT LIMITED ELSEWHERE IN PART I. A.— SIC 2091, 2092, 5142 AND 5146 SOURCES EXCEPT MECHANIZED CLAM FACILITIES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from seafood processing not otherwise classified from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/YEAR	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/YEAR	Grab
TSS	NL	NL	NA	NA	NA	1/YEAR	Composite
Oil and Grease	NL	NL	NA	NA	NA	1/YEAR	Grab
Production	NA	NL	NA	NA	NA	1/YEAR	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by the end of the calendar year and reported by the 10th of January of the following calendar year on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, owners of seafood processing facilities, other than mechanized clam processing facilities, are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with the information submitted with the registration statement, this cover page, Part I-Effluent Limitations and Monitoring Requirements, and Special Conditions, and Part II-Stormwater Pollution Prevention Plans, and Part III-Conditions Applicable to All VPDES Permits, as set forth in this general permit.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

2. CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 3,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	0.74	2.2	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.20	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

3. CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	0.15	0.30	NA	1/3 Months	Composite

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TSS	NL	NL	0.45	0.90	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.065	0.13	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 4. MECHANIZED BLUE CRAB PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12	36	NA	1/3 Months	Composite
Oil and Grease	NL	NL	4.2	13	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

5. MECHANIZED BLUE CRAB PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	2.5	5.0	NA	1/3 Months	Composite
TSS	NL	NL	6.3	13	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.3	2.6	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

6. NON-BREADED SHRIMP PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 2,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab

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TSS	NL	NL	38	110	NA	1/3 Months	Composite
Oil and Grease	NL	NL	12	36	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 7. NON-BREADED SHRIMP PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	25	63	NA	1/3 Months	Composite
TSS	NL	NL	10	25	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.6	4.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

8. BREADED SHRIMP PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 2,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	93	280	NA	1/3 Months	Composite
Oil and Grease	NL	NL	12	36	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

9. BREADED SHRIMP PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	40	100	NA	1/3 Months	Composite
TSS	NL	NL	22	55	NA	1/3 Months	Composite

# Regulations

Oil and Grease	NL	NL	1.5	3.8	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 10. TUNA PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	3.3	8.3	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.84	2.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 11. TUNA PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	8.1	20	NA	1/3 Months	Composite
TSS	NL	NL	3.0	7.5	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.76	1.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

**Part I**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

**12. CONVENTIONAL BOTTOM FISH PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 4,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY**

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	2.0	3.6	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.55	1.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

# Regulations

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 13. CONVENTIONAL BOTTOM FISH PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	0.71	1.2	NA	1/3 Months	Composite
TSS	NL	NL	0.73	1.5	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.042	0.077	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 14. MECHANIZED BOTTOM FISH PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12	22	NA	1/3 Months	Composite
Oil and Grease	NL	NL	3.9	9.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

### Part I

#### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

##### 15. MECHANIZED BOTTOM FISH PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	7.5	13	NA	1/3 Months	Composite
TSS	NL	NL	2.9	5.3	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.47	1.2	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

# Regulations

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 16. HAND-SHUCKED CLAM PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 4,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	18	59	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 17. HAND-SHUCKED CLAM PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate

pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	17	55	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.21	0.56	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

**Part I**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

**18. HAND-SHUCKED OYSTER PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 1,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY**

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16	23	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Raw material = The weight of oyster meat after shucking.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

# Regulations

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 19. HAND-SHUCKED OYSTER PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16	23	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 20. STEAMED AND CANNED OYSTER PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	190	270	NA	1/3 Months	Composite

Oil and Grease	NL	NL	1.7	2.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

21. STEAMED AND CANNED OYSTER PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	17	67	NA	1/3 Months	Composite
TSS	NL	NL	39	56	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.42	0.84	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

# Regulations

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 22. SCALLOP PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 23. SCALLOP PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

24. FARM-RAISED CATFISH PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 3,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	9.2	28	NA	1/3 Months	Composite
Oil and Grease	NL	NL	3.4	10	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

25. FARM-RAISED CATFISH PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s) \_\_\_\_\_.

# Regulations

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	2.3	4.6	NA	1/3 Months	Composite
TSS	NL	NL	5.7	11	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.45	0.90	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 26. HERRING PROCESSING—ALL

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	24	32	NA	1/3 Months	Composite
Oil and Grease	NL	NL	10	27	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 27. HERRING PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	15	16	NA	1/3 Months	Composite
TSS	NL	NL	5.2	7.0	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.1	2.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

### B. SPECIAL CONDITIONS APPLYING TO PART I A 1 THROUGH PART I A 27.

1. No sewage shall be discharged from a point source to surface waters at this facility except under the provisions of another VPDES permit specifically issued for that purpose.
2. There shall be no chemicals added to the water or waste to be discharged, other than those listed on the owner's accepted registration statement.
3. Wastewater should be reused or recycled to the maximum extent practicable.

4. The permittee shall comply with the following solids management plan:

- a. There shall be no discharge of floating solids or visible foam in other than trace amounts.
- b. All floors, machinery, conveyor belts, dock areas, etc. shall be dry swept or dry brushed prior to washdown.
- c. All settling basins shall be cleaned frequently in order to achieve effective settling.
- d. All solids resulting from the seafood processes covered under this general permit, other than oyster, clam, or scallop shells, shall be handled, stored, and disposed of so as to prevent a discharge to state waters of

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such solids or industrial wastes or other wastes from those solids.

e. The permittee shall install and properly maintain wastewater treatment necessary in order to remove organic solids present in the wastewater that may settle and accumulate on the substrate of the receiving waters in other than trace amounts.

f. All employees shall receive training relative to preventive measures to be taken to control the release of solids from the facility into surface waters.

5. Production to be reported and used in calculating effluent discharge levels in terms of kg/kkg shall be the weight in kilograms of raw material processed, in the form in which it is received at the processing plant, on the day of effluent sampling, except for the hand-shucked oyster, steamed and canned oyster, and scallop processing subcategories, for which production shall mean the weight of oyster or scallop meat after processing. The effluent levels in terms of kg/kkg shall be calculated by dividing the measured pollutant load in kg/day by the production level in kkg (thousands of kilograms).

6. The permittee shall notify the department as soon as they know or have reason to believe:

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

(1) One hundred micrograms per liter (100 µg/l) of the toxic pollutant;

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

(3) Five times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board.

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

(1) Five hundred micrograms per liter (500 µg/l) of the toxic pollutant;

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

(3) Ten times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board.

7. Compliance reporting and recordkeeping under Part I A.

a. The quantification levels (QL) shall be less than or equal to the following concentrations:

Effluent Parameter	Quantification Level
BOD	2 mg/l
TSS	1.0 mg/l
Oil and Grease	5.0 mg/l

The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method.

b. Recording results. Any concentration below the QL used in the analysis shall be recorded as "<QL" if it is less than the QL used in the analysis (the QL must be less than or equal to the QL in subdivision 7 a of this subsection. Otherwise the numerical value shall be recorded.

c. Monitoring results shall be recorded using the same number of significant digits as listed in the permit. Regardless of the rounding conventions used by the permittee (e.g., five always rounding up or to the nearest even number), the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

8. The discharges authorized by this permit shall be controlled as necessary to meet water quality standards in 9VAC25-260.

9. If a new process is added after coverage under the general permit is obtained, an amended registration statement must be submitted at least ~~30~~ 60 days prior to commencing operation of the new process or a later submittal approved by the board.

10. Notice of termination.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer discharges of process wastewater or stormwater associated with the industrial activity;

(2) A new owner has assumed responsibility for the facility. A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement Form has been submitted;

(3) All discharges associated with this facility have been covered by an individual VPDES permit or an alternative VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES general permit registration number for the facility; and

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility, and there are no longer discharges from the facility;

(c) A statement indicating that all discharges have been covered by an individual VPDES permit or an alternative VPDES permit; or

(d) A statement indicating that termination of coverage is being requested for another reason (state the reason).

(5) The following certification: "I certify under penalty of law that all wastewater and stormwater discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge seafood processing wastewater or, for facilities classified as SIC Code 2091 or 2092, stormwater associated with industrial activity in accordance with the general permit, and that discharging pollutants to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

C. 6. The notice of termination shall be submitted to the department and signed in accordance with Part III K.

Part II

~~Stormwater Pollution Prevention Plans~~ Stormwater Management

~~A stormwater pollution prevention plan (SWPPP) shall be developed for each facility covered by this permit. The following stormwater management requirements apply only~~

to seafood processors classified as Standard Industrial Classifications (SIC) Codes 2091 and 2092.

A. Monitoring and inspections.

1. Quarterly visual monitoring of stormwater quality. The permittee shall perform and document visual monitoring of stormwater discharges associated with industrial activity from each outfall, except discharges waived in subdivision d of this subsection. The visual monitoring must be made during normal working hours, at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December.

a. Samples will be in clean, colorless glass or plastic containers and examined in a well-lit area;

b. Samples will be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed three hours, provided that the permittee explains in the stormwater pollution prevention plan (SWPPP) why an examination during the first 30 minutes was impractical) of when the runoff or snowmelt begins discharging. All such samples shall be collected from the discharge resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event") providing the interval from the preceding measurable storm event is at least 72 hours. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the facility. The 72-hour storm event interval may also be waived where the permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted.

c. The examination shall observe color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution.

d. If no qualifying storm event resulted in discharge from the facility during a monitoring period, or adverse weather conditions create dangerous conditions for personnel during each measurable storm event during a monitoring period, visual monitoring is exempted provided this is documented in the SWPPP. Acceptable documentation includes dates and times the outfalls were viewed or sampling was attempted, national Climatic Data Center weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.

e. Representative outfalls – substantially identical stormwater discharges. If the facility has two or more outfalls that discharge substantially identical stormwater effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, frequency of

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discharges, and stormwater management practices occurring within the drainage areas of the outfalls, the permittee may conduct quarterly visual monitoring on the stormwater discharges of just one representative outfall.

f. Visual monitoring reports shall be maintained on-site with the SWPPP. The report shall include:

(1) Outfall location;

(2) Monitoring date and time;

(3) Duration of storm event;

(4) Rainfall measurement or estimate (in inches) of the storm event that generated the discharge;

(5) Duration between the storm event sampled and the end of the previous measurable storm event;

(6) Monitoring personnel;

(7) Nature of the discharge (i.e., runoff or snow melt);

(8) Visual quality of the stormwater discharge, including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution;

(9) Probable sources of any observed stormwater contamination;

(10) Why it was not possible to take the sample within the first 30 minutes (if applicable); and

(11) Documentation to support substantially identical outfalls (if applicable) required by Part II A 1 e.

g. Corrective action. Whenever the visual monitoring shows evidence of stormwater pollution, the SWPPP and stormwater control measures shall be updated per Part II B.

2. Routine facility inspections. Personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the effectiveness of control measures shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater.

a. Inspections include loading and unloading areas, storage areas, including associated containment areas, waste management units, vents and stacks emanating from industrial activities, spoiled product and broken product container hold areas, animal holding pens, staging areas, air pollution control equipment, areas where spills or leaks have occurred in the past three years, discharge points, and control measures.

b. At least one member of the pollution prevention team shall participate in the routine facility inspections.

c. The inspection frequency shall be specified in the SWPPP based upon a consideration of the level of industrial activity at the facility but shall be at a minimum of once per calendar quarter unless written approval is received from the department for less frequent intervals. Inspections shall be performed during operating hours. At least once each calendar year, the routine facility inspection shall be conducted during a period when a stormwater discharge is occurring.

d. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 60 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP and shall include at a minimum:

(1) The inspection date;

(2) The names of the inspectors;

(3) Weather information and a description of any discharges occurring at the time of the inspection;

(4) Any previously unidentified discharges of pollutants from the site;

(5) Any control measures needing maintenance or repairs;

(6) Any failed control measures that need replacement;

(7) Any incidents of noncompliance observed; and

(8) Any additional control measures needed to comply with the permit requirements.

e. Corrective action. Whenever the routine inspection shows evidence of stormwater pollution, the SWPPP and stormwater control measures shall be updated per Part II B.

f. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

3. Nonstormwater discharges.

a. Allowable nonstormwater discharges. Discharges of certain sources of nonstormwater listed in Part II A 3 c are allowable discharges under this permit. All other nonstormwater discharges are not authorized and shall be either eliminated, covered under this permit, or covered under a separate VPDES permit.

b. Annual outfall inspection for unauthorized discharges. The SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges. The documentation shall include:

- (1) The date of the evaluation;
- (2) A description of the evaluation criteria used;
- (3) A list of the outfalls or on-site drainage points that were directly observed during the evaluation;
- (4) A description of the results of the evaluation for the presence of unauthorized discharges; and
- (5) The actions taken to eliminate unauthorized discharges if any were identified.

c. The following nonstormwater discharges are authorized by this permit:

- (1) Discharges from emergency firefighting activities;
- (2) Fire hydrant flushing, managed in a manner to avoid an instream impact;
- (3) Potable water, including water line flushing, managed in a manner to avoid an instream impact;
- (4) Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;
- (5) Irrigation drainage;
- (6) Landscape watering provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling;
- (7) Pavement wash waters where no detergents or hazardous cleaning products are used and no spills or leaks of toxic or hazardous materials have occurred, unless all spilled material has been removed. Pavement wash waters shall be managed in a manner to avoid an instream impact;
- (8) Routine external building washdown that does not use detergents or hazardous cleaning products;
- (9) Uncontaminated groundwater or spring water;
- (10) Foundation or footing drains where flows are not contaminated with process materials; and
- (11) Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

B. Corrective actions. The permittee shall take corrective action whenever:

- 1. Routine facility inspections, visual monitoring, inspections by local, state, or federal officials, or any other process, observation, or event result in a determination that modifications to the stormwater control measures are necessary to meet the permit requirements;
- 2. The department determines, or the permittee becomes aware, that the stormwater control measures are not

stringent enough for the discharge to meet applicable water quality standards.

3. The permittee shall review the SWPPP and modify it as necessary to address any deficiencies. Revisions to the SWPPP shall be completed within 60 days following the discovery of the deficiency. When control measures need to be modified or added, implementation shall be completed before the next anticipated storm event if possible, but no later than 60 days after the deficiency is discovered, or as otherwise provided or approved by the department. In cases where construction is necessary to implement control measures, the permittee shall include a schedule in the SWPPP that provides for the completion of the control measures as expeditiously as practicable, but no later than three years after the deficiency is discovered. Where a construction compliance schedule is included in the SWPPP, the SWPPP shall include appropriate nonstructural and temporary controls to be implemented in the affected portion of the facility prior to completion of the permanent control measure. The amount of time taken to modify a control measure or implement additional control measures shall be documented in the SWPPP.

4. Any corrective actions taken shall be documented and retained with the SWPPP. Reports of corrective actions shall be signed in accordance with Part III K.

C. Stormwater pollution prevention plans (SWPPPs). An SWPPP shall be developed and implemented for the facility covered by this permit, which has stormwater discharges associated with industrial activity and is classified under SIC Code 2091 or 2092. The SWPPP is intended to document the selection, design, and installation of control measures, including BMPs, to minimize the pollutants in all stormwater discharges from the facility and to meet applicable effluent limitations and water quality standards.

The SWPPP shall be prepared in accordance with good engineering practices and shall identify potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges from the facility. In addition, the plan shall describe and ensure the implementation of practices that will be used to reduce the pollutants in stormwater discharges from the facility and shall assure compliance with the terms and conditions of this permit. Permittees must implement the provisions of the SWPPP as a condition of this permit.

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents such as an erosion and sediment control (ESC) plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the plan requirements of this section. Part II C 2 (Contents of the SWPPP). If an ESC plan is being

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incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate plan approving authority authorized under the Erosion and Sediment Control Regulations, 9VAC25-840. All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Part III C 2, the permittee shall develop the missing SWPPP elements and include them in the required plan.

A. 1. Deadlines for ~~plan~~ SWPPP preparation and compliance.

~~1. Facilities that were covered under the 2011 Seafood Processing Facilities General Permit.~~ a. Owners of facilities that were covered under the ~~2011~~ 2016 Seafood Processing Facilities General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP ~~required by this part~~ within 60 days of the board granting coverage under this permit.

~~2. New facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit.~~ b. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit that elect to be covered under this general permit ~~must~~ shall prepare and implement the SWPPP within 60 days of the board granting coverage under this permit.

~~3. New owners of existing facilities.~~ c. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility must update and implement any revisions to the SWPPP within 60 days of the ~~transfer of title of the facility ownership change.~~

~~4. Extensions.~~ d. Upon a showing of good cause, the director may establish a later date in writing for preparation of and compliance with the SWPPP.

B. 2. Contents of the SWPPP. The contents of the SWPPP shall include, at a minimum, the following items:

~~1.~~ a. Pollution prevention team. The SWPPP shall identify the staff individuals by name or title who comprise the facility's stormwater pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising, and ~~maintaining~~ ensuring compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.

~~2.~~ b. Site description. The SWPPP shall include the following:

~~a. Activities at the facility.~~ (1) A description of the nature of the industrial activities at the facility.

~~b. General location map. A general location map (e.g., USGS quadrangle or other map) with enough detail to identify the location of the facility and the receiving waters within one mile of the facility.~~

~~e.~~ (2) Site map. A site map identifying the following:

~~(1) The size of the property (in acres)~~ (a) The boundaries of the property and the size of the property in acres;

~~(2) (b) The location and extent of significant structures and impervious surfaces (roofs, paved areas, and any other impervious areas);~~

~~(3) (c) Locations of all stormwater conveyances, including ditches, pipes, swales, and inlets, and the directions of stormwater flow (e.g., use arrows to show which ways stormwater will flow), using arrows to indicate which direction stormwater will flow;~~

~~(4) (d) Locations of all existing structural and source control BMPs~~ stormwater control measures, including BMPs;

~~(5) (e) Locations of all surface water bodies receiving discharges from the site, including wetlands;~~

~~(6) (f) Locations of identified potential pollutant sources identified in Part II C 2 c;~~

~~(7) (g) Locations where significant spills or leaks identified under Part II C 2 c (3) have occurred;~~

~~(8) Locations of the following activities where such activities are exposed to precipitation: fueling stations; vehicle and equipment maintenance or cleaning areas; loading or unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; processing and storage areas; access roads, rail cars and tracks; transfer areas for substances in bulk; and machinery;~~ (9) (h) Locations of stormwater outfalls and monitoring locations, an approximate outline of the area draining to each outfall, and the drainage area of each outfall in acres, the longitude and latitude of each outfall, the location of any municipal separate storm sewer systems (MS4s), if the stormwater from the facility discharges to them; system (MS4) conveyance receiving discharge from the facility, and each outfall identified with a unique numerical identification codes. For example: Outfall Number 001, Outfall Number 002, etc.;

~~(10) (i) Location and description of all nonstormwater discharges;~~

~~(11) (j) Location of any storage piles containing salt used for deicing or other commercial or industrial purposes; and;~~

~~(42) (k) Location and source of run-on suspected run-on to the site from an adjacent property, where the run-on contains property if the run-on is suspected of containing significant quantities of pollutants; and~~

~~(l) Locations of vents and stacks from cooking, drying, and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage area if exposed to precipitation or runoff.~~

~~d. Receiving waters and wetlands. The name of all surface waters receiving discharges from the site, including intermittent streams. A description of wetland sites that may receive discharges from the facility shall also be provided. If the facility discharges through an MS4, the MS4 operator and the receiving water to which the MS4 discharges shall also be identified.~~

~~3. c. Summary of potential pollutant sources. The SWPPP shall identify each separate area at the facility where industrial materials or activities are exposed to stormwater. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, and waste products, and application and storage of pest control chemicals used on facility grounds. Material handling activities include, but are not limited to, the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product or waste product. For each separate area identified, the description shall include:~~

~~a. (1) Activities in area. A list of the industrial activities (e.g., material storage, equipment fueling and cleaning, cutting steel beams); exposed to stormwater;~~

~~b. (2) Pollutants. A list of the associated pollutant(s) or pollutant parameter(s) (e.g., crankcase oil, zinc, sulfuric acid, cleaning solvents, etc.) for each activity pollutants, pollutant constituents, or industrial chemicals associated with each industrial activity that could potentially be exposed to stormwater. The pollutant list shall include all significant materials handled, treated, stored, or disposed that have been exposed to stormwater in the three years prior to the date the SWPPP was prepared or amended. The list shall include any hazardous substance substances or oil at the facility.~~

~~4. (3) Spills and leaks. The SWPPP shall clearly identify areas where potential spills and leaks that can contribute pollutants to stormwater discharges can occur and their corresponding outfalls. The SWPPP shall include a list of significant spills and leaks of toxic or hazardous pollutants that actually occurred at exposed areas, or that drained to a stormwater conveyance during the three-year~~

period prior to the date this SWPPP was prepared or amended. The list shall be updated within 60 days of the incident if significant spills or leaks occur in exposed areas of the facility during the term of the permit. Significant spills and leaks include, but are not limited to, releases of oil or hazardous substances in excess of reportable quantities.

~~5. Stormwater controls.~~

~~a. BMPs d. Control measure considerations. Control measures shall be implemented for all the areas identified in Part II ~~B-3~~ C 2 c (Summary of potential pollutant sources) to prevent or control pollutants in stormwater discharges from the facility. If applicable, ~~steps shall be taken to control or address the quality of discharges from the site that do not originate at the facility.~~ regulated stormwater discharges from the facility include stormwater run-on that commingles with stormwater discharges associated with industrial activity at the facility. The SWPPP shall describe the type, location, and implementation of all BMPs control measures for each area where industrial materials or activities are exposed to stormwater. Selection of BMPs control measures shall take into consideration:~~

~~(1) That preventing stormwater from coming into contact with polluting materials is generally more effective, and less costly, than trying to remove pollutants from stormwater;~~

~~(2) BMPs Control measures generally must be used in combination with each other for most effective water quality protection;~~

~~(3) Assessing the type and quantity of pollutants, including their potential to impact receiving water quality, is critical to designing effective control measures;~~

~~(4) That minimizing impervious areas at the facility can reduce runoff and improve groundwater recharge and stream base flows in local streams (however, care must be taken to avoid groundwater contamination);~~

~~(5) Flow attenuation by use of open vegetated swales and natural depressions can reduce ~~in-stream~~ instream impacts of erosive flows;~~

~~(6) Conservation or restoration of riparian buffers will help protect streams from stormwater runoff and improve water quality; and~~

~~(7) Treatment interceptors (e.g., swirl separators and sand filters) may be appropriate in some instances to minimize the discharge of pollutants.~~

~~b. e. Control measures. The permittee shall implement the following types of BMPs control measures to prevent and control pollutants in the stormwater discharges from~~

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the facility, unless it can be demonstrated and documented that such controls are not relevant to the discharges (e.g., there are no storage piles containing salt).

(1) Good housekeeping. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants to stormwater discharges. ~~Typical problem areas include areas around trash containers, storage areas, loading docks, and vehicle fueling and maintenance areas. The SWPPP shall include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and of the conditions of drums, tanks, and containers. The introduction of raw, final or waste materials to exposed areas of the facility shall be minimized. The generation of dust, along with off site vehicle tracking of raw, final or waste materials, or sediments, shall be minimized. The permittee shall perform the following good housekeeping measures to minimize pollutant discharges:~~

(a) The SWPPP shall include a schedule for regular pickup and disposal of waste materials along with routine inspections for leaks and conditions of drums, tanks, and containers;

(b) Sweep or vacuum as feasible;

(c) Store materials in containers constructed of appropriate materials;

(d) Manage all waste containers to prevent a discharge of pollutants;

(e) Minimize the potential for waste, garbage, and floatable debris to be discharged by keeping areas exposed to stormwater free of such materials or by intercepting such materials prior to discharge; and

(f) Implement BMPs to eliminate stormwater discharges of plastics.

(2) Eliminating and minimizing exposure. To the ~~maximum~~ extent practicable, ~~industrial materials and activities manufacturing, processing, and material storage areas, including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations,~~ shall be located inside, or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff. Unless infeasible, facilities shall implement the following:

(a) Use grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from potential sources of pollutants;

(b) Locate materials, equipment, and activities so that potential leaks and spills are contained, or able to be contained, or diverted before discharge;

(c) Clean up spills and leaks immediately, upon discovery of the spills or leaks, using dry methods (e.g., absorbents) to prevent the discharge of pollutants;

(d) Store leaking vehicles and equipment indoors, or if stored outdoors, use drip pans and adsorbents;

(e) Utilize appropriate spill or overflow protections equipment;

(f) Perform all vehicle maintenance or equipment cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also capture any overspray; and

(g) Drain fluids from equipment and vehicles that will be decommissioned, and for any equipment and vehicles that remain unused for extended periods of time, inspect at least monthly for leaks.

(3) Preventive maintenance. ~~The permittee shall have a preventive maintenance program that includes regular inspection, testing, SWPPP shall include preventive maintenance that includes a description of procedures and a regular schedule for inspection of the following:~~

(a) All control measures that includes a description of the back-up practices that are in place should a runoff event occur while a control measure is off line; and

(b) Testing, maintenance, and repairing of all industrial equipment and systems to avoid breakdowns or failures situations that could result in leaks, spills, and other releases. This program is in addition to the specific BMP maintenance required under Part II C (Maintenance of BMPs) of the permit of pollutants in stormwater discharged from the facility.

(4) Spill prevention and response procedures. The SWPPP shall describe the procedures that will be followed for preventing and responding to spills and leaks, including:

(a) Preventive measures include, such as barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling;

(b) Response procedures shall include (i), including notification of appropriate facility personnel, emergency agencies, and regulatory agencies; and (ii) procedures for stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable RCRA the Resource Conservation and Recovery Act regulations at 40 CFR Part 264 and 40 CFR Part 265. Employees who may cause, detect, or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. ~~One~~ If possible, one of these

individuals shall be a member of the pollution prevention team;

(c) Procedures for plainly labeling containers (e.g., "used oil," "spent solvents," and "fertilizers and pesticides") that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur; and

~~(e)~~ (d) Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP and maintained in other locations where it will be readily available.

~~(5) Routine facility inspections. Facility personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility, and who can also evaluate the effectiveness of BMPs shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater. These inspections are in addition to, or as part of, the comprehensive site evaluation required under Part II D. At least one member of the pollution prevention team shall participate in the routine facility inspections. The inspection frequency shall be specified in the SWPPP and be based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit or written approval is received from the department for less frequent intervals. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 30 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP, along with the date(s) and description(s) of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.~~

~~(6)~~ (5) Employee training. The permittee shall implement a stormwater employee training program for the facility. The SWPPP shall include a schedule for all training and shall document all training sessions and the employees who received the training. Training shall be provided at least annually for all employees who work in areas where industrial materials or activities are exposed to stormwater, and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors and maintenance personnel). The training shall cover the components and goals of the SWPPP and include such topics as spill response, good housekeeping, material management practices, BMP operation and maintenance, etc. and pest control. The SWPPP shall include a summary of any training performed.

~~(7)~~ (6) Sediment and erosion control. The SWPPP shall identify areas at the facility that, due to topography, land

disturbance (e.g., construction, landscaping, site grading), or other factors, have a potential for soil erosion. The permittee shall identify and implement structural, vegetative, or stabilization BMPs control measures to prevent or control on-site and off-site erosion and sedimentation. Flow velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel if the flows would otherwise create erosive conditions.

~~(8)~~ (7) Management of runoff. The plan shall describe the stormwater runoff management practices (i.e., permanent structural BMPs control measures) for the facility. These types of BMPs are typically control measures shall be used to divert, infiltrate, reuse, or otherwise reduce pollutants in stormwater discharges from the site.

Structural BMPs control measures may require a separate permit under § 404 of the federal Clean Water Act and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.

~~C. Maintenance. All BMPs identified in the SWPPP shall be maintained in effective operating condition. Stormwater BMPs identified in the SWPPP shall be observed during active operation (i.e., during a stormwater runoff event) to ensure that they are functioning correctly. The observations shall be documented in the SWPPP.~~

The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all BMPs and shall include a description of the back up practices that are in place should a runoff event occur while a BMP is off line. The effectiveness of nonstructural BMPs shall also be maintained (e.g., spill response supplies available and personnel trained).

~~If site inspections required by Part II B 5 b (5) (Routine facility inspections) or Part II D (Comprehensive site compliance evaluation) identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. In the interim, back up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the date or dates of regular maintenance, date or dates of discovery of areas in need of repair or replacement, and for repairs, date or dates that the BMPs returned to full function, and the justification for any extended maintenance or repair schedules.~~

~~D. Comprehensive site compliance evaluation. The permittee shall conduct comprehensive site compliance evaluations at least once a year. The evaluations shall be done by qualified personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility, and who can also evaluate the effectiveness of BMPs. The personnel conducting the~~

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evaluations may be either facility employees or outside constituents hired by the facility.

1. ~~Scope of the compliance evaluation. Evaluations shall include all areas where industrial materials or activities are exposed to stormwater, as identified in Part II B 3. The personnel shall evaluate:~~

- ~~a. Industrial materials, residue or trash that may have or could come into contact with stormwater;~~
- ~~b. Leaks or spills from industrial equipment, drums, barrels, tanks or other containers that have occurred within the past three years;~~
- ~~c. Off site tracking of industrial or waste materials or sediment where vehicles enter or exit the site;~~
- ~~d. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas;~~
- ~~e. Evidence of, or the potential for, pollutants entering the drainage system;~~
- ~~f. Evidence of pollutants discharging to surface waters at all facility outfalls, and the condition of and around the outfall, including flow dissipation measures to prevent scouring;~~
- ~~g. Review of training performed, inspections completed, maintenance performed, quarterly visual examinations, and effective operation of BMPs; and~~
- ~~h. Review of the results of both visual and any analytical monitoring done during the past year.~~

2. ~~Based on the results of the evaluation, the SWPPP shall be modified as necessary (e.g., show additional controls on the map required by Part II B 2 c; revise the description of controls required by Part II B 5 to include additional or modified BMPs designed to correct problems identified). Revisions to the SWPPP shall be completed within 30 days following the evaluation, unless permission for a later date is granted in writing by the director. If existing BMPs need to be modified or if additional BMPs are necessary, implementation shall be completed before the next anticipated storm event, if practicable, but not more than 60 days after completion of the comprehensive site evaluation, unless permission for a later date is granted in writing by the department.~~

3. ~~Compliance evaluation report. A report shall be written summarizing the scope of the evaluation, the name or names of personnel making the evaluation, the date or dates of the evaluation, and all observations relating to the implementation of the SWPPP, including elements stipulated in Part II D 1 (a) through (f) of this general permit. Observations shall include such things as: the location or locations of discharges of pollutants from the site; the location or locations of previously unidentified sources of pollutants; the location or locations of BMPs~~

~~that need to be maintained or repaired; the location or locations of failed BMPs that need replacement; and location or locations where additional BMPs are needed. The report shall identify any incidents of noncompliance that were observed. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part III K and maintained with the SWPPP.~~

4. ~~Where compliance evaluation schedules overlap with routine inspections required under Part II B 5 b (5), the annual compliance evaluation may be used as one of the routine inspections.~~

E. ~~3. Signature and plan SWPPP review.~~

1. ~~Signature/location. a. Signature and location. The SWPPP, including revisions to the SWPPP to document any corrective actions taken as required by Part II B, shall be signed in accordance with Part III K, dated, and retained on-site at the facility covered by this permit. All other changes to the SWPPP, and other permit compliance documentation, must be signed and dated by the person preparing the change or documentation.~~

2. ~~b. Availability. The permittee shall make the SWPPP, annual site compliance evaluation report, and other information available to the department retain a copy of the current SWPPP required by this permit at the facility, and it shall be immediately available to the department, EPA, or the operator of an MS4 receiving discharges from the site at the time of an on-site inspection or upon request.~~

3. ~~c. Required modifications. The permittee shall modify the SWPPP whenever necessary to address all corrective actions required by Part II B. Changes to the SWPPP shall be made in accordance with the corrective action deadlines in Part II B and shall be signed and dated in accordance with Part III K. The director may notify the permittee at any time that the SWPPP, BMPs control measures, or other components of the facility's stormwater program do not meet one or more of the requirements of this permit. The notification shall identify specific provisions of the permit that are not being met and may include required modifications to the stormwater program, additional monitoring requirements, and special reporting requirements. The permittee shall make any required changes to the SWPPP within 60 days of receipt of such notification, unless permission for a later date is granted in writing by the director, and shall submit a written certification to the director that the requested changes have been made.~~

~~F. 4.~~ Maintaining an updated SWPPP. ~~4.~~ The permittee shall review and amend the SWPPP as appropriate whenever:

- a. There is construction or a change in design, operation, or maintenance at the facility that has an effect on the discharge, or the potential for the discharge, of pollutants from the facility ~~sufficient to impact water quality~~;
- b. Routine inspections or ~~compliance evaluations~~ visual monitoring determine that there are deficiencies in the control measures, including BMPs;
- c. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;
- d. There is a significant spill, leak or other release at the facility; or
- e. There is an unauthorized discharge from the facility.

~~2. f.~~ SWPPP modifications shall be made within ~~30~~ 60 calendar days after the discovery, observation, or event requiring a SWPPP modification. Implementation of new or modified ~~BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II C)~~ control measures shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a ~~BMP control measure~~ or implement additional ~~BMPs control measures~~ shall be documented in the SWPPP.

~~3. g.~~ If the SWPPP modification is based on a significant spill, leak, release, or unauthorized discharge, include a description and date of the ~~release incident~~, the circumstances leading to the ~~release incident~~, actions taken in response to the ~~release incident~~, and measures to prevent the recurrence of such releases. Unauthorized ~~releases and discharges~~ are subject to the reporting requirements of Part III G of this permit.

~~G. Allowable nonstormwater discharges. The following nonstormwater discharges are authorized by this permit:~~

- ~~1. Discharges from fire fighting activities;~~
- ~~2. Fire hydrant flushings;~~
- ~~3. Potable water including water line flushings;~~
- ~~4. Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;~~
- ~~5. Irrigation drainage;~~
- ~~6. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling;~~

~~7. Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred, unless all spilled material has been removed;~~

~~8. Routine external building wash down that does not use detergents;~~

~~9. Uncontaminated groundwater or spring water;~~

~~10. Foundation or footing drains where flows are not contaminated with process materials; and~~

~~11. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower, for example, "piped" cooling tower blowdown or drains.~~

Part III

Conditions Applicable to All VPDES Permits

A. Monitoring.

- 1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
- 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
- 3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.
- 4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

B. Records.

- 1. Records of monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The ~~individual(s)~~ individuals who performed the sampling or measurements;
  - c. The ~~date(s) and time(s)~~ dates and times analyses were performed;
  - d. The ~~individual(s)~~ individuals who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.
- 2. 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

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reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

## C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department. Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from ~~his~~ the permittee's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

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

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F (Unauthorized discharges); or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify (see NOTE in Part III I) the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset, should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the

department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include ~~but are not limited to~~ any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance.

1. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

~~1. a.~~ An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:

- ~~a. (1)~~ Any unanticipated bypass; and
  - ~~b. (2)~~ Any upset that causes a discharge to surface waters.
- ~~2. b.~~ A written report shall be submitted within five days and shall contain:
- ~~a. (1)~~ A description of the noncompliance and its cause;
  - ~~b. (2)~~ The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
  - ~~c. (3)~~ Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

~~3. 2.~~ The permittee shall report all instances of noncompliance not reported under Parts III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

~~NOTE: 3.~~ The immediate (within 24 hours) reports required in Part III G, H, and I may be made to the department's regional office. Reports may be made by

telephone, FAX, or online at <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx>.

For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

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

J. Notice of planned changes.

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

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- (1) After promulgation of standards of performance under § 306 of the federal Clean Water Act that are applicable to such source; or
- (2) After proposal of standards of performance in accordance with § 306 of the federal Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified ~~elsewhere in this permit;~~ under Part I B 6; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit ~~application~~ registration 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 that may result in noncompliance with permit requirements.

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## K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

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

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

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

2. Reports and other ~~requested~~ information. All reports required by permits, and other information requested by the board, shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

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

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:

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

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the federal Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the federal Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit coverage 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 Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least ~~30~~ 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights or any infringement of federal, state or local laws or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as provided in permit conditions in Part III U (Bypass) and Part III V (Upset) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

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

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

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

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

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part III U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I (Reports of noncompliance).

3. Prohibition of bypass.

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

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

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

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

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

a. An upset occurred and that the permittee can identify the ~~cause(s)~~ 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 Part III I; and

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d. The permittee complied with any remedial measures required under Part III S.

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

W. Inspection and entry. The permittee shall allow the director or an authorized representative, (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 this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the federal Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours ~~and~~ or whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

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

Y. Transfer of ~~permits~~. Permits are permit coverage.

1. Permit coverage is not transferable to any person except after notice to the department.

2. Coverage under this permit may be automatically transferred to a new permittee if:

1. a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property unless permission for a later date has been granted by the board;
2. b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

~~3. c.~~ The board does not notify the existing permittee and the proposed new permittee of its intent to deny the permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-115)

Standard Industrial Classification (SIC) ~~2091, 2092, 5142 or 5046 (Office of Management and Budget (OMB) SIC Manual, 1987)~~. U.S. Office of Management and Budget (OMB) SIC Manual, 1987

[North American Industry Classification System \(NAICS\) U.S. Office of Management and Budget, 2017](#)

VA.R. Doc. No. R19-5819; Filed July 14, 2020, 3:34 p.m.

## Final Regulation

<p><b>REGISTRAR'S NOTICE:</b> The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.</p>
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Title of Regulation: **9VAC25-410. Occoquan Policy (amending 9VAC25-410-10, 9VAC25-410-20).**

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

Effective Date: September 2, 2020.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (803) 698-4238, or email [melissa.porterfield@deq.virginia.gov](mailto:melissa.porterfield@deq.virginia.gov).

Summary:

*The amendments, which are a result of a periodic review, make technical corrections to update the regulation.*

### 9VAC25-410-10. Introduction.

A. Purpose and authority. To provide a policy that protects the Occoquan watershed from point source pollution. The Occoquan Policy specifically regulates jurisdictional domestic sewage and sets forth requirements for high performance regional treatment plants. The policy was adopted pursuant to authority vested in the State Water Control Board (board) by § 62.1-44.15 of the State Water Control Law.

B. Water quality standard. This "Occoquan Policy" also constitutes special standard "g" in the board's water quality standards for sections 7a, through 7h of the Potomac River Basin's Potomac River Subbasin (9VAC25-260-390), which sections are delineated geographically in the "Basin and Section Description" portion of the water quality standards publication (9VAC25-260-10 et seq.). In addition, the text of this policy is referred to under special standards and requirements (~~9VAC25-300-10~~) (9VAC25-260-310), entitled "Occoquan Watershed Policy," of the water quality standards (9VAC25-260-10 et seq.).

C. Background. During the 1960s there was a great deal of concern generated about the large amount of treated sewage effluent being discharged in the Occoquan watershed, since the receiving streams feed the Occoquan reservoir, a drinking water supply for over 600,000 people in Northern Virginia.

In response to this, the board commissioned the firm of Metcalf & Eddy to study the problems of the Occoquan reservoir and to recommend a course of action to preserve the Occoquan as a valuable water resource for future generations.

The results of the Metcalf & Eddy study stated that point source pollution was the primary cause of water quality degradation in the Occoquan watershed and that a high degree of waste treatment would be necessary to prolong the life of the drinking water supply.

In 1971 the board adopted a policy for waste treatment and water quality management in the Occoquan watershed (the Occoquan Policy) ~~which~~ that outlined a course of action to control point source pollution in the watershed.

The Occoquan Policy provided for the construction of regional high-performance treatment facilities in the watershed and a monitoring program to obtain water quality data both before and after construction of any of the high-performance plants.

The Occoquan Watershed Monitoring Program (OWMP or monitoring program) was established in 1972 which gathered an extensive amount of information and found that water quality problems in the Occoquan watershed were related directly to point source pollution and to non-point source pollution.

In 1978, a regional high-performance treatment facility (the Upper Occoquan ~~Sewage Authority UOSA~~) Service Authority, UOSA, formerly known as the Upper Occoquan Sewage Authority) was placed in operation. This facility eliminated 11 major point sources of pollution in the watershed.

Shortly after UOSA began operations, costs and charges for sewage treatment in systems tributary to UOSA increased rather sharply. To date a significant part of those high costs have been associated with large amounts of infiltration and

inflow being sent by the user jurisdictions to the regional facility for treatment.

In an attempt to control non-point source pollution the Commonwealth of Virginia adopted an erosion and sediment control law in 1973. In accordance with this law, all of the watershed jurisdictions have adopted erosion and sediment control ordinances. In addition, a number of best management practices (BMP) handbooks were written and published in 1979 by the board. In mid-1980 Fairfax County adopted a BMP ordinance.

In 1978, the board contracted the firm of Camp Dresser & McKee (CDM) to reevaluate certain aspects of the Occoquan Policy. Their report was presented to the board and to the local communities in 1980 and recommended that few changes be made to the policy.

As a result of the CDM report, input from the local communities and the board's staff, an updated version of the Occoquan Policy was drafted.

D. References.

1. A Comprehensive Pollution Abatement Program for the Occoquan Watershed, Metcalf & Eddy Engineers, March 18, 1970.
2. Record of public hearing on March 31, 1971, concerning State Water Control Board's Occoquan Policy.
3. Occoquan Policy Reevaluation, Phase III Report, Camp Dresser & McKee, June 1980.
4. Record of public hearing on November 20, 1980, concerning amendments to the Occoquan Policy.

**9VAC25-410-20. Long-range policy.**

A. Number and general location of regional treatment plants.

1. The number of high-performance regional plants which shall be permitted in this watershed is not more than three, but preferably two, generally located as follows:
  - a. One plant in the Fauquier County/Warrenton area.
  - b. One plant in the Manassas area to serve the surrounding area in Prince William, Fairfax, and Loudoun counties.
2. All point source discharges of treated sewage effluent will preferably be located at least 20 stream miles above the Fairfax County Water Authority's raw water intake. In no case shall a plant be located less than 15 miles above the raw water intake.
3. The provisions of 9VAC25-410-20 A 1 and A 2 shall not limit the consideration of land disposal systems for waste treatment in the watershed, provided such systems shall have no point source discharge to state waters and shall have the approval of the State Water Control Board.

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B. Regional plant capacity allocations for the Occoquan basin.

1. The initial allotment of plant capacity for the Upper Occoquan Sewage Service Authority treatment facility was approximately 10 MGD, based on all effluent being from high-performance plants meeting the requirements of subsections D, E, and F below of this section and all those treatment facilities belonging to the City of Manassas, the City of Manassas Park, the Greater Manassas Sanitary District, and Sanitary District 12 of Fairfax County being abandoned.

2. Incremental increases in the regional plant capacity may be approved by the board based on the results of a monitoring program which that shows that current and projected discharges from the high-performance plants do not create a water quality or public health problem in the reservoir. The board advises that since severe infiltration/inflow stresses the performance reliability of the regional treatment plants, jurisdictions must pursue I/I correction within their individual systems.

C. Prerequisites for preliminary plant approval. Prerequisites before the board gives approval to preliminary plans for a regional high-performance plant are:

1. A monitoring program for the receiving waters shall be in effect; and
2. The authority who is to operate the proposed plant shall enter into a written and signed agreement with the board that the authority shall meet the administrative requirements of subsection F of this section.

D. Design concept for high-performance plants on the Occoquan.

1. Plant design requirements are:
  - a. The design of the high-performance sewage treatment plants discharging to the Occoquan Watershed shall meet all the requirements specified here as well as those specified in the most recent edition of the Commonwealth of Virginia Sewerage Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.); and
  - b. The basic sewage plant design concept for the regional plants discharging to the Occoquan watershed shall be based on the Upper Occoquan Sewage Service Authority Wastewater Reclamation Facility.

2. Changes in plant design requirements will be made according to these criteria:

- a. Changes to the plant design described here shall only be acceptable if the change does all of the following:
  - (1) Improves or equals the plant performance and final effluent quality;

(2) Increases or equals plant reliability and maintainability; and

(3) Has a demonstrated performance in a plant of at least 5 to 10 MGD size for an operating period of not less than one, but preferably two years.

b. Before such changes are incorporated in the plant, specific written approval shall be obtained from the board; and

c. Changes to the plant design solely to reduce cost and which jeopardize plant performance and reliability will not be approved.

E. Plant performance requirements.

1. The plant performance requirements for high performance plants discharging to the Occoquan watershed are given in Table I.

2. Operation of the nitrogen removal facilities is required when the ambient nitrate concentration (as N) is 5.0 mg/l or higher in the Occoquan reservoir in the vicinity of the Fairfax County Water Authority intake point. The owner of the regional sewage authority is responsible for knowing ambient results of nitrate and when operation of nitrogen removal facilities is necessary.

TABLE I-
MINIMUM EFFLUENT QUALITY REQUIREMENTS* FOR ANY REGIONAL SEWAGE TREATMENT PLANT IN THE OCCOQUAN WATERSHED-
FINAL EFFLUENT REQUIREMENTS
COD mg/1 - 10.0
Suspended solids mg/1 - 1.0
Nitrogen mg/1 - 1.0**
Phosphorus mg/1 - 0.1
MBAS mg/1 - 0.1
Turbidity NTU - 0.5***
Coliform per 100 ml Sample - less than 2.0
*As measured on a monthly average unless otherwise noted. Since these are minimum requirements, the normal average would be expected to be substantially better.  **Unoxidized nitrogen (as TKN) Refer to 9VAC25-410-20 E 2 for further information.  ***Measured immediately prior to chlorination.

F. Administrative and technical requirements for the control of the sewer system tributary to a regional, high-performance plant in the Occoquan watershed.

1. The owner to whom the permit is issued for operation of a regional plant shall meet the general and administrative requirements covered below. These requirements shall also be contractually passed on by the owner to any parties or jurisdictions with which the owner may contract for the processing of wastewater.

These requirements are applicable to regional sewage treatment plants.

2. The high-performance regional treatment plant shall be manned by an appropriate number of trained and qualified operating, maintenance and laboratory personnel and manned continuously 24 hours a day, seven days a week throughout the year.

3. The owner shall include, as part of his preliminary and final plans and specifications submitted to the board for approval, a detailed statement indicating how each of the technical and administrative requirements in this policy has been met. Any proposed deviation from any of these requirements shall be clearly identified and technically justified, and shall require formal board approval. These submittals shall also include:

a. Simplified fluid system diagrams ~~which~~ that clearly identify the following:

- (1) The average and peak capacity of each unit;
- (2) The number of units of each type needed to handle the normal average flow and the peak of flow; and
- (3) The number of spare units and their capacity for both average and peak flow cases shall also be identified.

In addition, a brief narrative summary description shall be submitted to identify what has been done to ensure that each unit and major subsystem can be maintained and expanded without release of effluent that does not meet the minimum standards.

b. A simple one-line power distribution system diagram showing how outside power is brought into the plant and how power is distributed within the plant proper shall be submitted. This diagram shall also show as a minimum:

- (1) Ratings and characteristics of electrical components, such as transformers, circuit breakers, and motor controllers, ~~etc.~~, making up the system;
- (2) Protective devices such as thermal overloads, under frequency, or under voltage relays;
- (3) Voltages supplied by all fuses;
- (4) Normal circuit breaker and switch conditions (~~Notes~~ notes shall also be provided as required to cover abnormal, casualty, and emergency operating modes); and

(5) How electrical loads are combined into switch gear and load center. (The use of cubicle outlines in phantom or dotted line is suggested.)

4. The final submittal of plans and specifications for the plant to the board shall include a systematic failure mode and effects analysis on the mechanical and electrical portions of the plant so as to demonstrate that a single failure of a mechanical or electrical component will not interrupt the plant operations which are necessary to meet the effluent requirements of Table I of this policy.

5. Pumping stations on the collection systems ~~which~~ that are located in the Occoquan watershed and are tributary to a regional treatment works shall:

- a. Have stand-by pumping units;
- b. Have at least one "on-site" backup power supply;
- c. Have at least one "off-site" power supply;
- d. Be designed so that no single failure of a mechanical or electrical component could degrade pumping capability;
- e. Have pumps and valves arranged so that these units can be removed and replaced without the by-passing of sewage;
- f. Have flow measure devices with provisions for recording flow; and
- g. Have retention basins of a minimum one-day capacity.

If these pumping stations are remote and unmanned, an alarm system shall be provided at manned stations to indicate that problems are developing and to direct maintenance assistance to the affected pumping station. The owner of each pumping station shall be required to obtain a State Water Control Board certificate.

A waiver may be sought from requirement g above, particularly in new collection systems exhibiting no I/I problems. However, the jurisdiction requesting such a waiver must submit documentation to the board for review that the sewer system tributary to the pump station meets the criteria established by the most recent edition of the Virginia Sewerage Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq. ) for infiltration/inflow, and any other such information that the board may require.

6. The major junctions in the collection system (e.g., at least at the 1 to 2 MGD collection points) shall have continuous recording flow measuring devices to help in the early identification of problem portions of a collection system in the event of unexplainable high flows (e.g., excessive infiltration). Also, such flow measuring devices and isolation valves shall be provided between jurisdictions as well as any others contracting for the

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services of the regional plant. The flow measuring devices and isolation valves between jurisdictions shall be under the control and responsibility of the owner to whom a plant certificate is issued.

7. Each sewage treatment plant shall have a pretreatment program approved by the board.

8. Waste being processed in any existing small plants shall have the first priority on treatment capacity and such capacity shall be specifically reserved for them in the new high-performance regional plants. New developments are to have second priority.

9. If any of the various administrative procedures of the owner of the regional treatment plant or of jurisdictions served by the plant prove ineffective under actual operating conditions, the board shall have the right to place new requirements on the owner and jurisdictions and to require any necessary action by these parties to physically correct the damage done to the reservoir due to ineffective implementation of the administrative requirements covered here.

10. The owner's interceptor and collection systems of the jurisdictions in the Occoquan watershed shall be designed, installed, inspected, and tested by the respective owner to limit infiltration to 100 gal/inch-dia/mile/day as a maximum. The test results shall be certified and submitted to the board.

11. Whenever the owner enters into an agreement with a jurisdiction for services of a regional plant, the owner shall be responsible for seeing that such jurisdictions have ordinances and rules to meet all the applicable requirements covered by this policy. These ordinances and rules shall meet the owner's approval and the owner shall monitor and spot-check to see that the jurisdictions are effectively implementing their ordinances and rules to meet the requirements covered here. The board, at its discretion, can request the owner to submit to the board for its approval the ordinances and rules that will be used to meet the board's requirements covered here.

Further, any time a user violates any of the administrative or technical requirements of the contract between the user and the owner which can affect the plant operations, hydraulic loading, or effluent quality or which affect the reservoir's water quality due to urban ~~run-off~~ runoff (e.g., siltation), the owner shall not allow the user to discharge additional wastewater to the owner's plant until the problem has been resolved to the owner's satisfaction.

12. Up-to-date "as-built" drawings and manuals shall be available at least once a year for board inspection and review. These documents shall include as a minimum:

a. Up-to-date as-built electrical and fluid system diagrams;

b. Detailed as-built and installed drawings; and

c. Normal operating and casualty procedures manual. The documents shall be updated at least once a year to reflect all changes and modifications to the plant.

13. The design engineer shall have the responsibility of meeting the proposed effluent quality as shown in Table I. To demonstrate that the plant as designed by the engineer can meet the effluent standards, the plant is to be operated under the supervision of the design engineer for a minimum of one year of continuous operation after the "debugging" period.

G. Other point source discharges.

1. Point sources other than regional plants will be permitted as regulated or required by the Virginia Pollutant Discharge Elimination System (VPDES) permit regulation (~~9VAC25-30-10 et seq.~~) (9VAC25-31-10 et seq.).

2. VPDES permits may be issued for single family homes with failing septic tanks, stormwater, pollution remediation projects, and minor industries. The permitting of major discharges (as defined in 40 CFR Part 122) other than regional sewage treatment plants is strictly prohibited with the exception of pollution remediation projects ~~which that~~ are shown to be feasible and no other alternatives are available.

3. No permit as authorized in subdivisions 1 and 2 ~~above of~~ this subsection shall be issued or reissued unless the applicant demonstrates that it is not feasible to connect to a regional plant and that there is not a feasible alternative except to discharge.

VA.R. Doc. No. R20-6176; Filed July 9, 2020, 3:47 p.m.

## Proposed Regulation

**REGISTRAR'S NOTICE:** The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation: 9VAC25-630. Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management (amending 9VAC25-630-10 through 9VAC25-630-80; adding 9VAC25-630-90).**

**Statutory Authority:** §§ 62.1-44.15 and 62.1-44.17:1.1 of the Code of Virginia.

**Public Hearing Information:**

September 14, 2020 - 7 p.m. - GoToWebinar - Register at: <https://attendee.gotowebinar.com/register/1998009848523103248>. If a determination is made for an in person option, details will be announced on the Virginia Regulatory Town Hall and the Department of Environmental Quality (DEQ) website.

September 16, 2020 - 9 a.m. - GoToWebinar - Register at: <https://attendee.gotowebinar.com/register/673532644146132240>. If a determination is made for an in person option, details will be announced on the Virginia Regulatory Town Hall and the DEQ website.

**Public Comment Deadline:** October 2, 2020.

**Agency Contact:** Betsy Bowles, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, FAX (804) 698-4032, or email [betsy.bowles@deq.virginia.gov](mailto:betsy.bowles@deq.virginia.gov).

**Summary:**

*The proposed amendments update, for the purpose of reissuing, the existing Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management (9VAC25-630) to continue the general permit coverage of nearly 1,000 confined poultry feeding operations. The Virginia Pollution Abatement (VPA) general permit governs the management of poultry feeding operations that confine 200 or more animal units (20,000 chickens or 11,000 turkeys) and establishes the utilization, storage, tracking, and accounting requirements related to poultry waste. The VPA expires on November 30, 2020.*

**9VAC25-630-10. Definitions.**

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Permit Regulation (9VAC25-32) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Agricultural storm water discharge" means a precipitation-related discharge of manure, litter, or process wastewater that has been applied on land areas under the control of an animal feeding operation or under the control of a poultry waste end-user or poultry waste broker in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site-specific nutrient management practices that ensure

appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

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

1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

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

"Commercial poultry processor" or "processor" means any animal food manufacturer, as defined in § 3.2-5400 of the Code of Virginia, that contracts with poultry growers for the raising of poultry.

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

"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys, regardless of animal age or sex.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or ~~his~~ the director's designee.

"Fact sheet" means the document prepared by the department that summarizes the requirements set forth in this chapter regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers.

"General permit" means 9VAC25-630-50.

"Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment, and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; except that for a poultry waste end-user or poultry waste broker who is not subject to the general permit, the requirements of 9VAC25-630-80 constitute the NMP.

"Organic source" means any nutrient source including, but not limited to, manures, biosolids, compost, and waste or sludges from animals, humans, or industrial processes, but for

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the purposes of this regulation it excludes waste from wildlife.

"Permittee" means the poultry grower, poultry waste end-user, or poultry waste broker whose poultry waste management activities are covered under the general permit.

"Poultry grower" or "grower" means any person who owns or operates a confined poultry feeding operation.

"Poultry waste" means dry poultry litter and composted dead poultry.

"Poultry waste broker" or "broker" means a person who possesses or controls poultry waste that is not generated on an animal feeding operation under his operational control and who transfers or hauls poultry waste to other persons. If the entity is defined as a broker they cannot be defined as a hauler for the purposes of this regulation.

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

"Poultry waste hauler" or "hauler" means a person who provides transportation of transferred poultry waste from one entity to another, and is not otherwise involved in the transfer or transaction of the waste, nor responsible for determining the recipient of the waste. The responsibility of the recordkeeping and reporting remains with the entities to which the service was provided: grower, broker, and end-user.

"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.

"Standard rate" means a land application rate for poultry waste approved by the board as specified in this regulation.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

## **9VAC25-630-20. Purpose; delegation of authority; effective date of permit.**

A. This regulation governs the management of poultry waste at confined poultry feeding operations not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit and poultry waste utilized or stored by poultry waste end-users or poultry waste brokers. It establishes

requirements for proper nutrient management, waste storage, and waste tracking and accounting of poultry waste.

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

C. This general permit will become effective on December 1, ~~2010~~ 2020. This general permit will expire 10 years from the effective date.

## **9VAC25-630-25. Duty to comply.**

A. Any person who manages or proposes to manage pollutants regulated by 9VAC25-630 shall comply with the applicable requirements of this chapter.

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

C. Any poultry waste end-user or poultry waste broker shall comply with the technical requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80. Any poultry waste end-user or poultry waste broker who does not comply with the technical requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 may be required to obtain coverage under the general permit.

D. Any poultry waste end-user or poultry waste broker who is required by the board to obtain coverage under the Virginia Pollution Abatement general permit shall obtain coverage and comply with the requirements of this chapter.

E. Any commercial poultry processor shall comply with the requirements outlined in 9VAC25-630-90.

## **9VAC25-630-30. Authorization to manage pollutants.**

A. Poultry grower. Any poultry grower governed by this general permit is hereby authorized to manage pollutants at confined poultry feeding operations provided that the poultry grower files the registration statement of 9VAC25-630-40, complies with the requirements of 9VAC25-630-50, and:

1. The poultry grower has not been required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit or an individual permit according to 9VAC25-32-260 B;

2. The activities of the confined poultry feeding operation shall not contravene the Water Quality Standards (9VAC25-260), as ~~amended and~~ adopted and amended by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). There shall be

no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;

3. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit by a permittee for routine disposal of daily poultry mortalities shall be a violation of this permit. This prohibition shall not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia;

4. The poultry grower shall obtain Department of Conservation and Recreation approval of a nutrient management plan for the confined poultry feeding operation prior to the submittal of the registration statement. The poultry grower shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan that was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The poultry grower shall implement the approved nutrient management plan;

5. Adjoining property notification.

a. Prior to filing a general permit registration statement for a confined poultry feeding operation that proposes construction of poultry growing houses after December 1, 2000, the poultry grower shall give notice to all owners or residents of property that adjoins the property on which the proposed confined poultry feeding operation will be located. Such notice shall include (i) the types and maximum number of poultry ~~which that~~ will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the permit may be submitted.

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

than 60 days after the filing of the registration statement; and

6. Each poultry grower covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry growers shall complete a training program at least once every five years.

B. Poultry waste end-user, poultry waste broker. Any poultry waste end-user or poultry waste broker shall comply with the requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 or the general permit as applicable.

1. Any poultry waste end-user or poultry waste broker who does not comply with the requirements of 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 may be required to obtain coverage under the general permit.

2. Any poultry waste end-user or poultry waste broker governed by this general permit is hereby authorized to manage pollutants relating to the utilization and storage of poultry waste provided that the poultry waste end-user or poultry waste broker files the registration statement of 9VAC25-630-40, complies with the requirements of 9VAC25-630-50, and:

a. The poultry waste end-user or poultry waste broker has not been required to obtain a Virginia Pollution Abatement individual permit according to subdivision 2 b of 9VAC25-32-260;

b. The activities of the poultry waste end-user or poultry waste broker shall not contravene the Water Quality Standards (~~9VAC25-260~~), as ~~amended and~~ adopted and amended by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;

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

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end-user or the poultry waste broker shall implement the approved nutrient management plan; and

d. Each poultry waste end-user or poultry waste broker covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry waste end-users or permitted poultry waste brokers shall complete a training program at least once every five years.

C. Receipt of this general permit does not relieve any poultry grower, poultry waste end-user, or poultry waste broker of the responsibility to comply with any other applicable federal, state or local statute, ordinance, or regulation.

D. Continuation of permit coverage.

1. Any owner that was authorized to manage pollutants under the general permit ~~issued in 2000~~, and that submits a complete registration statement on or before ~~November 30, 2010~~ the expiration date, is authorized to continue to manage pollutants under the terms of the ~~2000~~ general permit until such time as the board either:

- a. Issues coverage to the owner under this general permit; or
- b. Notifies the owner that coverage under this permit is denied.

2. When the permittee that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

- a. Initiate enforcement action based upon the existing or expired general permit;
- b. Issue a notice of intent to deny coverage under the ~~amended~~ reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the activities authorized by the ~~continued existing~~ or expired general permit or be subject to enforcement action for operating without a permit;
- c. Issue an individual permit with appropriate conditions; or
- d. Take other actions set forth in the VPA Permit Regulation (9VAC25-32).

## **9VAC25-630-40. Registration statement.**

A. Poultry growers. In order to be covered under the general permit, the poultry grower shall file a complete VPA General Permit Registration Statement. The registration statement shall contain the following information:

1. The poultry grower's name, mailing address, email address (~~if available~~), and telephone number;

2. The farm name (if applicable) and location of the confined poultry feeding operation;

3. The name, email address (~~if available~~), and telephone number of a contact person or operator other than the poultry grower, if necessary;

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

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

6. Indicate whether the poultry are grown under contract with a commercial poultry processor or poultry integrator and give the name of the processor or integrator (if applicable);

7. The types of poultry and the maximum numbers of each type to be grown at the facility at any one time;

8. Identification of the method of dead bird disposal;

9. An indication of whether new poultry growing houses are under construction or planned for construction;

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

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

12. The following certification: "I certify that for any confined poultry feeding operation that proposes construction of new poultry growing houses, notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the confined poultry feeding operation will be located. This notice included the types and numbers of poultry which will be grown at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. I certify under penalty of law that all the requirements of the board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

B. Poultry waste end-users or poultry waste brokers. In order to be covered under the general permit, the poultry waste end-user or poultry waste broker shall file a complete VPA General Permit Registration Statement. The registration statement shall contain the following information:

1. The poultry waste end-user's or poultry waste broker's name, mailing address, email address (~~if available~~), and telephone number;
2. The location of the operation where the poultry waste will be utilized, stored, or managed;
3. The best time of day and day of the week to contact the poultry waste end-user or poultry waste broker;
4. If the facility has an existing VPA permit, the permit number;
5. If confined poultry are located at the facility, indicate the number of confined poultry and give the name of the processor or integrator (if applicable);
6. A copy of the nutrient management plan approved by the Department of Conservation and Recreation;
7. A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and
8. The following certification: "I certify under penalty of law that all the requirements of the board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information,

including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 9VAC25-32-50.

**9VAC25-630-50. Contents of the general permit.**

Any poultry grower, poultry waste end-user, or poultry waste broker whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPA Permit Regulation, 9VAC25-32.

General Permit No. VPG2

Effective Date: December 1, ~~2010~~ 2020

Expiration Date: November 30, ~~2020~~ 2030

**GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT**

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

In compliance with the provisions of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia) and State Water Control Board regulations adopted pursuant thereto, owners of confined poultry feeding operations having 200 or more animal units, poultry waste end-users, and poultry waste brokers are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations prohibit such activities.

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

**Part I**

**Pollutant Management and Monitoring Requirements for Confined Poultry Feeding Operations**

A. Pollutant management authorization and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the facility's approved nutrient management plan.
2. If poultry waste is land applied, it shall be applied at the rates specified in the facility's approved nutrient management plan.
3. Soil at the land application sites shall be monitored as specified ~~below~~ in the following table. Additional soils monitoring may be required in the facility's approved nutrient management plan.

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## SOILS MONITORING

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

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

SU = Standard Units

\*Specific sampling requirements are found in the facility's approved nutrient management plan.

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

## WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/3 years	Composite
Ammonia Nitrogen	NL	*	1/3 years	Composite
Total Phosphorus	NL	*	1/3 years	Composite
Total Potassium	NL	*	1/3 years	Composite
Moisture Content	NL	%	1/3 years	Composite

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

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

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

6. All monitoring data required by Part I A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

### ~~Other~~ Site design, storage, and operation requirements or special conditions.

1. The confined poultry feeding operation shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent

crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

- a. Poultry waste shall be covered to protect it from precipitation and wind;
- b. Storm water shall not run onto or under the stored poultry waste;
- c. A minimum of two feet of separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot of separation between

the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ( $1 \times 10^{-6}$  centimeters per second); and

d. For poultry waste that is not stored under roof, the storage site must be at least:

(1) 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs; and

(2) 200 feet from any occupied dwellings not on the permittee's property, unless the occupant of the dwelling signs a waiver of the storage site.

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless the poultry grower has no land outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. New, expanded, or replacement poultry growing houses that are constructed after December 1, 2000, shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

4. ~~Poultry waste may be transferred from a permitted poultry grower to another person without identifying the fields where such waste will be utilized in the permitted poultry grower's approved nutrient management plan if the following conditions are met:~~

~~a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365 day period, the poultry grower shall provide that person with:~~

~~(1) Grower name, address, and permit number;~~

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

~~(3) A fact sheet.~~

~~b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365 day period, the poultry grower shall keep a record of the following:~~

~~(1) The recipient name and address;~~

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

~~(3) The date of the transaction;~~

~~(4) The nutrient analysis of the waste; and~~

~~(5) The signed waste transfer records form acknowledging the receipt of the following:~~

~~(a) The waste;~~

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

~~(c) A fact sheet.~~

~~c. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365 day period, and the recipient of the waste is someone other than a broker, the poultry grower shall keep a record of the following:~~

~~(1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code); and~~

~~(2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site.~~

~~d. Poultry growers shall maintain the records required by Part I B 4 a, b, and c for at least three years after the transaction and shall make them available to department personnel upon request.~~

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

The permittee shall operate and manage the facility so that impervious surfaces such as concrete end pads or load-out pads and surrounding areas and ventilation outlets are kept clean of poultry waste.

5. ~~Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted~~

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pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

## C. Poultry waste transfer and utilization requirements.

1. Poultry waste may be transferred from a permitted poultry grower to another person without identifying the fields where such waste will be utilized in the permitted poultry grower's approved nutrient management plan if the following conditions are met:

a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person with:

- (1) Grower name, address, and permit number;
- (2) A copy of the most recent nutrient analysis of the poultry waste; and
- (3) A fact sheet.

b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:

- (1) The recipient name and address;
- (2) The amount of poultry waste received by the person;
- (3) The date of the transaction;
- (4) The nutrient analysis of the waste; and
- (5) The signed waste transfer records form acknowledging the receipt of the following:

- (a) The waste;
- (b) The nutrient analysis of the waste; and
- (c) A fact sheet.

c. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, and the recipient of the waste is someone other

than a broker, the poultry grower shall keep a record of the following:

- (1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city, county, and zip code); and
- (2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site.

2. Poultry growers shall maintain the records required by Part I C 1 for at least three years after the transaction and shall make them available to department personnel upon request.

3. Transfer records reporting requirements. The grower shall submit the records required by Part I C 1 in accordance with the timing outlined in Part I C 3 a and b.

a. Beginning (insert the date one year after the effective date of this permit), upon request by the department, the grower shall submit the records in a format and method determined by the department.

b. Beginning (insert the date two years after the effective date of this permit), the grower shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.

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

~~6.~~ 5. The poultry grower shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. The terms of the NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

- a. Site map indicating the location of the waste storage facilities and the fields where waste generated by this facility will be applied by the poultry grower. The location of fields as identified in ~~Part I B 4 e~~ Part I C 4 shall also be included;
- b. Site evaluation and assessment of soil types and potential productivities;
- c. Nutrient management sampling including soil and waste monitoring;
- d. Storage and land area requirements for the grower's poultry waste management activities;

- e. Calculation of waste application rates; and
- f. Waste application schedules.

~~7. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.~~

~~8. 6.~~ Nitrogen application rates contained in the NMP shall be established in accordance with ~~4VAC5-15-150 A 2~~ 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

~~9. 7.~~ Phosphorus application rates contained in the NMP shall be established in accordance with ~~4VAC5-15-150 A 2~~ 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

~~10. 8.~~ The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

- a. Slopes are not greater than 6.0%;
- b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;
- c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and
- d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

9. In cases where poultry waste storage is threatened by emergencies such as fire or flood or where these conditions are imminent, poultry waste can be land applied outside of the spreading schedule outlined in the grower's NMP. If this occurs, the poultry grower shall document the land application information in accordance with Part I C 11 and notify the department in accordance with Part II H.

~~11. 10.~~ Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

- a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);
  - b. Distance from water supply wells or springs: 100 feet;
  - c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists).
- Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;
- d. Distance from rock outcropping (except limestone): 25 feet;
  - e. Distance from limestone outcroppings: 50 feet; and
  - f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

~~12. 11.~~ The following records shall be maintained:

- a. The identification of the land application field sites where the waste is utilized or stored;
- b. The application rate;
- c. The application dates; and
- d. What crops have been planted.

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

D. Other special conditions.

~~13. 1.~~ Each poultry grower covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry growers shall complete a training program at least once every five years.

2. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

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## Part II Conditions Applicable to all VPA Permits

### A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures listed under 40 CFR Part 136 unless ~~other procedures have been~~ otherwise specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

### B. Records.

#### 1. Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The name of the ~~individual(s)~~ individuals who performed the sampling or measurements;
- c. The ~~date(s)~~ dates analyses were performed;
- d. The name of the ~~individual(s)~~ individuals who performed the analyses;
- e. The analytical techniques or methods used, with supporting information such as observations, readings, calculations and bench data; and
- f. The results of such analyses.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit for a period of at least three years from the date of the sample, measurement, report or application. This period of retention may be extended by request of the board at any time.

C. Reporting monitoring results. If reporting is required by Part I or Part III of this general permit, the permittee shall follow the requirements of this subsection.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after the monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.
2. Monitoring results shall be reported on forms provided or specified by the department.
3. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for

any pollutant more frequently than required by the permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.

4. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant that is not required to be monitored by the permit, and uses approved analytical methods, the permittee shall report the results with the monitoring report.

5. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee. Plans, specifications, maps, conceptual reports, and other relevant information shall be submitted as requested by the director prior to commencing construction.

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

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part II F<sub>2</sub> or (ii) a discharge that may reasonably be expected to enter state waters in violation of Part II F shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse ~~affects~~ effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:

- a. Any unanticipated bypass; and
- b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2 in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in ~~Parts Part~~ Part II F, G, and H may be made to the department's regional office. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency ~~Services~~ Management maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the design or operation of the pollutant management activity.
2. The permittee shall give at least 10 days advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Applications. All permit applications shall be signed as follows:

- a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar ~~policy-~~ policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

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

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this general permit and 9VAC25-630. Any noncompliance with the general permit or 9VAC25-630 constitutes a violation of the State Water Control Law

(§ 62.1-44 et seq. of the Code of Virginia). Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least 30 days before the expiration date of the existing permit unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state, or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as provided in permit conditions on bypassing (Part II U), and upset (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

Q. Proper operation and maintenance. The permittee shall be responsible for the proper operation and maintenance of all treatment works, systems and controls which are installed or used to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any pollutant management activity in violation of this permit which has a reasonable

likelihood of adversely affecting human health or the environment.

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

U. Bypass.

1. Prohibition. "Bypass" means intentional diversion of waste streams from any portion of a treatment works. A bypass of the treatment works is prohibited except as provided herein.

2. Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall notify the department promptly at least 10 days prior to the bypass. After considering its adverse effects, the board may approve an anticipated bypass if:

a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities ~~which that~~ causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. "Severe property damage" does not mean economic loss caused by delays in production; and

b. There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in ~~paragraphs~~ Part II U 2 a and b and in light of the information reasonably available to the permittee at the time of the bypass.

V. Upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;

2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. That the 24-hour reporting requirements to the department were met; and

4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the permit.

W. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any ~~permittee's public or private~~ public or private property; ~~public or private~~ on which the pollutant management activities that are governed by this permit are located and have access to records required by this permit;

2. Have access to, inspect and copy any records that must be kept as part of permit conditions;

3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the permit; and

4. Sample or monitor any substances or parameters at any locations for the purpose of assuring permit compliance or as otherwise authorized by the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is involved in managing pollutants. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause upon the request of the permittee or interested persons, or upon the board's initiative. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VPA permit.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such other requirements as may be necessary. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has

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been modified to reflect the transfer or has been revoked and reissued to the new owner or operator.

2. As an alternative to transfers under Part II Y 1, this permit shall be automatically transferred to a new permittee if:

- a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not, within the 30-day time period, notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If the board notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable and, if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

## Part III

### Pollutant Management and Monitoring Requirements for Poultry Waste End-Users and Poultry Brokers

#### A. Pollutant management authorization and monitoring requirements.

- 1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the permittee's approved nutrient management plan.
- 2. If poultry waste is land applied on land under the permittee's operational control, it shall be applied at the rates specified in the permittee's approved nutrient management plan.
- 3. Soil at the land application sites shall be monitored as specified below in the following table. Additional soils monitoring may be required in the permittee's approved nutrient management plan.

#### SOILS MONITORING

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

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

SU = Standard Units

\*Specific sampling requirements are outlined in the permittee's approved nutrient management plan.

4. Poultry waste shall be monitored as specified below in the following table. Additional waste monitoring may be required in the permittee's approved nutrient management plan.

#### WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/3 years	Composite
Ammonia Nitrogen	NL	*	1/3 years	Composite
Total Phosphorus	NL	*	1/3 years	Composite
Total Potassium	NL	*	1/3 years	Composite

Moisture Content	NL	%	1/3 years	Composite
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NL = No limit, this is a monitoring requirement only.

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

5. If waste from two or more poultry waste sources is commingled or stored then a sample that best represents the waste shall be used to calculate the nutrients available in the poultry waste for land application and shall be provided to the end-user of the waste.

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

7. All monitoring data required by Part III A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

**B. ~~Other~~ Site design, storage, and operation requirements ~~or special conditions.~~**

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

2. Poultry waste shall be stored according to the approved nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

- a. Poultry waste shall be covered to protect it from precipitation and wind;
- b. Storm water shall not run onto or under the stored poultry waste;
- c. A minimum of two feet of separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot of separation between the seasonal high water table and the impermeable barrier. ~~"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray~~

~~mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.~~ Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10<sup>-6</sup> centimeters per second); and

d. For poultry waste that is not stored under roof, the storage site must be at least:

- (1) 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs; and
- (2) 200 feet from any occupied dwellings not on the permittee's property (unless the occupant of the dwelling signs a waiver of the storage site).

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless there is no land available outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

4. The permittee shall operate and manage the facility so that impervious surfaces such as concrete end pads or load-out pads and surrounding areas and ventilation outlets are kept clean of poultry waste.

5. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

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## C. Poultry waste transfer and utilization requirements.

~~4.~~ 1. When a poultry waste end-user or poultry waste broker receives, possesses, or has control over more than 10 tons of transferred poultry waste in any 365-day period, he shall provide the person from whom he received the poultry waste with:

a. The end-user or broker name, address, and permit number;

b. If the recipient of the poultry waste is an end-user, then he shall also provide the person from whom he received the poultry waste the following information:

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

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

c. Written acknowledgement of receipt of:

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) The fact sheet.

If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.

~~5.~~ 2. When a poultry waste broker transfers or hauls poultry waste to other persons, he shall provide the person who received the poultry waste with:

a. Broker name, address, and permit number;

b. The nutrient analysis of the waste; and

c. A fact sheet.

~~6.~~ 3. When a poultry waste end-user or poultry waste broker is a recipient of more than 10 tons of transferred poultry waste in any 365-day period, the poultry waste end-user or poultry waste broker shall keep a record regarding the transferred poultry waste:

a. The following items shall be recorded regarding the source of the transferred poultry waste:

(1) The source name and address;

(2) The amount of poultry waste received from the source; and

(3) The date the poultry waste was acquired.

b. The following items shall be recorded regarding the recipient of the transferred poultry waste:

(1) The recipient name and address;

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

(3) The date of the transaction;

(4) The nutrient content of the waste;

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

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

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

(a) The waste;

(b) The nutrient analysis of the waste; and

(c) A fact sheet.

~~7.~~ 4. End-users or brokers shall maintain the records required by ~~Part III B 6~~ Part III C 3 for at least three years after the transaction and make them available to department personnel upon request.

5. Transfer records reporting requirements. The end-users and brokers shall submit the records required by Part III C 3 in accordance with the timing outlined in Part III C 5 a and 5 b.

a. Beginning (insert the date one year after the effective date of this permit), upon request by the department, the end-users and brokers shall submit the records in a format and method determined by the department.

b. Beginning (insert the date two years after the effective date of this permit), the end-users and brokers shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.

~~8.~~ 6. If poultry waste is also generated by this facility it shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the permittee's approved nutrient management plan.

~~9. Poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.~~

~~10.~~ 7. The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient

management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. The terms of the NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

- a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied by the permittee. The location of fields as identified in ~~Part III B 8~~ Part III C 6 shall also be included;
- b. Site evaluation and assessment of soil types and potential productivities;
- c. Nutrient management sampling including soil and waste monitoring;
- d. Storage and land area requirements for the permittee's poultry waste management activities;
- e. Calculation of waste application rates; and
- f. Waste application schedules.

~~11. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.~~

~~12. 8.~~ Nitrogen application rates contained in the NMP shall be established in accordance with ~~4VAC5-15-150 A 2~~ 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

~~13. 9.~~ Phosphorus application rates contained in the NMP shall be established in accordance with ~~4VAC5-15-150 A 2~~ 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

~~14. 10.~~ The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

- a. Slopes are not greater than 6.0%;
- b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;
- c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and
- d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

11. In cases where poultry waste storage is threatened by emergencies such as fire or flood or where these conditions are imminent, poultry waste can be land applied outside of the spreading schedule outlined in the permittee's NMP. If this occurs, the permittee shall document the land application information in accordance with Part III C 13 and notify the department in accordance with Part II H.

~~15. 12.~~ Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

- a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);
- b. Distance from water supply wells or springs: 100 feet;
- c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;
- d. Distance from rock outcropping (except limestone): 25 feet;
- e. Distance from limestone outcroppings: 50 feet; and
- f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

~~16. 13.~~ The following records shall be maintained:

- a. The identification of the land application field sites where the waste is utilized or stored;
- b. The application rate;
- c. The application dates; and
- d. What crops have been planted.

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

D. Other special conditions.

~~17. 1.~~ Each poultry waste end-user or poultry waste broker covered by this general permit shall complete a training

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program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry waste end-users or permitted poultry waste brokers shall complete a training program at least once every five years.

2. Poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

## **9VAC25-630-60. Tracking and accounting requirements for poultry waste brokers.**

A. Poultry waste brokers shall register with the department by providing their name and address on a form ~~approved~~ provided by the department prior to transferring poultry waste.

B. When a poultry waste broker transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry waste broker shall provide information regarding the transfer of poultry waste to both the source and recipient of the waste.

1. The broker name and address shall be provided to the source of the transferred poultry waste:
2. The following items shall be provided to the recipient of the transferred poultry waste:
  - a. The broker name and address;
  - b. The most recent nutrient analysis of the poultry waste; and
  - c. A fact sheet.

C. When a poultry waste broker transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry waste broker shall keep records regarding the transferred poultry waste.

1. The following items shall be recorded regarding the source of the transferred poultry waste:
  - a. The source name and address;
  - b. The amount of the poultry waste received from the source; and
  - c. The date the poultry waste was acquired.
2. The following items shall be recorded regarding the recipient of the transferred poultry waste:
  - a. The recipient name and address;
  - b. The amount of poultry waste received by the person;

- c. The date of the transaction;
- d. The nutrient content of the waste;
- e. The locality in which the recipient intends to utilize the waste (i.e., nearest town or city, county, and zip code);
- f. The name of the stream ~~of~~ or waterbody if known to the recipient that is nearest to the waste utilization or storage site; and
- g. The signed waste transfer records form acknowledging the receipt of the following:
  - (1) The waste;
  - (2) The nutrient analysis of the waste; and
  - (3) A fact sheet.

D. Poultry waste brokers shall submit ~~copies~~ of the records required by subsection C of this section, to the department annually ~~using a form approved in a format and method determined~~ by the department. Records for the preceding ~~calendar state fiscal~~ year (July 1 through June 30) shall be submitted to the department ~~not no~~ later than ~~February 15~~ September 15. Poultry waste brokers shall maintain the records required by ~~subsection~~ subsections C and E of this section for at least three years and make them available to department personnel upon request.

E. If waste from two or more poultry waste sources is commingled or stored then a sample that best represents the waste shall be used to calculate the nutrients available in the poultry waste for land application and shall be provided to the end-user of the waste. The original sources of the waste shall also be recorded and provided to the department with the annual transfer records submittal.

F. If the poultry waste broker land applies the poultry waste for the end-user then the broker shall provide the end-user with the records regarding land application as required by 9VAC25-630-70.

G. Poultry waste brokers shall complete a training program offered or approved by the department within one year of registering with the department. Poultry waste brokers shall complete a training program at least once every five years.

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

## **9VAC25-630-70. Tracking and accounting requirements for poultry waste end-users.**

A. When a poultry waste end-user is the recipient of more than 10 tons of poultry waste in any 365-day period, the end-

user shall maintain records regarding the transfer and land application of poultry waste.

1. The poultry waste end-user shall provide the permitted poultry grower or poultry waste broker with the following items:

- a. End-user name and address;
- b. The locality in which the end-user intends to utilize the waste (i.e., nearest town or city, county, and zip code);
- c. The name of the stream or waterbody if known to the end-user that is nearest to the waste utilization or storage site; and
- d. Written acknowledgement of receipt of:
  - (1) The waste;
  - (2) The nutrient analysis of the waste; and
  - (3) A fact sheet.

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

- a. The source name, address, and permit number (if applicable);
- b. The amount of poultry waste that was received;
- c. The date of the transaction;
- d. The final use of the poultry waste;
- e. The locality in which the waste was utilized (i.e., nearest town or city, county, and zip code); and
- f. The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site.

~~Records regarding poultry waste transfers~~ End-users shall be maintained maintain the records required by subdivisions A 1 and A 2 of this section on site for a period of three years after the transaction. All records shall be made available to department personnel upon request.

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

- a. The nutrient analysis of the waste;
- b. Maps indicating the poultry waste land application fields and storage sites;
- c. The land application rate;
- d. The land application dates;
- e. What crops were planted;
- f. Soil test results, if obtained;
- g. NMP, if applicable; and

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

~~Records regarding land application of poultry waste~~ End-users shall be maintained maintain the records required by this subdivision 3 on site for a period of three years after the recorded application is made. All records shall be made available to department personnel upon request.

4. Reporting requirements. End-users shall submit the records required by subdivisions A 1, A 2, and A 3 of this section in accordance with the timing outlined in subdivisions 4 a and 4 b of this subsection.

a. Beginning (insert the date one year after the effective date of this regulation) and continuing through (insert the date two years after the effective date of this regulation), upon request by the department, the end-user shall submit the records in a format and method determined by the department; and

b. Beginning (insert the date three years after the effective date of this regulation), the end-user shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.

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

**9VAC25-630-80. Utilization and storage requirements for transferred poultry waste.**

A. Any poultry waste end-user or poultry waste broker who receives poultry waste shall comply with the requirements outlined in the following sections.

B. Storage requirements. Any poultry waste end-user or poultry waste broker who receives poultry waste shall comply with the requirements outlined in this section regarding storage of poultry waste in their possession or under their control.

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

- a. Poultry waste shall be covered to protect it from precipitation and wind;
- b. Storm water shall not run onto or under the stored poultry waste;

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

d. For poultry waste that is not stored under roof, the storage site must be at least:

(1) 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs; and

(2) 200 feet from any occupied dwellings not on the end-user's or broker's property, unless the occupant of the dwelling signs a waiver of the storage site.

2. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless there is no land available outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

C. Land application requirements. Any poultry waste end-user or poultry waste broker who (i) receives ~~five~~ 10 or more tons of poultry waste in any 365-day period and (ii) land applies poultry waste shall follow appropriate land application requirements as outlined in this section. The application of poultry waste shall be managed to minimize adverse water quality impacts.

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

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

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

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

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

b. Poultry waste may be applied to any crop at the standard rate of 1.5 tons per acre once every three years when:

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

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

c. Soil test recommendations can be used when:

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

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

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

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

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

- a. Slopes are not greater than 6.0%;
- b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;
- c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and
- d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

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

- a. Distance from occupied dwellings: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);
- b. Distance from water supply wells or springs: 100 feet;
- c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;
- d. Distance from rock outcropping (except limestone): 25 feet;
- e. Distance from limestone outcroppings: 50 feet; and
- f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

4. In cases where poultry waste storage is threatened by emergencies such as fire or flood or where these conditions are imminent, poultry waste can be land applied outside of the spreading schedule outlined in the Fact Sheet. If this occurs, the end-user or broker shall document the land application information in accordance with 9VAC25-630-70 A 3.

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

E. The activities of the poultry waste end-user or poultry waste broker shall not contravene the Water Quality Standards (9VAC25-260), as ~~amended and~~ adopted and amended by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

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

investigations necessary in the enforcement of the provisions of this regulation.

**9VAC25-630-90. Commercial poultry processor activities.**

A. Any commercial poultry processor who contracts with a poultry grower shall comply with the requirements outlined in this section.

B. For the purpose of this section, the commercial poultry processor's hired staff, contract or company employed haulers, poultry catching crews, and feed truck operators are also considered the commercial poultry processor.

C. A commercial poultry processor that conducts typical farming activities on the contract poultry grower's farm shall be responsible for cleaning up after such farming activities.

1. Typical farming activities include the following:

- a. Releasing poultry into the poultry growing houses;
- b. Catching poultry for transport; and
- c. Filling feed bins.

2. Typical farming activities do not include the routine washing of trucks owned, operated, or contracted by the commercial poultry processor.

3. The introduction of water into the process of the typical farming activities is prohibited, except in the following cases:

- a. When used for cooling the birds during the releasing and catching process; and
- b. When there is a disease outbreak or poultry health risk that requires clean up and disinfection of the vehicles and catching equipment prior to entering and leaving the farm.

When water is introduced into the process, it should be done in a manner that does not produce process wastewater.

D. The commercial poultry processor shall clean up and properly dispose of, in a prompt and efficient manner, any of the following materials that have been deposited or released by the commercial poultry processor:

- 1. Poultry waste;
- 2. Feed; and
- 3. Hydraulic fluids, fuels, and oils used in machinery.

E. Farming activities such as those listed in subsection C of this section shall be conducted on impervious surfaces, where available, to facilitate the cleanup efforts.

F. The commercial poultry processor shall submit an operation and maintenance manual that outlines proper procedures to be used by the commercial poultry processor

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while commencing with typical farming activities, as listed in subsection C of this section, on the contract grower's farm.

1. The manual shall at a minimum cover the following items:

a. The processor's procedures to carry out the typical farming activities;

b. Proper clean up and disposal of materials deposited or released during such activities; and

c. Any additional information to ensure compliance with this section or determined to be relevant by the department.

2. The manual shall be submitted to the department for approval by (insert date 60 days after the effective date of this section).

3. Subsequent revisions to the manual shall be submitted to the department for approval 30 days prior to making changes to the procedures outlined in the manual.

4. An individual commercial poultry processor may submit one manual to cover multiple processing plants or complexes, where all procedures used are identical.

G. The activities of the commercial poultry processor shall not contravene the Water Quality Standards (9VAC25-260), as adopted and amended by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

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

**NOTICE:** Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (9VAC25-630)

~~Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Growers, RS VPG2 (rev. 07/10)~~

~~Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Waste End Users and Poultry Waste Brokers, RS End Users/Brokers VPG2 (rev. 07/10)~~

~~Fact Sheet, Requirements for Poultry Litter Use and Storage (rev. 12/10)~~

[Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Growers, RS VPG2 \(eff. 12/2020\)](#)

[Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Waste End-Users and Poultry Waste Brokers, RS End Users/Brokers VPG2 \(eff. 12/2020\)](#)

[Fact Sheet, Requirements for Poultry Litter Use and Storage \(eff. 12/2020\)](#)

VA.R. Doc. No. R19-5666; Filed July 15, 2020, 8:51 a.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 14 of the Code of Virginia, which exempts adoption, amendment, or repeal of wasteload allocations by the State Water Control Board pursuant to State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) if the board (i) provides public notice in the Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period, forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary response to written comments; and (iv) conducts at least one public meeting.

**Title of Regulation:** **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-50, 9VAC25-720-60).**

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

**Effective Date:** September 2, 2020.

**Agency Contact:** Kelly Meadows, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, or email [kelly.meadows@deq.virginia.gov](mailto:kelly.meadows@deq.virginia.gov).

**Summary:**

*The amendments add (i) one new total maximum daily load (TMDL) wasteload allocation in the Potomac-Shenandoah River Basin and (ii) 10 new TMDL wasteload allocations in the James River Basin.*

**9VAC25-720-50. Potomac-Shenandoah River Basin.**

A. Total maximum daily loads (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA <sup>1</sup>	Units
<b>EDITOR'S NOTE:</b> Rows numbered 1 through 218 in this TMDL table in subsection A of 9VAC25-720-50 are not amended; therefore, the text of those rows is not set out.							
<u>219.</u>	<u>North Fork Catoctin Creek</u>	<u>A TMDL and Watershed Management Plan to Address Sediment in North Fork Catoctin Creek Located in Loudoun County, Virginia</u>	<u>Loudoun</u>	<u>A02R</u>	<u>Sediment</u>	<u>99.1</u>	<u>tons/year</u>
<p>Notes:</p> <p><sup>1</sup>The total WLA can be increased prior to modification provided that DEQ tracks these changes for bacteria TMDLs where the permit is consistent with water quality standards for bacteria.</p> <p><sup>2</sup>There were no point source dischargers in the modeled TMDL area.</p>							

**EDITOR'S NOTE:** Subsections B and C of 9VAC25-720-50 are not amended; therefore, the text of those subsections is not set out.

**9VAC25-720-60. James River Basin.**

A. Total maximum daily loads (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA <sup>1</sup>	Units
<b>EDITOR'S NOTE:</b> Rows numbered 1 through 172 in this TMDL table in subsection A of 9VAC25-720-60 are not amended; therefore, the text of those rows is not set out.							
<u>173.</u>	<u>Blue Run</u>	<u>Benthic TMDL Development for the North Fork Rivanna River Watershed and Tributaries Located in Albemarle, Greene, and Orange Counties</u>	<u>Albemarle, Greene, Orange</u>	<u>H27R</u>	<u>Sediment</u>	<u>20,750</u>	<u>lbs/year</u>
<u>174.</u>	<u>Marsh Run</u>	<u>Benthic TMDL Development for the North Fork Rivanna River Watershed and Tributaries Located in Albemarle, Greene, and Orange Counties</u>	<u>Albemarle, Greene, Orange</u>	<u>H27R</u>	<u>Sediment</u>	<u>5,210</u>	<u>lbs/year</u>

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<u>175.</u>	<u>Preddy Creek</u>	<u>Benthic TMDL Development for the North Fork Rivanna River Watershed and Tributaries Located in Albemarle, Greene, and Orange Counties</u>	<u>Albemarle, Greene, Orange</u>	<u>H27R</u>	<u>Sediment</u>	<u>105,600</u>	<u>lbs/year</u>
<u>176.</u>	<u>Preddy Creek North Branch</u>	<u>Benthic TMDL Development for the North Fork Rivanna River Watershed and Tributaries Located in Albemarle, Greene, and Orange Counties</u>	<u>Albemarle, Greene, Orange</u>	<u>H27R</u>	<u>Sediment</u>	<u>47,940</u>	<u>lbs/year</u>
<u>177.</u>	<u>Quarter Creek</u>	<u>Benthic TMDL Development for the North Fork Rivanna River Watershed and Tributaries Located in Albemarle, Greene, and Orange Counties</u>	<u>Albemarle, Greene, Orange</u>	<u>H27R</u>	<u>Sediment</u>	<u>11,020</u>	<u>lbs/year</u>
<u>178.</u>	<u>Standardsville Run</u>	<u>Benthic TMDL Development for the North Fork Rivanna River Watershed and Tributaries Located in Albemarle, Greene, and Orange Counties</u>	<u>Albemarle, Greene, Orange</u>	<u>H27R</u>	<u>Sediment</u>	<u>6,105</u>	<u>lbs/year</u>
<u>179.</u>	<u>Swift Run</u>	<u>Benthic TMDL Development for the North Fork Rivanna River Watershed and Tributaries Located in Albemarle, Greene, and Orange Counties</u>	<u>Albemarle, Greene, Orange</u>	<u>H27R</u>	<u>Sediment</u>	<u>89,130</u>	<u>lbs/year</u>
<u>180.</u>	<u>Unnamed tributary to Flat Branch</u>	<u>Benthic TMDL Development for the North Fork Rivanna River Watershed and Tributaries Located in Albemarle, Greene, and Orange Counties</u>	<u>Albemarle, Greene, Orange</u>	<u>H27R</u>	<u>Sediment</u>	<u>27,890</u>	<u>lbs/year</u>
<u>181.</u>	<u>Blue Run</u>	<u>Benthic TMDL Development for the North Fork</u>	<u>Albemarle, Greene, Orange</u>	<u>H27R</u>	<u>Total Phosphorus</u>	<u>21.8</u>	<u>lbs/year</u>

		<u>Rivanna River Watershed and Tributaries Located in Albemarle, Greene, and Orange Counties</u>					
<u>182.</u>	<u>Standardsville Run</u>	<u>Benthic TMDL Development for the North Fork Rivanna River Watershed and Tributaries Located in Albemarle, Greene, and Orange Counties</u>	<u>Albemarle, Greene, Orange</u>	<u>H27R</u>	<u>Total Phosphorus</u>	<u>4.6</u>	<u>lbs/year</u>

Notes:

<sup>1</sup>The total WLA can be increased prior to modification provided that the Department of Environmental Quality tracks these changes for bacteria TMDLs where the permit is consistent with water quality standards for bacteria.

<sup>2</sup>GS means growing season.

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

V.A.R. Doc. No. R20-6437; Filed July 9, 2020, 3:53 p.m.

**TITLE 11. GAMING**

**VIRGINIA RACING COMMISSION**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Virginia Racing Commission is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 17 of the Code of Virginia regarding the promulgation of technical regulations governing actual live horse racing at race meetings licensed by the commission.

Title of Regulation: **11VAC10-110. Entries (amending 11VAC10-110-90).**

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

Effective Date: July 27, 2020.

Agency Contact: Kimberly Mackey, Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7406, or email [kimberly.mackey@vrc.virginia.gov](mailto:kimberly.mackey@vrc.virginia.gov).

Summary:

*The amendments allow horses trained and owned by the same person to run as two separate betting interests.*

**11VAC10-110-90. Coupling.**

~~All horses entered in the same race and owned wholly or partially by the same owner or spouse shall be joined as a mutuel entry and shall constitute a single wagering interest, except as provided for in subdivision 7 of this section. No trainer shall enter more than two horses in an overnight race. The following provisions shall apply to mutuel entries:~~

- ~~1. The racing secretary shall be responsible for coupling entries for wagering purposes;~~
- ~~2. No more than two horses having common ties through ownership, which would result in a mutuel entry and a single wagering interest, may be entered in an overnight race;~~
- ~~3. When two horses having common ties through ownership are entered in an overnight race, preference shall be given to the horse with the earliest preference date or the most stars;~~
- ~~4. 1. Two horses having common ties through ownership shall not start as a mutuel entry in an overnight race to the exclusion of another horse; and~~
- ~~5. 2. The racing secretary shall be responsible for assigning horses to the mutuel field when the number of wagering interests exceeds the numbering capacity of the infield tote board;~~
- ~~6. In an overnight race, the racing secretary may uncouple entries having common ties through training; and~~

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~~7. In any thoroughbred stakes race with added or guaranteed money of \$50,000 or more, the racing secretary may uncouple mutual entries of horses sharing common ties through training or ownership or both.~~

VA.R. Doc. No. R20-6344; Filed July 6, 2020, 3:36 p.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The Virginia Racing Commission is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 17 of the Code of Virginia regarding the promulgation of technical regulations governing actual live horse racing at race meetings licensed by the commission.

**Title of Regulation:** 11VAC10-120. Claiming Races (amending 11VAC10-120-50).

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

**Effective Date:** July 27, 2020.

**Agency Contact:** Kimberly Mackey, Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7406, or email [kimberly.mackey@vrc.virginia.gov](mailto:kimberly.mackey@vrc.virginia.gov).

### Summary:

*The amendments (i) allow for the voiding of a claim if a horse suffers an injury that requires euthanasia on the racetrack during a claiming race; (ii) require a claimed horse's complete injection records for the last 60 days; and (iii) order the owner of a horse that is sold, claimed, or transferred to transfer all of the health and medical records of that horse to the new owner within seven days.*

### 11VAC10-120-50. Claiming procedure.

A claim may be filed on a horse programmed to race by properly completing a claim slip, including the correct spelling of the horse's name, the date and the race number, sealing the claim slip in an envelope, and depositing the envelope in a locked claims box. The following provisions shall apply to the claiming of a horse:

1. The licensee shall provide claim slips, claim envelopes, and a locked claim box to secure filed claims;
2. The claim slip, enclosed in a sealed envelope, must be deposited in a locked claim box at least 15 minutes before post time of the race for which the claim is filed;
3. The licensee shall provide a clock, and before the sealed envelope is deposited in the locked claim box, the time of day shall be stamped upon the envelope;
4. No money or its equivalent shall be put in the claim box;
5. The person filing the claim must have sufficient funds on deposit with the horsemen's bookkeeper or licensee in

not less than the amount of the designated price and applicable sales taxes;

6. The claims clerk shall inform the stewards of a claim filed for a horse and of multiple claims on a horse;

7. The claims clerk shall ascertain that the claim slip and envelope are properly complete;

8. The claims clerk shall ascertain that the person is eligible to claim a horse and inform the stewards immediately of any doubts of the person's eligibility;

9. The claims clerk shall ascertain that there are sufficient funds on deposit with the horsemen's bookkeeper or licensee of not less than the amount of the claim and applicable sales taxes;

10. If more than one valid claim is filed for a horse, then title to the horse shall be determined by lot under the supervision of the stewards or their representative;

11. A claimed horse shall race in the interest of and for the account of the owner from whom the horse was claimed;

~~12. Title to a claimed horse shall vest in the successful claimant at the time the horse is deemed a starter whether the horse is dead or alive, sound or unsound, or injured in the race or after the race~~ In the event a horse dies during a claiming race, is euthanized on the racetrack during a claiming race, or suffers an injury that requires euthanasia of the horse performed on the racetrack or in an adjacent area as determined by the commission veterinarian, any claim on that horse will be declared void;

13. A claim is voidable at the sole discretion of the new owner or trainer for a period of one hour after the race is made official for any horse that is vanned off the racetrack after the race at the direction of the commission veterinarian;

14. Upon a successful claim the stewards shall issue a transfer authorization of the horse from the original owner to the claimant. Copies of the transfer authorization shall be maintained by the stewards and the racing secretary. Upon notification by the stewards the horsemen's bookkeeper shall immediately debit the claimant's account for the claiming price, along with applicable taxes and transfer fees, and shall immediately credit the original owner's account with the claiming price;

~~14.~~ 15. In harness racing, the successful claimant of a horse programmed to start may, at his option, acquire ownership of a claimed horse even though such claimed horse was scratched and did not start in the claiming race from which it was scratched. The successful claimant must exercise his option by 9 a.m. of the day following the claiming race to which the horse programmed and scratched. No horse may be claimed from a claiming race unless the race is contested;

~~15.~~ 16. A horse that has been claimed shall be delivered to the new owner at the conclusion of the race either at the paddock or at the detention barn, after the completion of any post-race testing;

~~16.~~ 17. The claimant shall present the former owner with written authorization of the claim from the racing secretary;

~~17.~~ 18. A positive test result for any prohibited drug is grounds for voiding the claim;

~~18.~~ 19. The new owner may request that the horse be tested for equine infectious anemia, by taking the horse immediately following the race to the detention barn where a blood sample will be drawn;

~~19.~~ 20. A positive test result for equine infectious anemia is grounds for voiding a claim;

~~20.~~ 21. The new owner shall be responsible for filing the change of ownership with the appropriate breed registry;

~~21.~~ 22. Despite any designation of sex or age of a horse appearing in the daily program or other publication, the person making the claim shall be solely responsible for determining the sex or age of the horse before filing a claim for the horse;

~~22.~~ 23. Officials and employees of the licensee shall not provide any information as to the filing of the claim until after the race has been run, except as necessary for processing of the claim; and

~~23.~~ 24. If a horse is successfully claimed by a new owner, the trainer of record at the time of that claiming race must provide that horse's complete corticosteroid and intra-articular injection records for the last ~~30~~ 60 days, which shall include the date of the injection, name of the veterinarian performing the injection, articular spaces or structures injected, medication or biologicals used to inject each articular space, and dose in milligrams of each corticosteroid used. Such records shall be completed by the treating veterinarian and be provided to the new trainer within 48 hours of the transfer of the horse. In addition, the owner of a horse shall order production and transfer of all health and medical records held by the individual or veterinarian providing services to the horse owned by them within seven days if the horse is sold, claimed, or transferred to a new owner, or if requested by the commission veterinarian.

VA.R. Doc. No. R20-6346; Filed July 6, 2020, 6:58 p.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The Virginia Racing Commission is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 23 of the Code of Virginia when promulgating regulations pertaining to the

administration of medication or other substances foreign to the natural horse.

Title of Regulation: **11VAC10-180. Medication (amending 11VAC10-180-35; adding 11VAC10-180-72; repealing 11VAC10-180-70).**

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

Effective Date: July 27, 2020.

Agency Contact: Kimberly Mackey, Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7406, or email [kimberly.mackey@vrc.virginia.gov](mailto:kimberly.mackey@vrc.virginia.gov).

Summary:

*The amendments (i) require the veterinarian treating a horse with shockwave therapy to report the procedure within 24 hours of the procedure to the commission veterinarian; (ii) prohibit intra-articular injections within 14 days of a horse's race and require reporting of the injections to the commission veterinarian within 24 hours of treatment; (iii) prohibit the use of two or more corticosteroids on a horse; and (iv) reduce the use of nonsteroidal anti-inflammatory drugs (NSAIDs) from within 24 hours of a horse's race to within 48 hours of a horse's race and prohibit the use of two or more NSAIDs that require that, when an extracorporeal shockwave therapy device or radial pulse wave therapy device is used on a horse, the horse be placed on the veterinarian's list for 10 days from the date of treatment.*

**11VAC10-180-35. Prohibited practices.**

A. No trainer shall allow a horse to appear in a race, qualifying race, or official timed workout when the horse contains in its system any prohibited substance, as determined by testing of blood, saliva, or urine, or any other reasonable means.

B. No person shall administer any prohibited substance to a horse on race day. Furosemide is the only substance specifically permitted for use in approved horses on race day.

C. No veterinarian or permit holder shall, without good cause, possess or administer any substance to a horse stabled within the enclosure or at any facility under the jurisdiction of the commission if the substance:

1. Has not been approved by the U.S. Food and Drug Administration (FDA) for any use (human or animal) or by the U.S. Department of Agriculture's Center for Veterinary Biologics;
2. Is on the U.S. Drug Enforcement Agency's Schedule I or Schedule II of controlled substances as prepared by the Attorney General of the United States pursuant to 21 USC §§ 811 and 812;

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3. May endanger the health and welfare of the horse or endanger the safety of the rider or driver, or may adversely affect the integrity of racing; or

4. Does not have a recognized laboratory analytical method to detect and confirm its administration.

D. No person, except a veterinarian holding a valid veterinarian's permit or an assistant under the veterinarian's immediate supervision, shall have in his possession within the enclosure of a horse racing facility any prescription substance for animal use unless:

1. The person actually possesses within the enclosure of the horse racing facility documentary evidence that a prescription has been issued to him for the substance by a licensed veterinarian;

2. The prescription substance is labeled with a dosage for the horse to be treated with the prescription substance; and

3. The horse or horses named in the prescription are then under the care and supervision of the permit holder and are then stabled within the enclosure of the horse racing facility.

E. The possession or administration of equine growth hormone, venoms, erythropoietin (Epogen), darbepoietin, oxyglobin, Hemopure, or any analogous substance that increases oxygen-carrying capacity of the blood is prohibited. Furthermore, should the analysis of a test sample detect the presence of antibodies of erythropoietin or darbepoietin or any analogous substance in the horse's blood that indicates a history of use of these substances, the horse shall be prohibited from racing and placed on the veterinarian's list until the horse tests negative for the presence of such antibodies.

F. The use of androgenic and anabolic steroids is prohibited in racing horses as stipulated in 11VAC10-180-75.

G. The use of an extracorporeal shockwave therapy device or radial pulse wave therapy device is prohibited on the racetrack premises and at any site that falls under the jurisdiction of the Virginia Racing Commission unless:

1. The therapy device is registered with the commission veterinarian;

2. The therapy device is used by a veterinarian who is a permit holder; and

3. Each use of the therapy device is reported to the commission veterinarian ~~on the treatment report by the treating veterinarian within 24 hours of treatment.~~

Notwithstanding the provisions in this subsection, whether on or off the premises, a shockwave therapy device or radial pulse wave therapy device shall not be used on a racehorse fewer than 10 days before the horse is to race or train at racing speed. For the purposes of this calculation, the day of

treatment shall be considered day one. Furthermore, the horse that was treated shall be placed on the veterinarian's list for 10 days from the date of treatment.

H. Tubing of horses prohibited. The tubing or dosing of any horse for any reason on race day is prohibited unless administered for medical emergency purposes by a licensed veterinarian in which case the horse shall be scratched. The practice of administration of any substance via a tube or other method into a horse's stomach on race day is considered a violation of this chapter.

1. Using or possessing the ingredients or the paraphernalia associated with forced feeding to a horse of any alkalinizing agent with or without a concentrated form of carbohydrate, or administering any substance by tubing or other method on race day shall be considered a violation of this chapter.

2. Under the provisions of this subsection, endoscopic examination by a licensed veterinarian shall not be considered a violation of this chapter.

I. Notwithstanding any other provision in this chapter, no substance of any kind may be administered to a horse within four hours, or three hours for a ship-in meet, of the scheduled post time for the race in which the horse is entered. To ensure uniform supervision and conformity to this this chapter, the trainer shall have each horse programmed to race stabled in its assigned stall within the enclosure of the horse race facility no fewer than five hours, or four hours for a ship-in meet, prior to post time for the respective race.

J. Intra-articular injections prohibited. Injecting any substance or inserting a needle into a joint space is prohibited within ~~seven~~ 14 days prior to the horse's race for flat and steeplechase racing and within seven days for harness racing. All intra-articular injections shall be reported by the treating veterinarian to the commission veterinarian within 24 hours of treatment. Horses treated shall be ineligible to race for a period of 14 days for flat and steeplechase racing and for seven days for harness racing. For the purposes of this calculation, the day of treatment shall be considered day one.

K. Peri-neural injections prohibited. Injecting a local anesthetic or other chemical agent adjacent to a nerve is prohibited within three days prior to the horse's race.

L. Hyperbaric oxygen chamber prohibited. Subjecting a horse to therapy utilizing a hyperbaric oxygen chamber is prohibited within four days prior to the horse's race.

M. Stacking corticosteroids prohibited. The detection of two or more corticosteroids in a horse's post-race biological samples shall constitute a stacking violation and is prohibited.

**11VAC10-180-70. Phenylbutazone, flunixin, and other nonsteroidal anti-inflammatory drugs. (Repealed.)**

A. Generally. The use of multiple nonsteroidal anti-inflammatory drugs in a horse within 96 hours prior to the horse's race is prohibited. Despite this prohibition, this chapter specifically permits the use of one of the following: (i) phenylbutazone, (ii) flunixin, (iii) ketoprofen, (iv) firocoxib, or (v) diclofenac in racehorses in the quantities provided for in this chapter.

B. Quantitative testing. Any horse to which phenylbutazone, flunixin, or ketoprofen has been administered shall be subject to testing at the direction of the commission veterinarian to determine the quantitative levels of phenylbutazone, flunixin, ketoprofen, firocoxib, or diclofenac, or the presence of other substances that may be present.

C. Disciplinary actions. The stewards may take disciplinary actions for reports of quantitative testing by the primary testing laboratory for levels of (i) phenylbutazone quantified at levels above 2.0 micrograms per milliliter of serum or plasma, (ii) flunixin quantified at levels above 20 ng per milliliter of serum or plasma, (iii) ketoprofen quantified at levels above 2.0 ng per milliliter of serum or plasma, (iv) firocoxib quantified at levels above 20 ng per milliliter in serum or plasma, and (v) diclofenac quantified at levels above 5.0 ng per milliliter in serum or plasma in horses following races, qualifying races, and official timed workouts for the stewards or commission veterinarian. The stewards may use the most recent revision of the Association of Racing Commissioners International (RCI) Uniform Classification Guidelines for Foreign Substances and the Multiple Violations Penalty System as a guide. The stewards, in their discretion, may impose other more stringent disciplinary actions against trainers or other permit holders who violate the provisions under which (i) phenylbutazone, (ii) flunixin, (iii) ketoprofen, (iv) firocoxib, or (v) diclofenac is permitted by the commission.

**11VAC10-180-72. Nonsteroidal anti-inflammatory drugs.**

The use of nonsteroidal anti-inflammatory drugs (NSAIDs) shall be governed by the following conditions:

1. The administration of NSAIDs at less than 48 hours to the scheduled post of a horse's race, qualifying race, or official timed workout is prohibited.
2. The presence of one of the following does not constitute a violation:
  - a. Phenylbutazone at a concentration of less than 0.3 micrograms per milliliter of plasma or serum;
  - b. Flunixin at a concentration less than 5.0 nanograms per milliliter of plasma or serum; or
  - c. Ketoprofen at a concentration less than 2.0 nanograms per milliliter of plasma or serum.

3. The detection of two or more NSAIDs in blood or urine constitutes NSAIDs stacking violation and is prohibited.

VA.R. Doc. No. R20-6348; Filed July 6, 2020, 7:09 p.m.

**TITLE 14. INSURANCE**

**STATE CORPORATION COMMISSION**

**Proposed Regulation**

**REGISTRAR'S NOTICE:** The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**Title of Regulation:** **14VAC5-405. Rules Governing Balance Billing for Out-Of-Network Health Care Services (adding 14VAC5-405-10 through 14VAC5-405-90).**

**Statutory Authority:** §§ 12.1-13 and 38.2-223 of the Code of Virginia.

**Public Hearing Information:** A public hearing will be held upon request.

**Public Comment Deadline:** September 1, 2020.

**Agency Contact:** Jackie Myers, Chief Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9630, fax (804) 371-9944, or email [jackie.myers@scc.virginia.gov](mailto:jackie.myers@scc.virginia.gov).

**Summary:**

*Pursuant to Chapters 1080 and 1081 of the 2020 Acts of Assembly, the proposed amendments add Rules Governing Balance Billing for Out-of-Network Health Care Services (14VAC5-405). The proposed regulation establishes requirements and processes to protect consumers from surprise balance billing from out-of-network providers for emergency health care services or nonemergency ancillary and surgical services received at an in-network facility, including procedures for the use of arbitration between health carriers and out-of-network providers to address reimbursement disputes concerning balance billing.*

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AT RICHMOND, JULY 10, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2020-00136

Ex Parte: In the matter of Adopting  
New Rules Governing Balance Billing  
for Out-of-Network Health Care Services

## ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223<sup>1</sup> of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy also may be found at the Commission's website: <http://scc.virginia.gov/pages/Case-Information>.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to promulgate new rules in Chapter 405 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Balance Billing for Out-of-Network Health Care Services," which are recommended to be set out at 14 VAC 5-405-10 through 14 VAC 5-405-90.

The proposed new rules are necessary as a result of action by the 2020 General Assembly, specifically Acts of Assembly Chapter 1080 (HB 1251) and Chapter 1081 (SB 172). This legislation, in part, adds §§ 38.2-3445.01 through 38.2-3445.07 to Chapter 34 of Title 38.2 of the Code. These sections, which become effective January 1, 2021, address balance billing by out-of-network providers. The provisions of the Bureau's proposed rules are intended to establish requirements and processes to carry out the provisions of these new Code sections that protect consumers from surprise balance billing from out-of-network providers for emergency health care services or nonemergency ancillary and surgical services received at an in-network facility. The proposed rules also set forth procedures for the use of arbitration between health carriers and out-of-network providers to address reimbursement disputes concerning balance billing.

NOW THE COMMISSION is of the opinion that the proposal to adopt new rules recommended to be set out at Chapter 405 of Title 14 in the Virginia Administrative Code as submitted by the Bureau should be considered for adoption with a proposed effective date on or before January 1, 2021.

Accordingly, IT IS ORDERED THAT:

(1) The proposed new rules entitled "Rules Governing Balance Billing for Out-of-Network Health Care Services,"

recommended to be set out at 14 VAC 5-405-10 through 14 VAC 5-405-90, are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of proposed Chapter 405 shall file such comments or hearing request on or before September 1, 2020, with the Clerk of the Commission, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2020-00136. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <https://scc.virginia.gov/casecomments/Submit-Public-Comments>. All comments shall refer to Case No. INS-2020-00136.

(3) If no written request for a hearing on the adoption of the proposed rules as outlined in this Order is received on or before September 1, 2020, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the proposed rules as submitted by the Bureau.

(4) The Bureau shall provide notice of the proposal to all carriers licensed in Virginia to write accident and sickness insurance and to all interested persons.

(5) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposed new rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: <https://scc.virginia.gov/pages/Case-Information>.

(7) The Bureau shall file with the Clerk of the Commission a certificate of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

A COPY hereof shall be sent by the Clerk of the Commission to: C. Meade Browder, Senior Assistant Attorney General, at [MBrowder@oag.state.va.us](mailto:MBrowder@oag.state.va.us), Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; 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 S. Blauvelt.

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<sup>1</sup>Specific authority to adopt rules to implement the provisions of §§ 38.2-3445 through 38.2-3445.06 is also granted to the Commission in § 38.2-3445.07. This Code section becomes effective January 1, 2021.

CHAPTER 405  
RULES GOVERNING BALANCE BILLING FOR OUT-  
OF-NETWORK HEALTH CARE SERVICES

**14VAC5-405-10. Purpose and scope.**

The purpose of this chapter is to set forth rules and procedures that address balance billing and the use of arbitration between health carriers and out-of-network providers pursuant to the provisions of §§ 38.2-3445 through 38.2-3445.07 of Chapter 34 (§ 38.2-3400 et seq.) of Title 38.2 of the Code of Virginia. This chapter shall apply to all health benefit plans that use a provider network offered in this Commonwealth except as provided for in § 38.2-3445.06 of the Code of Virginia.

**14VAC5-405-20. Definitions.**

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

"Allowed amount" means the maximum portion of a billed charge a health carrier will pay, including any applicable cost-sharing requirements, for a covered service or item rendered by a participating provider or by a nonparticipating provider.

"Arbitrator" means an individual or entity included on a list of arbitrators approved by the commission pursuant to 14VAC5-405-40.

"Balance bill" means a bill sent to an enrollee by an out-of-network provider for health care services provided to the enrollee after the provider's billed amount is not fully reimbursed by the carrier, exclusive of applicable cost-sharing requirements.

"Child" means a son, daughter, stepchild, adopted child, including a child placed for adoption, foster child, or any other child eligible for coverage under the health benefit plan.

"Clean claim" means a claim (i) that is received by the carrier within 90 days of the service being provided to the enrollee unless submission of the claim within 90 days is not possible due to the provider receiving inaccurate information about the enrollee or the enrollee's coverage; (ii) that has no material defect or impropriety, including any lack of any reasonably required substantiation documentation, that substantially prevents timely payment from being made on the claim; and (iii) that includes appropriate Internal Revenue Service documentation necessary for the carrier to process payment. A failure by the provider to submit a clean claim will not remove the claim from being subject to this chapter.

"Commercially reasonable payment" or "commercially reasonable amount" means payments or amounts a carrier is required to reimburse a health care provider for out-of-network services pursuant to § 38.2-3445.01 of the Code of Virginia.

"Commission" means the State Corporation Commission.

"Cost-sharing requirement" means an enrollee's deductible, copayment amount, or coinsurance rate.

"Covered benefits" or "benefits" means those health care services to which an individual is entitled under the terms of a health benefit plan.

"Dependent" means the spouse or child of an eligible employee, subject to the applicable terms of the policy, contract, or plan covering the eligible employee.

"Emergency medical condition" means, regardless of the final diagnosis rendered to an enrollee, a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, so that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment to bodily functions, (iii) serious dysfunction of any bodily organ or part, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

"Emergency services" means with respect to an emergency medical condition (i) a medical screening examination as required under § 1867 of the Social Security Act (42 USC § 1395dd) that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate such emergency medical condition and (ii) such further medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under § 1867 of the Social Security Act (42 USC § 1395dd (e)(3)) to stabilize the patient.

"Enrollee" means a policyholder, subscriber, covered person, participant, or other individual covered by a health benefit plan.

"ERISA" means the Employee Retirement Income Security Act of 1974 (29 USC § 1001 et seq.).

"Facility" means an institution providing health care related services or a health care setting, including hospitals and other licensed inpatient centers; ambulatory surgical or treatment centers; skilled nursing centers; residential treatment centers; diagnostic, laboratory, and imaging centers; and rehabilitation and other therapeutic health settings.

"Geographic area" means any of the following: (i) for the purpose of determining a cost-sharing requirement under a health benefit plan, a geographic rating area established by the commission; or (ii) for the purpose of providing data to assist in determining a commercially reasonable amount and resolving payment disputes, the health planning region as defined at § 32.1-102.1 of the Code of Virginia, the geographic rating area established by the commission, or

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other geographic region representative of a market for health care services as determined by a working group established pursuant to § 38.2-3445.03 of the Code of Virginia.

"Group health plan" means an employee welfare benefit plan as defined in § 3(1) of ERISA to the extent that the plan provides medical care within the meaning of § 733(a) of ERISA to employees, including both current and former employees, or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

"Health benefit plan" means a policy, contract, certificate, or agreement offered by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. "Health benefit plan" includes short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition. "Health benefit plan" does not include the "excepted benefits" as defined in § 38.2-3431 of the Code of Virginia.

"Health care professional" means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with state law.

"Health care provider" or "provider" means a health care professional or facility.

"Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

"Health carrier" means an entity subject to the insurance laws and regulations of the Commonwealth and subject to the jurisdiction of the commission that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurer licensed to sell accident and sickness insurance, a health maintenance organization, a health services plan, or any other entity providing a plan of health insurance, health benefits, or health care services.

"Initiating party" means the health carrier or out-of-network provider that requests arbitration pursuant to § 38.2-3445.02 of the Code of Virginia and 14VAC5-405-40.

"In-network" or "participating" means a provider that has contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees and be reimbursed by the carrier at a contracted rate as payment in full for the health care services, including applicable cost-sharing requirements.

"Managed care plan" means a health benefit plan that either requires an enrollee to use, or creates incentives, including financial incentives, for an enrollee to use health care providers managed, owned, under contract with, or employed by the health carrier.

"Network" means the group of participating providers providing services to a managed care plan.

"Offer to pay" or "payment notification" means a claim that has been adjudicated and paid by a carrier or determined by a carrier to be payable by an enrollee to an out-of-network provider for services described in subsection A of § 38.2-3445.01 of the Code of Virginia.

"Out-of-network" or "nonparticipating" means a provider that has not contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees.

"Out-of-pocket maximum" or "maximum out-of-pocket" means the maximum amount an enrollee is required to pay in a plan year, after which the carrier covers the entirety of the allowed amount of covered benefits under the contract of coverage.

"Provider group" means a group of multispecialty or single specialty health care providers who contract with a facility to exclusively provide multispecialty or single specialty health care services at the facility.

"Self-funded group health plan" means an entity providing or administering an employee welfare benefit plan, as defined in ERISA, 29 USC § 1002(1), that is self-insured or self-funded with respect to such plan and that establishes for its enrollees a network of participating providers. A self-funded group health plan also includes the state employee health plan and group health plans for local governments, local officers, teachers, and retirees, and the dependents of such employees, officers, teachers, and retirees.

"Surgical or ancillary services" means any professional services, including surgery, anesthesiology, pathology, radiology, or hospitalist services and laboratory services.

"Written" or "in writing" means a written communication that is only electronically transmitted.

## **14VAC5-405-30. Balance billing for out-of-network services.**

A. Pursuant to § 38.2-3445.01 of the Code of Virginia, no out-of-network provider shall balance bill or attempt to collect payment amounts from an enrollee other than those described in subsection B of this section for:

1. Emergency services provided to an enrollee by an out-of-network provider located in Virginia; or
2. Nonemergency services provided to an enrollee at an in-network facility located in Virginia if the nonemergency services involve covered surgical or ancillary services provided by an out-of-network provider.

B. An enrollee who receives services described in subsection A of this section is obligated to pay the in-network cost-sharing requirement specified in the enrollee's or

applicable group health plan contract, which shall be determined using the carrier's median in-network contracted rate for the same or similar service in the same or similar geographic area. When there is no median in-network contracted rate for the specific services provided, the enrollee's cost-sharing requirement shall be determined as provided in § 38.2-3407.3 of the Code of Virginia. An enrollee who is enrolled in a high deductible health plan associated with a Health Savings Account or other health plan for which the carrier is prohibited from providing first-dollar coverage prior to the enrollee meeting the deductible requirement under 26 USC § 223(c)(2) or any other applicable federal or state law may be responsible for any additional amounts necessary to meet deductible requirements beyond those described in this subsection, including additional amounts pursuant to subsection E of this section and owed to the out-of-network provider in 14VAC5-405-40, but only to the extent that the deductible has not yet been met and not to exceed the deductible amount.

C. When a clean claim is received pursuant to the provisions of subsection A of this section, the health carrier shall be responsible for:

1. Providing an explanation of benefits to the enrollee and the out-of-network provider that reflects the cost-sharing requirement determined under this subsection;
2. Applying the in-network cost-sharing requirement under subsection B of this section and any cost-sharing requirement paid by the enrollee for such services toward the in-network maximum out-of-pocket payment obligation;
3. Making commercially reasonable payments for services other than cost-sharing requirements directly to the out-of-network provider without requiring the completion of any assignment of benefits or other documentation by the provider or enrollee;
4. Paying any additional amounts owed to the out-of-network provider through good faith negotiation or arbitration directly to the out-of-network provider; and
5. Making available to a provider through electronic or other method of communication generally used by a provider to verify enrollee eligibility and benefits information regarding whether an enrollee's health benefit plan is subject to the requirements of this section.

D. If the enrollee pays the out-of-network provider an amount that exceeds the amount determined under subsection B of this section, the out-of-network provider shall be responsible for:

1. Refunding to the enrollee the excess amount that the enrollee paid to the provider within 30 business days of receipt; and

2. Paying the enrollee interest computed daily at the legal rate of interest stated in § 6.2-301 of the Code of Virginia beginning on the first calendar day after the 30 business days for any unrefunded payments.

E. The amount paid to an out-of-network provider for health care services described in subsection A of this section shall be a commercially reasonable amount. Within 30 calendar days of receipt of a clean claim from an out-of-network provider, the carrier shall offer to pay the provider a commercially reasonable amount. Disputes between the out-of-network provider and the carrier regarding the commercially reasonable amount shall be handled as follows:

1. If the out-of-network provider disputes the carrier's payment, the provider shall notify the carrier in writing no later than 30 calendar days after receipt of payment or payment notification from the carrier;
2. The carrier and provider shall have 30 calendar days from the date of the notice described in subdivision E 1 of this subsection to negotiate in good faith; and
3. If the carrier and provider do not agree to a commercially reasonable payment amount within the good faith negotiation period and either party chooses to pursue further action to resolve the dispute, the dispute shall be resolved through arbitration as provided in § 38.2-3445.02 of the Code of Virginia and 14VAC5-405-40. A carrier may not require a provider to reject or return claim payment as a condition of pursuing further arbitration.

F. A health carrier shall not be prohibited from informing enrollees in a nonemergency situation of the availability of in-network facilities that employ or contract with only in-network providers that render surgical and ancillary services.

G. The requirements of this chapter only apply to out-of-network services rendered in Virginia. A carrier's payment for covered services received outside Virginia by an out-of-network provider shall be in accordance with 45 CFR §147.138. An enrollee's payment responsibility for services received by an out-of-network provider outside Virginia may be based on such federal rules that allow balance billing.

**14VAC5-405-40. Arbitration process.**

A. If a good faith negotiation does not result in resolution of the dispute, the health carrier or provider may initiate arbitration by providing written notice of intent to arbitrate to the commission and the non-initiating party within 10 calendar days following completion of the good faith negotiation period. The notice shall state the initiating party's final payment offer.

B. Within 30 calendar days following receipt of the notice of intent to arbitrate, the non-initiating party shall provide its final payment offer to the initiating party. Agreement between the parties may be reached at any time in the process. The

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claim shall be paid within 10 calendar days and the matter closed upon agreement or after the arbitration decision.

C. The commission shall maintain a list of qualified arbitrators and each arbitrator's fixed fee on its website.

1. Within five calendar days of the notice of intent to arbitrate, the initiating party shall notify the commission of either agreement on an arbitrator from the list or that the parties cannot agree on an arbitrator.

2. If the parties cannot agree on an arbitrator, within three business days the commission shall provide the parties with the names of five arbitrators from the list. Within five calendar days, each party is responsible for reviewing the list of five arbitrators and notifying the commission if there is an apparent conflict of interest with any of the arbitrators on the list. Each party may veto up to two of the named arbitrators. If one name remains, that arbitrator shall be chosen. If more than one name remains, the commission shall choose the arbitrator from the remaining names.

3. Once the arbitrator is chosen, the commission shall notify the parties and the arbitrator within three business days.

4. The arbitrator's fee is payable within 10 calendar days of the assignment of the arbitrator with the health carrier and the provider to divide the fee equally.

D. Both parties shall agree to a nondisclosure agreement provided by the commission and executed within 10 business days following receipt of the notice of intent to arbitrate.

E. Within five calendar days after receiving notification of the final selection of an arbitrator, each party shall provide written submissions in support of its position directly to the arbitrator. Each party shall include in its written submission the evidence and methodology for asserting that the amount proposed to be paid is or is not commercially reasonable. Any party that fails to make a written submission required by this subsection without good cause shown will be in default. The arbitrator shall require the defaulting party to pay or accept the final payment offer of the non-defaulting party and may require the defaulting party to pay the entirety of the arbitrator's fee.

F. The arbitrator shall consider the following factors in reviewing the submissions of the parties and making a decision requiring payment of the final offer amount of either the initiating or non-initiating party:

1. The evidence and methodology submitted by the parties to assert that their final offer amount is reasonable;

2. Patient characteristics and the circumstances and complexity of the case, including time and place of service and type of facility, that are not already reflected in the provider's billing code for the service;

3. The arbitrator may also consider other information that a party believes is relevant as part of their original written submission, including data sets developed pursuant to § 38.2-3445.03 of the Code of Virginia. The arbitrator shall not require extrinsic evidence of authenticity for admitting such data sets.

G. Within 15 calendar days after receipt of the parties' written submissions, the arbitrator shall issue a written decision requiring payment of the final offer amount of either of the parties. The arbitrator shall notify the parties and the commission of this decision. The decision shall include an explanation by the arbitrator of the basis for the decision and factors relied upon in making the decision and copies of all written submissions by each party. The decision shall also include information required to be reported to the commission, including the name of the health carrier, the name of the provider, the provider's employer or business entity in which the provider has an ownership interest, the name of the facility where services were provided, and the type of health care service at issue.

H. Within 30 calendar days of receipt of the arbitrator's decision, either party may appeal to the commission in accordance with the provisions of 5VAC5-20-100 B based only on one of the following grounds: (i) the decision was substantially influenced by corruption, fraud, or other undue means; (ii) there was evident partiality, corruption, or misconduct prejudicing the rights of any party; (iii) the arbitrator exceeded his powers; or (iv) the arbitrator conducted the proceeding contrary to the provisions of § 38.2-3445.02 of the Code of Virginia, and commission rules in such a way as to materially prejudice the rights of the party.

I. A single provider is permitted to bundle claims for arbitration. Multiple claims may be addressed in a single arbitration proceeding if the claims at issue (i) involve identical health carrier or administrator and provider parties; (ii) involve claims with the same or related Current Procedural Technology (CPT) codes, Healthcare Common Procedure Coding System (HCPCS) codes, or in the case of facility services, Diagnosis Related Group (DRG) codes, Revenue Codes, or other procedural codes relevant to a particular procedure, and (iii) occur within a period of two months of one another. Provider groups are not permitted to bundle claims for arbitration if the professional providing the service is not the same.

J. All written submissions and notifications required under this section shall be submitted electronically. Individual information related to any arbitration is confidential and not subject to disclosure.

## **14VAC5-405-50. Arbitrator qualifications and application.**

A. Any person meeting the minimum qualifications of an arbitrator may submit an application on a form prescribed by the commission. An application fee of up to \$500 may be required. The commission shall review the application within 30 days of receipt and notify the arbitrator of its decision.

B. An arbitrator approved by the commission shall meet the following minimum qualifications:

1. Any professional license the arbitrator has is in good standing;
2. Training in the principles of arbitration or dispute resolution by an organization recognized by the commission;
3. Experience in matters related to medical or health care services;
4. Completion of any training made available to the applicants by the commission;
5. Experience in arbitration or dispute resolution; and
6. Any other information deemed relevant by the commission.

C. The applicant shall supply the following information to the commission as part of the application process:

1. Number of years of experience in arbitrations or dispute resolutions;
2. Number of years of experience engaging in the practice of medicine, law, or administration responsible for one or more of the following issues: health care billing disputes, carrier and provider or facility contract negotiations, health services coverage disputes, or other applicable experience;
3. The names of the health carriers for which the arbitrator has conducted arbitrations or dispute resolutions;
4. Membership in an association related to health care, arbitration or dispute resolutions and any association training related to health care or arbitration or dispute resolution;
5. A list of specific areas of expertise in which the applicant conducts arbitrations;
6. Fee to be charged for arbitration that shall reflect the total amount that will be charged by the proposed arbitrator, inclusive of indirect costs, administrative fees, and incidental expenses; and
7. Any other information deemed relevant by the commission.

D. Before accepting any appointment, an arbitrator shall ensure that there is no conflict of interest that would adversely impact the arbitrator's independence and

impartiality in rendering a decision in the arbitration. A conflict of interest includes (i) current or recent ownership or employment of the arbitrator or a close family member by any health carrier; (ii) serving as or having been employed by a physician, health care provider, or a health care facility; or (iii) having a material professional, familial, or financial conflict of interest with a party to the arbitration to which the arbitrator is assigned. A close family member is generally a spouse, child, or other person living in your home for whom you provide more than half of their financial support.

E. An arbitrator shall ensure that arbitrations are conducted within the specified timeframes and that required notices are provided in a timely manner.

F. The arbitrator shall maintain records and provide reports to the commission as requested in accordance with the requirements set out in § 38.2-3445.02 of the Code of Virginia and 14VAC5-405-40.

G. The commission shall immediately terminate the approval of an arbitrator who no longer meets the qualifications or requirements to serve as an arbitrator. Failure to disclose any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding shall serve as potential grounds for termination.

## **14VAC5-405-60. Data sets.**

A. The commission shall contract with Virginia Health Information or its successor to establish a data set and business process to provide health carriers, health care providers, and arbitrators with data to assist in determining commercially reasonable payments and resolving payment disputes for out-of-network medical services rendered by health care providers. This contractor will develop the data sets and business process in collaboration with health carriers and health care providers. The data set shall be reviewed by the advisory committee established pursuant to § 32.1-276.7:1 of the Code of Virginia.

B. The 2020 data set shall be based upon the most recently available full calendar year of claims data drawn from commercial health plan claims and shall not include claims paid under Medicare or Medicaid or other claims paid on other than a fee-for-service basis. The 2020 data set shall be adjusted annually for inflation by applying the Consumer Price Index-Medical Component as published by the Bureau of Labor Statistics of the U.S. Department of Labor to the previous year's data set.

C. The commission may request other adjustments to the data sets as it deems necessary.

## **14VAC5-405-70. Notification to consumers.**

A. The notice of consumer rights shall be in a standard format provided by the commission and available on the commission's website.

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B. A health carrier shall provide an enrollee with:

1. A clear description of the health plan's out-of-network health benefits outlined in the plan documents that also explains the circumstances under which the enrollee may have payment responsibility in excess of cost-sharing amounts for services provided out-of-network;

2. The notice of consumer rights delivered with the plan documents; and

3. An explanation of benefits containing claims from out-of-network providers that clearly indicates whether the enrollee may or may not be subject to balance billing.

C. A health carrier shall update its website and provider directory no later than 30 days after the addition or termination of a participating provider.

D. A health care facility shall provide the notice of consumer rights to an enrollee at the time any nonemergency service is scheduled and also along with the bill. A health care facility shall provide the notice of consumer rights to an enrollee with any bill for an emergency service. The notice may be provided electronically. However, a posted notice on a website will not satisfy this requirement.

E. A health care provider shall provide a notice of consumer rights upon request and post the notice on its website, along with a list of carrier provider networks with which it contracts. If no website is available, a health care provider shall provide to each consumer a list of carrier provider networks with which it contracts and the notice of consumer rights.

## **14VAC5-405-80. Self-funded group health plans may opt-in.**

A. A self-funded group health plan that elects to participate in §§ 38.2-3445 through 38.2-3445.07 of the Code of Virginia, shall provide notice to the commission and to the third-party administrator of the self-funded group health plan of their election decision on a form prescribed by the commission. The completed form must include an attestation that the self-funded group health plan has elected to participate in and be bound by §§ 38.2-3445 through 38.2-3445.07 of the Code of Virginia and this chapter, except as described in subsection E of this section. The form will be posted on the commission's public website for use by self-funded group health plans.

B. A self-funded group health plan that elects to opt in shall reflect in its coverage documents its participation pursuant to subsection A of this section. The self-funded group health plan or plan administrator shall submit the required form electronically to the commission at least 30 days prior to the effective date. No other documents are required to be filed with the commission.

C. A self-funded group health plan may elect to initiate its participation on January 1st of any year or in any year on the first day of the self-funded group health plan's plan year.

D. A self-funded group health plan's election occurs on an annual basis. A group may choose to automatically renew its election to opt in to §§ 38.2-3445 through 38.2-3445.07 of the Code of Virginia on an annual basis or it may choose to renew on an annual basis until the commission receives advance notice from the plan that it is terminating its election as of either December 31 of a calendar year or the last day of its plan year. Notices under this subsection must be submitted to the commission at least 30 days in advance of the effective date of the election to initiate participation and the effective date of the termination of participation.

E. Self-funded group health plan sponsors and their third-party administrators may develop their own internal processes related to member notification, member appeals, and other functions associated with any fiduciary duty to enrollees under ERISA.

F. A list of all participating entities shall be posted on the commission's public website, to be updated at least each quarter. Posted information shall include relevant plan information.

G. A carrier that administers a self-funded group health plan shall, at the time of coverage verification, make information available to a provider of the group's participation in the provisions of this chapter.

## **14VAC5-405-90. 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.

**NOTICE:** Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

## **FORMS (14VAC5-405)**

**Notice of Consumer Rights (URL to be provided)**

VA.R. Doc. No. R20-6423; Filed July 13, 2020, 3:41 p.m.



**TITLE 19. PUBLIC SAFETY**

**DEPARTMENT OF STATE POLICE**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

**Title of Regulation:** **19VAC30-20. Motor Carrier Safety Regulations (amending 19VAC30-20-80).**

**Statutory Authority:** § 52-8.4 of the Code of Virginia.

**Effective Date:** September 29, 2020.

**Agency Contact:** First Sergeant Shawn Gobble, Assistant Safety Officer, Motor Carrier Division, Department of State Police, 3719 Saunders Avenue, Richmond, VA 23227, telephone (804) 278-5331, or email [shawn.gobble@vsp.virginia.gov](mailto:shawn.gobble@vsp.virginia.gov).

**Summary:**

*The amendment brings the Virginia Motor Carrier Safety Regulations (19VAC30-20) into compliance with the Federal Motor Carrier Safety Regulations promulgated by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, with amendments promulgated and in effect as of June 10, 2020, pursuant to the United States Motor Carrier Safety Act (49 CFR Parts 385 and 395) as amended by 85 FR 33396-33452, published June 1, 2020.*

**19VAC30-20-80. Compliance.**

Every person and commercial motor vehicle subject to this chapter operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, with amendments promulgated and in effect as of ~~January 1~~ **September 29, 2020**, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 366, 370 through 376, 379, 380 Subparts E and F, 382, 385, 386 Subpart G, 387, 390 through 397, and 399, which are incorporated in this chapter by reference, with certain exceptions.

V.A.R. Doc. No. R20-6413; Filed July 10, 2020, 6:28 p.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

**Title of Regulation:** **19VAC30-70. Motor Vehicle Safety Inspection Regulations (amending 19VAC30-70-1, 19VAC30-70-9, 19VAC30-70-9.1, 19VAC30-70-9.2, 19VAC30-70-9.3, 19VAC30-70-10.1, 19VAC30-70-25, 19VAC30-70-40, 19VAC30-70-80, 19VAC30-70-140, 19VAC30-70-160, 19VAC30-70-190, 19VAC30-70-580).**

**Statutory Authority:** § 46.2-1165 of the Code of Virginia.

**Effective Date:** September 4, 2020.

**Agency Contact:** Captain Ronald Maxey, Safety Officer, Department of State Police, 3719 Saunders Ave, Richmond, VA 23227, telephone (804) 278-5305, or email [ron.maxey@vsp.virginia.gov](mailto:ron.maxey@vsp.virginia.gov).

**Summary:**

*The amendments update the Motor Vehicle Safety Inspection Rules and Regulations as follows:*

1. *Waive the requirement for superintendent approval of certain equipment under specified conditions.*
2. *Distinguish between the voluntary withdrawal of an application and the rejection of an application and update forms generally.*
3. *Update the procedures for applying for an inspector's license.*
4. *Update the reinstatement process.*
5. *Eliminate the requirement that requests for application materials must be in writing.*
6. *Update inspection requirements related to vehicles obtained at auctions and military surplus vehicles.*
7. *Change the portion of the inspection fee forwarded to the department to \$.70.*
8. *Update requirements for checking wear, damage, and foreign materials on brakes.*
9. *Update requirements for headlamps.*
10. *Conform to a 2019 statutory change regarding the color and placement of various lights on specified emergency vehicles.*
11. *Require vehicles not originally equipped with a stop lamp to have two brake lights.*
12. *Clarify the permissible position of certain devices on windshields of vehicles with a gross vehicle weight of 10,001 pounds or greater.*

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## Part I

### Administration of Virginia's Official Motor Vehicle Inspection Program

#### **19VAC30-70-1. Purpose and authority.**

Virginia's Official Motor Vehicle Inspection Program was developed and adopted to promote highway safety. The program model is based on the National Highway Traffic Safety Administration Federal Motor Vehicle Safety Standards. Vehicles submitted for inspection must be compliant with Federal Motor Vehicle Safety Standards applicable on the date of manufacture. The goal of the Official Motor Vehicle Inspection Program is to assure all Virginia registered vehicles are mechanically safe to operate over the highways of the Commonwealth.

The rules and regulations governing the Official Motor Vehicle Inspection Program are contained in the Official Motor Vehicle Safety Inspection Manual. These rules and regulations are promulgated under the authority of Chapter 10 (§ 46.2-1000 et seq.) of Title 46.2 of the Code of Virginia. All official inspection stations shall comply with these rules and regulations, issuing approval certificates only to those vehicles which the inspections shall determine to be in compliance with those rules and regulations.

For devices or equipment required to be approved pursuant to § 46.2-1005 of Title 46.2 of the Code of Virginia, the superintendent may waive such approval and the issuance of a certificate of approval when the device or equipment is identified as complying with the standards and specifications of the Society of Automotive Engineers (SAE), the American National Standards Institute (ANSI), or the regulations of the federal Department of Transportation (DOT).

These rules and regulations are intended to ensure a uniform system of corrective action for those who violate the rules and regulations of the Official Motor Vehicle Inspection Program.

The Official Motor Vehicle Safety Inspection Manual covers administrative procedure as well as numerous vehicular safety items of varying importance. It is, therefore, necessary that the various sections of the manual be divided into categories of seriousness. This will provide a uniform system of corrective action for the certified ~~inspector~~ ~~mechanics~~ inspectors and the inspection stations.

#### **19VAC30-70-9. Inspector requirements.**

A. The inspection of motor vehicles required by this chapter shall be made only by those individuals who are certified and licensed as safety inspectors by the Department of State Police. The procedures outlined in this section are applicable to the processing of applications for initial certification, reclassification of safety inspector's licenses, and reinstatement of suspended or revoked safety inspector's licenses.

B. All certified inspectors shall be at least 18 years of age and meet the following qualifications:

1. A minimum of one year of practical experience as an automotive mechanic or six months of practical experience as an automotive mechanic combined with an additional and separate six months of mirroring a certified state inspector, or
2. Satisfactorily completed a training program in the field of automotive mechanics approved by the Superintendent of State Police.

A person who has met either of the practical experience requirements in repairing motorcycles may be certified to inspect motorcycles only. A person who meets practical experience requirements in repairing trailers may be certified to inspect trailers only.

C. Each mechanic entering the inspection program is required to satisfactorily pass a written and practical examination exhibiting knowledge of the inspection procedures.

D. Each certified inspector shall possess a valid Virginia driver's license with the following exceptions:

1. An inspector who is a resident of an adjoining state holding a valid driver's license in that state and who commutes regularly to work in Virginia; or
2. A member of the armed forces of the United States on active duty, or a dependent thereof, who holds a driver's license from his home state.

E. An inspector whose driver's license is suspended or revoked, including the seven-day administrative suspension for an arrest for driving under the influence (DUI), must immediately notify the station's supervising trooper or the local Safety Division Area Office of the suspension or revocation. The suspension or revocation of an inspector's driver's license shall automatically act as a suspension of his privilege to inspect motor vehicles until such suspension or revocation is terminated, and the reinstatement has been made by the Superintendent of State Police.

F. Each licensed safety inspector must have a valid safety inspector's license in his possession at all times while conducting inspections.

G. Each safety inspector with a valid safety inspector's license need only present such valid license to his new employer to commence participation in the program at a new place of employment. Management of the inspection station is required to notify the Safety Division when a safety inspector begins or ends employment. This notification may be handled by contacting the inspection station's supervising trooper by telephone.

H. In the event the safety inspector's license becomes mutilated, lost, or stolen, the inspector must notify the

Department of State Police immediately to request a duplicate using the Safety Inspector Notification Form. All required information shall be printed legibly and completely. An inspector who is not employed, writes "Inactive" in the station name block.

In those cases where notification is being made due to an address change, it is necessary to complete the Safety Inspector Notification Form and submit it to the Safety Division Headquarters. The inspector's information will be updated within the MVIP database by the Inspector Files Clerk.

NOTE: The Safety Inspector Notification Form can be downloaded from the Virginia State Police website under the Vehicle Safety Inspection link.

NOTE: Safety inspector licenses are only generated and distributed for initial certifications, renewals, name changes, and mutilated, lost, or stolen licenses. Inspectors submitting a change of address notification are not issued a new license.

I. An inspector must ~~immediately~~ notify the station's supervising trooper or ~~local~~ Safety Division Area Office within 72 hours of an arrest for a criminal offense or the institution of a civil action.

J. Requirements for safety inspector applicants with a specific learning disability.

1. Applicants must furnish documentation from the particular school division where the applicant was classified as having a learning disability. The specific learning disability must be clearly identified.
2. Once the learning disability has been documented, and if applicable, the applicant will be allowed to test with the written exam being orally presented.
3. The station management, where the applicant is employed or to be employed, must agree to have someone present during the hours the employee is conducting inspections to assist with the reading of the Official Motor Vehicle Safety Inspection Manual when necessary during the initial three-year certification period. If the inspector changes stations within the first three-year period, it is the inspector's responsibility to notify station management of his disability and this requirement.

### **19VAC30-70-9.1. Inspector certification.**

A. Upon request, the ~~Inspector Certification~~ Safety Inspector Application (Form SP-170B) and Criminal History Record Request (Form SP-167) are provided online via the Virginia State Police website to individuals desiring appointment as certified safety inspectors.

1. The application package includes instructions to help guide the applicant through the process.

2. Applicants may be certified in any of the following classes after completing the necessary requirements and the appropriate examinations:

- a. Class A: May inspect any motor vehicle, motorcycle, or trailer.
- b. Class B: May inspect trailers only.
- c. Class C: May inspect motorcycles only.

B. Applicants should immediately prepare for the written examination by studying the Official Motor Vehicle Safety Inspection Manual in its entirety.

1. When sufficiently prepared for the examination, the applicant should visit a testing site in his area to complete the appropriate examination.
2. The applicant must present his completed application in accordance with the provisions established in 19VAC30-70-9.2.
3. If the applicant's driver's license is expired, suspended, or revoked, the applicant will be advised, and the application destroyed. The applicant may reapply after his driver's license is reinstated.

C. The Class A inspector examination consists of five sections containing 20 questions each. A minimum score of 75% must be attained for each section. The Classes B and C inspector examinations will consist of 50 questions each. A minimum score of 74% must be attained. If the applicant fails the test, failure is noted at the end of Section I on the Form SP-170B with the word "failed" and the date. The application is returned to the applicant. Applicants failing to attain the minimum score are not allowed to test again for 30 days. Applicants failing a second or subsequent examination are not allowed to test again for six months.

D. The ~~Inspectors Certification~~ Safety Inspector Application (Form SP-170B) and Criminal History Record Request (Form SP-167) for applicants who achieve a minimum score or greater is forwarded to Safety Division Headquarters.

1. The applicant's record is checked against safety inspector and Central Criminal Records Exchange (CCRE) files.
2. Inspection and criminal record information along with the applicant's driver transcript is forwarded with the application to the appropriate Safety Division Area Office for investigation.
3. A credit check is performed to determine that the applicant associated with the inspection program is in compliance with any judgment order or is meeting all financial obligations, or both.

E. A background investigation is conducted consisting of the following:

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1. Verification that the applicant is at least 18 years of age.
2. Verification that the applicant has not less than one year's practical experience employed as an automotive technician repairing vehicles for the public, or six months of practical experience as an automotive mechanic combined with an additional and separate six months of mirroring a certified state inspector, or has satisfactorily completed a training program in the field of automotive mechanics approved by the Department of State Police. The following training programs in the field of automotive mechanics have been approved as a substitute for the one year's practical experience requirement:

a. The two-year associate degree or diploma programs in automotive technology offered by the Virginia Community College System consisting of the following minimum curriculum:

- (1) Automotive Electrical Systems - three semester hours.
- (2) Braking Systems - three semester hours.
- (3) Emissions Control Systems - three semester hours.
- (4) Suspension and Steering Systems - three semester hours.
- (5) Vehicle Safety Inspection - two semester hours.

b. The 1,080-hour Career Technical Automotive Services Technology Program, offered by the Office of Career Technical Education, State Department of Education, in the various technical schools located throughout Virginia or be certified by the National Institute for Automotive Service Excellence (ASE), or both.

(1) Upon the successful completion of this course, including a practical test as defined in this section, the student must complete a ~~Mechanics Certification~~ Safety Inspector Application (Form SP-170B) and a Criminal History Record Request (Form SP-167), pass a written test as defined in subsection C of this section, and submit to a background investigation as defined in this subsection. Upon successful completion of these requirements, the student, if 18 years of age, is certified as a safety inspector and issued a safety inspector license.

(2) If the student scores less than 75% on any part of the examination, the application will be returned to the certifying trooper. Students scoring less than 75% on any part of the examination may retest at the certifying trooper's next recertification testing date, but not sooner than 30 days from the date of the last examination. If the student passes the test at this time and is at least 18 years of age, he is issued a safety inspector license. Upon the student's 18th birthday, providing he still meets all of the requirements, the student will be issued a safety inspector license.

(3) Students failing the second written examination are not allowed to test again for six months. In order to retest the student must be at least 18 years of age and must complete the application process set forth for original certification.

c. The 1,500-hour Course #1 entitled "Auto-Diesel Technician Course" offered by the Nashville Auto Diesel College, Inc., 1524 Gallatin Road, Nashville, Tennessee 37206.

3. A determination of the applicant's mechanical ability through interviews with employers and customers.

4. A review of the applicant's current driving record on file with the Department of Motor Vehicles (DMV) is utilized in determining applicant's suitability for certification.

5. Determination of the character and reputation of the applicant through previous associates, employers, and records.

6. Determination of the applicant's attitude toward the inspection program and receptiveness to State Police supervision through personal interview.

7. The investigating trooper shall administer a practical examination to determine the applicant's ability to conduct a safety inspection. The applicant will conduct a complete inspection, including the use of the optical headlight aimer. This shall be conducted at the applicant's station of employment. If the applicant is not employed at a certified inspection station, the applicant may make arrangement with one to conduct practical testing.

F. Any applicant whose application is voluntarily withdrawn ~~or rejected due to incomplete documentation~~ may not reapply sooner than six months from the date of the withdrawal ~~or the date the applicant are notified of the rejection of his application~~. Any applicant whose application is denied may not reapply sooner than 12 months from the date of the letter notifying the denial.

G. When a safety inspector is certified, the bottom of the Form SP-170B is completed by the certifying trooper. The classification for which the safety inspector is being certified and the date of certification must be entered by the trooper on the bottom of the Form SP-170B. The Form SP-170B shall then be forwarded to the Safety Division Area Office.

H. Upon certification, the supervising trooper fills out the temporary inspector's license in triplicate, forwarding providing the original (white copy) to ~~Safety Division Headquarters~~ the inspector, issuing forwarding the canary copy to ~~the inspector~~ Safety Division Headquarters, and retaining the pink copy at the Safety Division Area Office for six months. Once the safety inspector has been issued a temporary ~~the~~ license, he is eligible to begin inspecting.

I. All safety inspector licenses shall be valid for a period of three years.

**19VAC30-70-9.2. Examinations for inspector's license.**

A. The Department of State Police administers the written examination for original certification for all inspectors. With few exceptions, recertifications are done at the normal testing sites along with original certification tests.

B. In order for an individual to become a certified safety inspector, the following actions shall be followed:

1. The person shall download the following forms from the Virginia State Police website:

- a. ~~Inspector Certification~~ Safety Inspector Application, Form SP-170B;
- b. Criminal History Record Request, Form SP-167; ~~and~~
- c. Inspector Application Worksheet;
- d. Authorization for Release of Information (SP-170D).

2. The applicant shall (i) complete Form SP-170B in its entirety and have it notarized; (ii) complete and have notarized Form SP-167 with appropriate credit card information or an attached \$15 cashier's check, business check or money order payable to "Virginia State Police"; and (iii) complete the Inspector Applicant Worksheet with two character references, two mechanical references, places of employment, and qualified automotive training, or schools completed or mechanical experience.

3. The applicant shall then take the completed application forms to any State Police testing site and present it to the trooper conducting the written examination. Applicants arriving after the designated testing time are not eligible to participate in the written examination.

4. The trooper verifies the notarizations and checks the driver's license for validity and identification of the applicant. If the applicant's driver's license is found to be expired, suspended, or revoked, the applicant is advised, and the application is destroyed. The applicant may reapply once the driver's license has been reissued or reinstated.

5. If the applicant successfully passes the test, the trooper notes at the end of Section I on the Form SP-170B the word "passed" and the date. The trooper signs the test and sends it to Safety Division Headquarters, Inspectors File Section for further processing and investigation.

6. The Class A examination consists of five sections: general information, brakes, suspension, lights, and glass. Each section contains 20 questions. A minimum score of 75% must be attained for each section and for the practical examination. The Classes B and C examinations consist of 50 questions each. A minimum score of 74 must be attained on the written and practical examination.

7. If the applicant fails the test, failure is noted at the end of Section I on the Form SP-170B with the word "failed" and the date.

8. If the applicant desires to test again for the written or practical test, he may do so after 30 days. If the applicant is again unsuccessful in passing either examination, the trooper shall take the application forms and forward them to Safety Division Headquarters, Inspector Files Section. The applicant may contact his assigned Safety Division trooper or the local Safety Division Area Office after six months to reapply.

C. Recertification.

1. Safety inspectors desiring to renew their inspector's license must participate in the recertification written examination. Inspectors arriving after the designated testing time are not eligible to participate in the written examination.

2. All safety inspectors are required to satisfactorily pass the appropriate examination for the license the inspector holds.

3. A safety inspector is not permitted to perform inspections after the expiration date of his inspector's license.

4. A safety inspector's license shall be valid for a period of three years.

5. All safety inspectors' licenses display an inspector's VSP number and do not display the social security number. The inspector's VSP number is written on the inspection sticker receipt or displayed on the automated MVIP receipt.

6. Safety inspector testing sites are not included on an inspection bulletin. Testing site information is updated in the computer system so that the usual letters going to inspectors to remind them of their upcoming recertification contain the updated information. All Safety Division Area Offices also have the updated information.

7. If the safety inspector has any questions about the testing sites, the safety inspector should contact the Safety Division Area Office closest to him. The office numbers are:

Area 61 (Richmond)	804-743-2217
Area 62 (Culpeper)	540-829-7414
Area 63 (Amherst)	434-946-7676
Area 64 (Wytheville)	276-228-6220
Area 65 (Suffolk)	757-925-2432

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Area 66 (Salem)	540-387-5437
Area 67 (Fairfax)	703-803-2622

D. Vo-tech students who successfully complete the Vocational Automotive Mechanics Course and who are expected to graduate from the program with the required 1,080 hours and meet the requirements of the Department of State Police are certified as safety inspectors.

1. The vo-tech instructor contacts his assigned Safety Division trooper or the local Safety Division Area Office by March 15 of each year. The written examination is scheduled for students who are at least 18 years of age or who will be at least 18 years of age by March 31 of that year.

2. The Safety Division troopers responsible for administering the written examinations at the vo-tech centers forward sufficient applications, Form SP-170B, for each student to complete prior to the testing date. A Criminal History Record Request (Form SP-167) if the student is at least 18 years of age must also be completed. The Safety Division trooper indicates at the top of the Form SP-170B the name of the vo-tech school where the examination is given.

3. The trooper verifies the notarizations and checks the driver's license for validity and identification of the applicant. If the applicant's driver's license is found to be expired, suspended, or revoked, the applicant is advised, and the application is destroyed. The applicant may reapply once the driver's license has been reissued or reinstated.

4. If the applicant successfully completes the written examination, the trooper notes at the end of Section I on the Form SP-170B the word "passed" and the date. The trooper signs the test and forwards it to Safety Division Headquarters, Mechanics File Inspector Files Section for further processing and investigation. Due to the age of these students, this should be done in a minimal amount of time.

5. If the applicant fails the test, failure is noted at the end of Section I on the Form SP-170B with the word "failed" and the date.

a. The Safety Division trooper only administers one written examination at the vo-tech center. Those students who fail the first written examination may retest, but not sooner than 30 days from the date of the last written examination. Those students who fail the first written examination keep the Form SP-170B in their ~~possessions~~ possession and present it to the Safety Division trooper at the test site prior to taking the second written examination.

b. The second written examination is not administered to the students prior to the end of the school year. Prior to taking the second written examination, the student shall have completed the Vocational Automotive Mechanics Course and must be employed at an official inspection station. These students are not required to have completed the one year of practical experience as an automotive mechanic.

c. For those students who pass the second written examination, the Safety Division trooper will forward the student's Form SP-170B to the Safety Division for further processing and investigation. Those students who successfully pass all phases for original certification are then issued ~~a temporary~~ an inspector license by the Safety Division trooper.

d. Students failing the second written examination are not allowed to test again for six months and must complete the application process as set forth for original certification.

6. The written examination consists of five sections: general information, brakes, suspension, lights, and glass. Each section contains 20 questions. A minimum score of 75% must be attained for each section.

7. Those students who successfully complete all phases of the written examination and background checks are then administered a practical examination. The vo-tech instructor, who holds a valid Class A Safety Inspector's License, administers the practical "Class A" examination to each student who is expected to graduate from the program. The Safety Division trooper should be on hand to observe at least some of the practical examinations administered by the vo-tech instructor to ensure that testing is administered according to Safety Division regulations.

~~8. Those students~~ Each student who successfully ~~complete~~ completes all phases for original certification by March 31 will be issued ~~a temporary~~ an inspector license by the Safety Division trooper, provided the student is at least 18 years of age. The Safety Division trooper then forwards the completed temporary inspector license to the Safety Division Headquarters, Inspector Files Section will issue the original (white copy) to the inspector, forward the canary copy to Safety Division Headquarters, and retain the pink copy at the Safety Division Area Office for six months.

~~a. The Safety Division mails a permanent inspector's license to the student, provided he is at least 18 years of age by March 31 of that year.~~ b. The vo-tech instructor is required to contact the Safety Division trooper prior to the end of the school year if any student fails to complete the Vocational Automotive Mechanics Course.

e. b. Any student who fails to complete the Vocational Automotive Mechanics Course is not licensed as a

certified safety inspector and is required to complete the application process as set forth for original certification.

9. Those students who will be at least 18 years of age after March 31 of that year and have successfully completed the Vocational Automotive Mechanics Course must contact the Safety Division trooper assigned to the inspection stations where they are employed and complete the application process as set forth for original certification. These students are not required to have completed the one year of practical experience as an automotive mechanic.

**19VAC30-70-9.3. Reinstatement of safety inspector license; classification change; recertification.**

A. Reinstatement of safety inspector licenses following a period of suspension or revocation.

1. The inspector shall contact his supervising trooper or nearest Safety Division Area Office to initiate the reinstatement process.

2. If the inspector is suspended for less than six months, the safety inspector's license will be held at the local Safety Division Area Office and returned upon the expiration of the suspension period. A check will be made by the supervising trooper with Department of Motor Vehicles (DMV) prior to reinstatement.

3. Once a safety inspector's license has been suspended for a period of six months or more, regardless of the cause for suspension, no application Form SP-170B is required for reinstatement; however, Form SP-170D and Form SP-167 must be completed. The supervising trooper will conduct checks with DMV, all court jurisdictions, and the Central Criminal Records Exchange. The supervising trooper shall also review a credit report prior to reinstatement of the inspector the inspector's history while in the inspection program to include the inspector's disciplinary record and a current credit report, which will be considered contingent upon reinstatement.

4. If the suspended inspector's license expires during the suspension period, the inspector may complete the process for inspector recertification as set forth in this section. The trooper administering the test will retain all documentation. The inspector's license will be returned at the end of the suspension period, if the suspended inspector's records indicate he is suitable for reinstatement, and the appropriate documents forwarded to the Safety Division.

5. Inspectors whose safety inspector's licenses have been revoked must complete the application process for initial certification as set forth in this section.

B. Safety inspectors who desire to change their license classification must complete the written and practical examinations as outlined in 19VAC30-70-9.2.

C. Safety inspectors desiring to renew their inspector's license must participate in the recertification process. The process requires the following:

1. Review of training materials as may be presented at the certification testing site by State Police personnel.

2. Completion of the appropriate examination for the class license the inspector holds. A minimum score must be attained as previously outlined in 19VAC30-70-9.2.

3. An inspector holding an expired license may be tested as long as his license has not been expired more than one month. During the period of expiration, he will not be permitted to perform inspections.

An inspector holding an expired inspector license that has not been expired more than one month and who fails the recertification examination the first time during this one-month grace period may be retested one additional time not sooner than 30 days from the date of the last recertification examination. Inspectors failing this subsequent examination are not retested for six months and must complete the application process as set forth for initial certification.

D. When a request for reinstatement is denied, inspectors who are suspended for a period of six months or more may not reapply sooner than 12 months from the date of the letter notifying the denial. Following an initial certification investigation for a revoked inspector, if the revoked inspector is denied, he may not reapply sooner than 12 months from the date of the letter notifying the denial.

**19VAC30-70-10.1. Official inspection station appointment.**

A. These procedures are applicable to the application process for initial appointment, reclassification of appointment, change in ownership, change in name, and reinstatement of the appointment for an official inspection station following a period of suspension or revocation.

For investigations involving changes to the original report, only those areas of inquiry that have changed need to be reported.

For changes in station name, location, and classification only, a narrative report is not required. These requests may be reported on the Form SP-164. This report should include information pertinent to the change. A statement should be included to report verification of information contained in the station's new application for appointment.

1. Any garage or other facility that routinely performs motor vehicle, motorcycle, or trailer repairs may apply to the Department of State Police in writing by contacting their Safety Division office for an application packet for appointment as an Official Safety Inspection Station.

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a. The Department of State Police will forward an application package to the applicant.

b. The application forms are to be completed and returned to the supervising trooper processing the application within 45 days.

c. The application shall include the names, addresses, email addresses, telephone numbers, dates of birth, and social security numbers for the applicant and each person who will supervise or otherwise participate in the program. Each person is also required to execute an Authorization for Release of Information Form (SP-170-D) and a Criminal History Record Request (Form SP-167). When a corporation with other established inspection stations is applying for an additional location, it shall not be necessary for the corporate officers to complete the Form SP-167 or undergo the usual background investigation. In these situations, the Department of State Police is only concerned with the personnel who will be responsible for handling and securing the safety inspection supplies.

2. Each inspection station application is reviewed, and the applicant must meet the following criteria:

a. The facility must have been in business at its present location for a minimum of 90 days.

(1) This requirement does not apply to a change in location for a previously appointed station.

(2) This requirement does not apply to a repair garage that is an established business and is expanding its mechanical convenience to the general public by the addition of other repair locations.

(3) This requirement does not apply to a business license as a franchised dealer of new vehicles.

b. The facility must perform motor vehicle, motorcycle, or trailer repairs routinely.

c. The station must have on hand or be willing to purchase the necessary equipment as identified by the Department of State Police for performing safety inspections.

d. The station must employ or be willing to employ at least one safety inspector with the appropriate license for the desired station's classification.

e. The facility's physical plant must meet the specific standards for the station classification for which the appointment is required.

3. Each applicant station must undergo a background investigation to determine if the business and associated personnel meet the following minimum criteria:

a. A review of the history of management and all persons employed who will participate in the inspection program

must reflect general compliance with all federal, state, and local laws.

b. The character, attitude, knowledge of safety inspection requirements, mechanical ability, and experience of each individual who will perform or supervise safety inspections must be satisfactory.

c. The applicant and all participants must be familiar with and agree to comply with the Official Motor Vehicle Inspection Manual. Each vehicle presented for safety inspection must be inspected in strict compliance with the Code of Virginia and the Official Motor Vehicle Inspection Manual.

d. The business establishment must be financially stable. Its future existence should not be dependent upon appointment as an inspection station. The applicant and all persons to be associated with the inspection program must be in compliance with any judgment order or meeting all financial obligations, or both. The applicant and all persons to be associated with the inspection program must be in good financial standing for a period of at least one year.

Following any change in ownership, new ownership must show financial stability for a minimum of 90 days prior to their official inspection station appointment.

4. Each business must agree to provide the necessary space, equipment, and personnel to conduct inspections as required by the Department of State Police. Facilities and equipment must be maintained in a manner satisfactory to the superintendent. All safety inspectors must read and be thoroughly familiar with the instructions furnished for Official Inspection Stations and agree to abide by these instructions and to carefully inspect every motor vehicle, trailer, and semi-trailer presented for inspection as required by the Official Motor Vehicle Safety Inspection Manual. Businesses must operate inspection stations in strict accordance with the Code of Virginia and the Official Motor Vehicle Inspection Manual. The appointment of an inspection station may be canceled at any time by the superintendent and are automatically canceled if any change in address, name, or ownership is made without proper notification.

5. Any applicant whose application is voluntarily withdrawn, ~~or rejected due to incomplete documentation,~~ may not reapply sooner than six months from the date of the withdrawal ~~or the date the applicant is notified of the rejection of his application.~~ Any applicant whose application is denied may not reapply sooner than 12 months from the date of the letter notifying the denial.

6. Each business to be appointed will be assigned one of 11 classifications based upon the physical plant specifications or other criteria as follows:

a. Unlimited: The inspection lane shall be level or on the same plane and in good condition for 60 feet. The front portion of the lane shall be level or on the same plane for a minimum of 40 feet. The entrance shall be at least 13-1/2 feet in height and no less than nine feet in width. Space should be adequate to allow a tractor truck towing a 53-foot trailer access to the inspection lane.

b. Small exemption: The inspection lane shall be level or on the same plane for 40 feet. The entrance opening shall be at least 10 feet in height, eight feet in width, and adequate to accommodate vehicles 40 feet in length. Any vehicle exceeding 10 feet in height may be inspected if the building entrance will allow such vehicle to completely enter the designated inspection lane.

c. Large exemption: The inspection lane shall be level or on the same plane and in good condition for 60 feet. The front portion of the lane shall be level or on the same plane for a minimum of 40 feet. The entrance shall be at least 13-1/2 feet in height and no less than nine feet in width. Space should be adequate to allow a tractor truck towing a 53-foot trailer access to the inspection lane. This classification is required to inspect only vehicles with a gross vehicle weight rating (GVWR) exceeding 10,000 pounds.

d. Motorcycle: The inspection lane shall be level or on the same plane. The entrance shall be adequate to accommodate the motorcycle and the operator.

e. Unlimited trailer: The inspection lane shall be reasonably level and in good condition for 60 feet. The entrance shall be at least 13-1/2 feet in height and no less than nine feet in width. This classification is required to inspect all trailers.

f. Small trailer exemption: The inspection lane shall be reasonably level and in good condition for 40 feet. The entrance shall be at least 10 feet in height and adequate to accommodate trailers 40 feet in length. This classification is required to inspect only those trailers not exceeding 40 feet in length or 10 feet in height measured to the highest part of the trailer but not including racks, air conditioners, antennas, etc.

g. Large trailer exemption: The inspection lane shall be reasonably level and in good condition for 60 feet. The entrance shall be at least 13-1/2 feet in height and adequate to accommodate all legal size trailers. This classification is required to inspect only property-carrying trailers exceeding 10 feet in height or 40 feet in length.

h. Safety and emissions: The inspection lane shall be level or on the same plane. The lane must accommodate most passenger cars and light trucks. The emissions equipment must be placed in the lane at a location to allow the inspected vehicle to be positioned with all four

wheels on the floor or on an above-ground ramp on a plane to the floor to accommodate headlight aiming and other required inspection procedures. Any above-ground structure must be constructed so as to permit proper steering, suspension, brake, and undercarriage inspection as outlined in the Official Motor Vehicle Safety Inspection Manual. A list of local inspection stations that can accommodate vehicles that cannot be safety inspected due to the pretenses of emissions equipment must be maintained and available for customers. A "bottle" jack or other appropriate lifting equipment may be used for safety inspection on above-ground structures.

i. Private station: The inspection lane shall be level or on the same plane. The entrance and size must be adequate to accommodate any vehicle in the fleet. An applicant who owns and operates fewer than 20 vehicles will not be considered.

j. Private station (fleet service contractor): The inspection lane shall be level or on the same plane. The entrance and size must be adequate to accommodate any vehicle in the fleet to be inspected. This classification will permit the inspection of all vehicles that the applicant has a written agreement to service and repair. An applicant who does not have at least six written agreements to service private fleets with at least five vehicles in each fleet or at least one written agreement to service a private fleet with at least 30 vehicles in the fleet will not be considered for this type of appointment. Vehicles not covered by a written agreement for service and repair, other than the vehicles owned by the applicant's company or corporation, shall not be inspected by a garage having this type of classification.

k. Private station (government): The inspection lane shall be level or on the same plane. The entrance and size must be adequate to accommodate any vehicle in the fleet to be inspected. This classification permits the inspection of all vehicles in the government entity's fleet, the fleet of any volunteer or paid fire department, or any other unit or agency of the government structure having a written agreement with such governmental entity for repair, inspection service, or both. An applicant for this classification must own or have a written agreement to inspect 30 or more vehicles. Vehicles not owned by or covered by a written agreement shall not be inspected by a garage having this type of classification.

7. Classifications listed in subdivisions 6 a through 6 h of this subsection must be open to the public and have at least one safety inspector available to perform inspections during normal business hours as set forth in 19VAC30-70-10.

8. Private inspection station classifications may be assigned to businesses or governmental entities with fixed

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garage or repair facilities operating or contracting with vehicle fleets.

B. A representative of any official inspection station may apply to the Department of State Police in writing to request a change of the station's status.

1. An application form is forwarded to the applicant.
2. The applicant completes the application form and contacts the Department of State Police in keeping with the application instructions. Applications must include all data as set forth in this section.
3. A Safety Division trooper is assigned to complete the appropriate investigation to affect the change. A change in status investigation includes the following:
  - a. A review of the existing station file.
  - b. An update of the file to include personnel, facility, or other significant changes. Criteria for appointment and background investigation procedures for a change in status will be in keeping with this section.
  - c. Official inspection stations are permitted to continue to perform safety inspections during a change of ownership investigation provided at least one safety inspector is retained from the prior owner.
  - d. If disqualifying criteria is revealed, the station's appointment shall be canceled until final disposition of the application is made or until issues of disqualifying criteria are resolved.

C. Once an official inspection station has been suspended, regardless of the cause for the suspension, management may request reinstatement up to 60 days prior to the expiration of the suspension period. Stations whose appointments are revoked may complete the application process as set forth for original appointments after the expiration of the period of revocation.

1. The applicant station must submit a letter to Safety Division Headquarters (Attention: Station Files) requesting reinstatement.
2. An application package is forwarded to the applicant.
3. The completed application forms must be returned to Safety Division Headquarters (Attention: Station Files).
4. After review, the application package is forwarded to the appropriate Safety Division Area Office for investigation.
  - a. The trooper assigned to the investigation compares the information in the new application package to the information in the existing files.
  - b. The investigation focuses on any changes ~~or~~, inconsistencies, and the inspection station's history while in the inspection program, to include the station's disciplinary record.

c. The applicant station must meet all criteria for appointment as set forth in this section.

d. Any applicant whose application for reinstatement is ~~rejected or~~ voluntarily withdrawn may not reapply sooner than six months from the date ~~he is notified of the rejection or of the~~ withdrawal of the application.

D. When a request for reinstatement is denied, a station suspended a period of six months or more may not reapply sooner than 12 months from the date of the letter notifying the denial. Following an original appointment investigation for a revoked station, if the revoked station is denied, it may not reapply sooner than 12 months from the date of the letter notifying the denial.

## **19VAC30-70-25. Exceptions to motor vehicle inspection requirements.**

A. The following shall be exempt from inspection as required by § 46.2-1157 of the Code of Virginia:

1. Four-wheel vehicles weighing less than 500 pounds and having less than six horsepower;
2. Boat, utility, or travel trailers that are not equipped with brakes;
3. Antique motor vehicles or antique trailers as defined in § 46.2-100 of the Code of Virginia and licensed pursuant to § 46.2-730 of the Code of Virginia;
4. Any motor vehicle, trailer, or semitrailer that is outside the Commonwealth at the time its inspection expires when operated by the most direct route to the owner's or operator's place of residence or the owner's legal place of business in the Commonwealth;
5. A truck, tractor truck, trailer, or semitrailer for which the period fixed for inspection has expired while the vehicle was outside the Commonwealth (i) from a point outside the Commonwealth to the place where such vehicle is kept or garaged within the Commonwealth or (ii) to a destination within the Commonwealth where such vehicle will be (a) unloaded within 24 hours of entering the Commonwealth, (b) inspected within such 24-hour period, and (c) operated, after being unloaded, only to an inspection station or to the place where it is kept or garaged within the Commonwealth;
6. New motor vehicles, new trailers, or new semitrailers may be operated upon the highways of Virginia for the purpose of delivery from the place of manufacture to the dealer's or distributor's designated place of business or between places of business if such manufacturer, dealer, or distributor has more than one place of business, without being inspected; dealers or distributors may take delivery and operate upon the highways of Virginia new motor vehicles, new trailers, or new semitrailers from another dealer or distributor provided a motor vehicle, trailer, or

semitrailer shall not be considered new if driven upon the highways for any purpose other than the delivery of the vehicle;

7. New motor vehicles, new trailers, or new semitrailers bearing a manufacturer's license may be operated for test purposes by the manufacturer without an inspection;

8. Motor vehicles, trailers, or semitrailers may be operated for test purposes by a certified inspector without an inspection sticker during the performance of an official inspection;

9. New motor vehicles, new trailers, or new semitrailers may be operated upon the highways of Virginia over the most direct route to a location for installation of a permanent body without being inspected;

10. Motor vehicles, trailers, or semitrailers purchased outside the Commonwealth may be driven to the purchaser's place of residence or the dealer's or distributor's designated place of business without being inspected;

11. ~~Prior to purchase from auto auctions within the Commonwealth, motor vehicles, trailers, or semitrailers may be operated upon the highways not to exceed a five-mile~~ 10-mile radius of such auction by prospective purchasers only for the purpose of road testing ~~without being inspected; motor vehicles, trailers, or semitrailers purchased from auto auctions within the Commonwealth also may be operated upon the highways from such auction to the purchaser's place of residence or business without being inspected~~ and motor vehicles, trailers, or semitrailers purchased from auto auctions operated upon the highways from such auction to (i) an official safety inspection station provided that (a) the inspection station is located between the auto auction and the purchaser's residence or place of business or within a 10-mile radius of such residence or business and (b) the vehicle is taken to the inspection station on the same day the purchaser removes the vehicle from the auto auction or (ii) the purchaser's place of residence or business;

12. Motor vehicles, trailers, or semitrailers, after the expiration of a period fixed for the inspection thereof, may be operated over the most direct route between the place where such vehicle is kept or garaged and an official inspection station for the purpose of having the same inspected pursuant to a prior appointment with such station;

13. Any vehicle for transporting well-drilling machinery and mobile equipment as defined in § 46.2-700 of the Code of Virginia;

14. Motor vehicles being towed in a legal manner as exempted under § 46.2-1150 of the Code of Virginia;

15. Logtrailers as exempted under § 46.2-1159 of the Code of Virginia;

16. Motor vehicles designed or altered and used exclusively for racing or other exhibition purposes as exempted under § 46.2-1160 of the Code of Virginia;

17. Any tow dolly or converter gear as defined in § 46.2-1119 of the Code of Virginia;

18. A new motor vehicle, as defined in § 46.2-1500 of the Code of Virginia, that has been inspected in accordance with an inspection requirement of the manufacturer or distributor of the new motor vehicle (i.e., predelivery inspection (PDI)) by an employee who customarily performs such inspection on behalf of a motor vehicle dealer licensed pursuant to § 46.2-1508 of the Code of Virginia shall be deemed to have met the safety inspection requirements of this section without a separate safety inspection by an official inspection station. Such inspection shall be deemed to be the first inspection for the purpose of § 46.2-1158 of the Code of Virginia, and an inspection approval sticker furnished by the Department of State Police at the uniform price paid by all official inspection stations to the Department of State Police for an inspection approval sticker may be affixed to the vehicle as required by § 46.2-1163 of the Code of Virginia.

NOTE: Only an active certified safety inspector may enter the vehicle's information into the Motor Vehicle Inspection Program (MVIP) database and affix the inspection sticker to the vehicle;

19. Mopeds;

20. Low-speed vehicles; ~~and~~

21. Vehicles exempt from registration pursuant to Article 6 (§ 46.2-662 et seq.) of Chapter 6 of Title 46.2 of the Code of Virginia; ~~and~~

22. Military surplus motor vehicles as defined in § 46.2-100 of the Code of Virginia and licensed pursuant to § 46.2-730.1 of the Code of Virginia.

B. The following shall be exempt from inspection as required by § 46.2-1157 of the Code of Virginia provided (i) the commercial motor vehicle operates in interstate commerce; (ii) the commercial motor vehicle is found to meet the federal requirements for annual inspection through a self-inspection, a third-party inspection, a Commercial Vehicle Safety Alliance inspection, or a periodic inspection performed by any state with a program; (iii) the inspection has been determined by the Federal Motor Carrier Safety Administration to be comparable to or as effective as the requirements of 49 CFR 396.3(a); and (iv) documentation of such determination as provided for in 49 CFR 396.3(b) is available for review by law-enforcement officials to verify that the inspection is current:

1. Any commercial motor vehicle operating in interstate commerce that is subject to the Federal Motor Carrier Safety Regulations.

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2. Any trailer or semitrailer being operated in interstate commerce that is subject to the Federal Motor Carrier Safety Regulations.

## 19VAC30-70-40. Fees.

A. Before the inspection of a vehicle begins, the vehicle owner or operator must be informed there is a regulated fee pursuant to § 46.2-1167 of the Code of Virginia.

B. The maximum inspection fees effective July 1, 2019, are as follows:

\$51 for each inspection of any (i) tractor truck, (ii) truck that has a gross vehicle weight rating of 26,000 pounds or more, or (iii) motor vehicle that is used to transport passengers and has a seating capacity of more than 15 passengers, including the driver.

\$12 for each inspection of any motorcycle and autocycle.

\$16 for each inspection of any other vehicle, including trailers and motor homes.

1. Inspection fees will result in inspection stations retaining and forwarding ~~\$.50~~ **\$.70** to the Department of State Police to support the department's costs in administering the Motor Vehicle Inspection Program (MVIP). Collection of these fees will be billed quarterly to each station on April 15, July 15, October 15, and January 15 of each year.

Tractor Trucks Trucks that have a gross vehicle weight rating of 26,000 pounds or more Buses that seat more than 15 passengers (including the driver)	\$.50 per inspection
Cars Pickup Trucks/Trucks Recreational Motor Homes Trailers	\$.70 per inspection
Motorcycles Autocycles	\$2.00 per inspection

2. After the appropriate fee has been determined for each station, an invoice is uploaded to each station's MVIP account. The procedures for mailing payments are outlined in this subdivision as follows:

a. Print the invoice from the MVIP station account.

b. Prepare a check, cashier's check, or money order made payable to the Department of State Police for the amount

indicated on the invoice and include the station number within the memo section of the check.

c. Prepare an envelope with the following information: Department of State Police - Safety Division, P.O. Box 27472, Richmond, Virginia 23261.

d. Mail the check and invoice to the address listed in subdivision 2 c of this subsection.

3. The station has 30 days in which to mail in the processing fee. In the event a check does not clear the bank for any reason, a \$50 fee will be assessed the station. Also, under 19VAC30-70-5, a returned check will be a Class III offense and administrative actions may be held against the station's record. Once the station has been contacted by the Department of State Police regarding a returned check, it will have 15 days to respond. If the returned check dispute is not settled in this period of time, administrative or legal sanctions, or both, may be taken against the station and, in addition, any requests for supplies will not be honored until the dispute has been settled.

C. If a rejected vehicle is not submitted to the same station within the validity period of the rejection sticker or is submitted to another official inspection station, a complete inspection must be performed and a charge of \$51 may be made for inspection of tractor trucks, trucks that have a gross vehicle weight rating of 26,000 pounds or more, and buses that seat more than 15 passengers, including the driver. A charge of \$20 may be made for each inspection performed on any other vehicle to include recreational motor homes and trailers. A charge of \$12 may be made for each motorcycle and autocycle inspection.

NOTE: The truck inspection fee does not pertain to any trailer.

D. A charge of \$1.00 may be made for reinspection of a vehicle rejected by the same station during the 15-day validity of the rejection sticker.

E. Inspection stations shall not charge an additional fee to those customers who drop off their vehicles for a state inspection. This is a violation of § 46.2-1167 of the Code of Virginia unless the station charges a "storage fee" for all services and repairs and not just for inspections.

### Part III

Inspection Requirements for Passenger Vehicles and Vehicles Up to 10,000 Pounds (GVWR)

## 19VAC30-70-80. Service brakes.

A. The inspector, as a minimum, must drive all vehicles into the inspection lane and test both service and parking brakes.

B. A minimum of two wheels, one front and one rear, must be inspected on each passenger and multipurpose vehicle with a gross vehicle weight rating of 10,000 pounds gross vehicle weight rating (GVWR) or less at the time of inspection,

except those listed in subdivisions 1, 2, and 3 of this subsection.

NOTE: If the vehicle is equipped with wheels that do not allow visual access to the braking system, the inspected wheels shall be removed.

NOTE: If the vehicle is equipped with drum brakes, the wheel and drum shall be removed for inspection.

## 1. Motorcycles.

2. A new model vehicle is defined as a vehicle that has not been titled or leased and is less than one year old, measured from October 1 as of each year; if such motor vehicle does not have a model year, such measurement shall be made from the date of manufacture.

3. Trucks with floating axles that require seal replacement upon removal of rear wheels. The inspection receipt (approval and rejection) shall be marked to reflect which wheels were pulled.

Warning: If wheels are removed to inspect brakes, lug nuts must be torqued to the manufacturer's specifications to prevent damage to disc rotors. The use of an impact wrench may exceed the manufacturer's specifications and damage disc rotors.

C. If any braking problem is detected, the inspector may test drive or require a test drive of the vehicle.

## D. Inspect for and reject if:

1. Vehicle is not equipped with brakes or any brake has been disconnected, rendered inoperative, or improperly installed. Trailers having an actual gross weight of less than 3,000 pounds are not required to be equipped with brakes; however, if brakes are installed, these vehicles must be inspected.

## Brake System Failure Indicator Lamp

2. Passenger vehicles manufactured after January 1, 1968, are not equipped with a red brake failure warning lamp or warning lamp does not light with parking brake applied when ignition key is turned to the start position, except for anti-lock system. The red brake failure warning lamp should light when the ignition key is turned to the start position; on some imports it may be checked when the emergency brake is applied or other factory installed test button. (DO NOT reject if only the amber ABS/anti-lock brake lamp is on.) With the engine running and parking brake released, the red brake failure warning lamp should go off, except for vehicles equipped with anti-lock system. If so, apply service brake for 10 seconds and if the red brake failure warning lamp lights again the system is defective. Also, if the warning lamp light does not come on when there is a leak or the warning lamp light is not functioning properly, the system is defective and shall be rejected. NOTE: This subdivision does not apply to

vehicles registered as street rods nor does it imply that the red brake failure warning lamp needs to light when the emergency brake is set. There are many vehicles that are not factory equipped with an emergency brake indicator light.

Note: Vehicles equipped with a brake pad wear indicator warning light shall not constitute an automatic rejection for the vehicle submitted for a safety inspection. Each vehicle manufacturer has determined an appropriate level to activate the brake pad wear indicator warning light; therefore, it shall be the responsibility of the inspector to confirm whether or not the brake pads have exceeded the established tolerance of 2/32 of an inch.

## Brake Linings and Disc Pads

3. Riveted linings or disc pads are worn to less than 2/32 of an inch over the rivet heads.

4. Bonded or molded linings or disc pads are worn to less than 2/32 of an inch in thickness at any point, not to include manufactured slots.

5. Wire in wire-backed lining is visible in friction surface.

6. Snap-on brake linings are loose.

7. Any lining is broken or cracked so that the lining or parts of the lining are not firmly attached to the shoe or has cracks on the friction surface extending to the open edge.

8. Grease or other contamination is present on the linings, drums, or rotors.

9. Rivets in riveted linings are loose or missing.

10. Any lining or pad is misaligned or does not make full contact with the drum or rotor, with the exception of minor scoring caused by debris, provided it does not affect braking efficiency.

11. Any foreign material or debris caught between a drum or rotor and the brake pad.

## Brake Drums and Discs

NOTE: The inspector shall ensure that the minimum measurements in subdivisions D 3 and D 4 of this section are obtained.

~~12.~~ 12. Brake drums or brake discs (rotors) are worn or scored to the extent that their machining would result in a failure to meet manufacturer's specifications. Use the specification stamped on the rotor or drum if available.

13. Brake drums or brake discs (rotors) are scored to the extent that the braking surface is reduced to the point that the braking efficiency is adversely affected. This does not apply to minor scoring caused by debris.

NOTE: A number of vehicles on the market are equipped with a lock nut to hold the rear brake drum in place.

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Manufacturers recommend replacement of these lock nuts after each removal to prevent failure of the component. If the customer is advised up front, then the wholesale cost of the replacement nut may be charged to the customer.

NOTE: The proper method to remove the rear brake assembly on the 2000 Ford Focus is to remove the four bolts from the opposite side of the assembly. Removal otherwise may damage the outside grease cap and incur a cost to replace.

~~12.~~ 14. Brake drums or discs have any external crack or cracks more than one half the width of the friction surface of the drum or disc. NOTE: Do not confuse short hairline heat cracks with flexural cracks.

## Mechanical Linkage

~~13.~~ 15. Cables are frayed or frozen.

~~14.~~ 16. Mechanical parts missing, broken, badly worn, or misaligned.

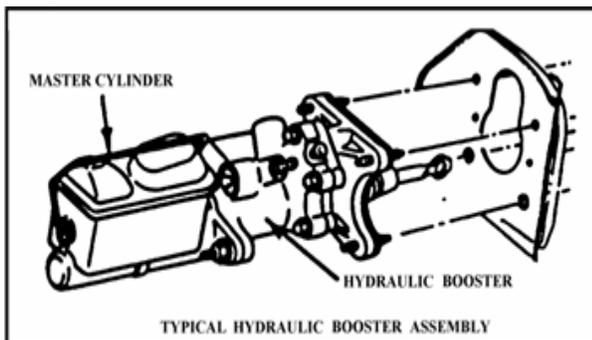
## E. Hydraulic.

NOTE: Some motor vehicles, beginning with 1976 models, have a hydraulic power system that serves both the power-assisted brakes and power-assisted steering system. Some vehicles, beginning with 1985 models, have an integrated hydraulic actuation and anti-lock brake unit using only brake fluid.

1. Brake hydraulic system. Inspector should check the brake hydraulic system in the following manner: test vehicle in a standing position; apply moderate pressure to the brake pedal for 10 seconds. Brake pedal height must be maintained. On vehicles equipped with power-assisted systems, the engine should be running.

2. Hydraulic system operation. Stop engine, then depress brake pedal several times to eliminate all pressure. Depress pedal with a light foot-force (30 pounds). While maintaining this force on the pedal, start engine and observe if pedal moves slightly when engine starts.

Reject vehicle if pedal does not move slightly as engine is started while force is on brake pedal.



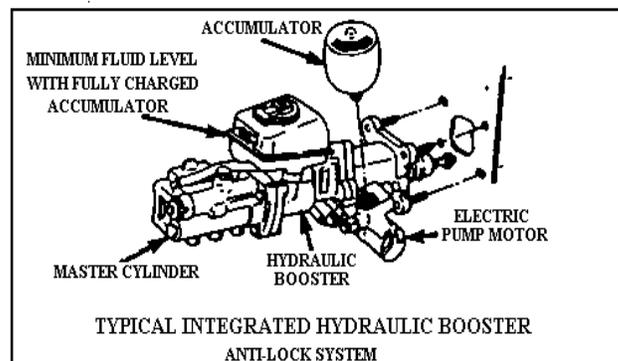
3. Condition of hydraulic booster power brake system. Inspect system for fluid level and leaks.

Reject vehicle if there is insufficient fluid in the reservoir; if there are broken, kinked or restricted fluid lines or hoses; if there is any leakage of fluid at the pump, steering gear or brake booster, or any of the lines or hoses in the system; or if belts are frayed, cracked or excessively worn.

4. Integrated hydraulic booster/anti-lock system operation. With the ignition key in the off position, depress brake pedal a minimum of 25 times to deplete all residual stored pressure in the accumulator. Depress pedal with a light foot-force (25 pounds). Place ignition key in the on position and allow 60 seconds for the brake warning light to go out and the electric pump to shut off.

Reject vehicle if the brake pedal does not move down slightly as the pump builds pressure or if the brake and anti-lock warning lights remain on longer than 60 seconds.

NOTE: The inspection of the ABS light is only for an integrated system that is an earlier system. The newer system that has the nonintegrated systems does not need to be checked. If the ABS system malfunctions on the newer system, the brake systems are still functional.

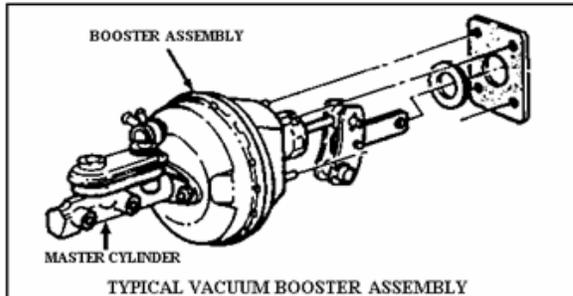


5. Condition of integrated hydraulic booster/anti-lock system with electronic pump. With the system fully charged, inspect system for fluid level and leaks.

Reject vehicle if there is insufficient fluid in the reservoir; if there are broken, kinked or restricted fluid lines or hoses; or if there is any leakage of fluid at the pump or brake booster, or any of the lines or hoses in the system.

6. Vacuum system operation. Stop engine then depress brake pedal several times to eliminate all vacuum in the system. Depress pedal with a light foot-force (25 pounds). While maintaining this force on the pedal, start engine and observe if pedal moves down slightly when engine starts.

Reject vehicle if pedal does not move down slightly as engine is started while force is on the brake pedal. In full vacuum-equipped vehicles, there is insufficient vacuum reserve for one full service brake application after engine is stopped.



7. Condition of vacuum booster power brake system. Reject vehicle if there are collapsed, cracked, broken, badly chafed or improperly supported hoses and tubes, loose or broken hose clamps.

F. Inspect for and reject if:

General Specifications - Hydraulic Brakes

1. There is any leakage in the master cylinder, wheel cylinders, or brake calipers. When checking for leakage in rear wheel cylinders, do not disturb the dust boot.

NOTE: Do not reject for the common dust ball formed on wheel cylinders or for wetness that may have spread to the backing plate unless it has contaminated the linings or drums as specified in subdivision D 8 of this section. Consumers should be advised of this wear so that they will be aware that repair may be needed before their next inspection. This may not warrant an immediate repair considering the dual valve master cylinder.

2. Fluid level in master cylinder is below the proper level for the particular vehicle.

3. There is any evidence of a caliper sticking or binding.

Electric Brake System

4. Trailers show an amperage value more than 20% above or 30% below the brake manufacturer's maximum current rating for each brake.

5. Amp meter shows no reading or indicator is not steady on application and release of brake controller.

6. Any terminal connections are loose or dirty; wires are broken, frayed, or unsupported; any single conductor nonstranded wires below the size recommended by the brake manufacturers are installed.

7. Electrical trailer brakes do not apply automatically when the breakaway safety switch is operated.

8. Breakaway braking devices are missing or inoperative; cable is frayed or broken.

General Specifications

9. Absence of braking action on any wheel required to have brakes.

10. There is any leakage in any hydraulic, air, or vacuum lines; hoses have any cracks, crimps, or restrictions or are abraded, exposing inner fabric; tubing or connections leak or are crimped, restricted, cracked, or broken; or any valves leak or are inoperative.

a. Reject the vehicle if the brake hoses or tubing are stretched or extended and do not allow for suspension movement.

b. Brake tubing and hoses must be:

(1) Long and flexible enough to accommodate without damage all normal motions of the parts to which they are attached;

(2) Secured against chaffing, kinking, or other mechanical damage; and

(3) Installed in a manner that prevents them from contacting the vehicle's exhaust system or any other source of high temperatures.

11. Any hydraulic brake tubing has been repaired using a compression fitting.

12. Brakes are not equalized so as to stop the vehicle on a straight line.

13. There is less than 1/5 reserve in actuator travel of the service brake when fully applied on all hydraulic, mechanical, or power-assisted hydraulic braking systems.

14. When tested on dry, hard, approximately level road free from loose material, at a speed of 20 miles per hour without leaving a 12-foot wide lane, results in excess of the following distances are obtained:

(When in doubt about a vehicle's stopping ability, the inspector shall conduct a road test.)

a. Any motor vehicle (except motorcycles, trucks, and tractor-trucks with semitrailers attached) four wheel brakes - 25 feet.

b. Any motor vehicle (except motorcycles, trucks, and tractor-trucks with semitrailers attached) two wheel brakes - 45 feet.

c. All combinations of vehicles - 40 feet.

**19VAC30-70-140. Headlamps; except motorcycles.**

A. Inspect for and reject if:

1. Any motor vehicle is not equipped with at least two headlamps of an approved type. An approved headlamp

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assembly that contains bulbs for both the high and low beams within the same housing shall be considered one headlamp. The headlamps must be marked with the headlamp manufacturer's name or trademark, and DOT. If the headlamp bulbs are replaceable, the headlamp lens must be marked with the headlamp light source type (bulb) for which it was designed and the bulb must match the lens code.

NOTE: If the headlamp system is stamped to accept halogen bulbs, then the replacement bulbs must be halogen as well. Retrofitting an HID or LED bulb to a halogen headlamp system does not conform to the standards set forth by the Federal Motor Vehicle Safety Standards (FMVSS) and shall be rejected.

If the entire headlamp assembly is changed from a halogen system to an LED system and does not require the manufacture's original wiring to be cut or compromised, then it shall be considered for inspection if it meets the requirements of subdivision A 2 of this section.

2. Headlights are not of the same approved type (Halogen, HID, LED, etc.) except for sealed beam headlamps, or the replacement headlamp system does not contain all properly marked DOT and SAE stamps certifying that it has met and complied with the standards set forth by the Federal Motor Vehicle Safety Standard (FMVSS) 108.

NOTE: Replacement headlamps stamped with a DOT or SAE approval and marked with the headlamp manufacturer's name or trademark shall be considered approved by the Superintendent of State Police and will not be required to be listed on the Virginia Motor Vehicle Approved Equipment List.

3. In any headlamp the lens is cracked, broken, discolored, or rotated away from the proper position, or the reflector is not clean and bright.

4. Moisture or water buildup in headlamp is such that it affects the aiming pattern.

5. Headlamps omit light other than white. Light tints of color may be acceptable if the headlamp and headlamp bulbs are marked as required.

6. Bulbs are not of an approved type and marked with all of the following: light source type, the manufacturer's name or trade mark, and DOT.

NOTE:

Approved headlamp bulbs: HB1, HB2, HB3, HB3A, HB4, HB4A, HB5, H1, H3, H7, H8, H8B, H9, H9B, H9C, H11, H11B, H11C, H13, H13C, H15, HIR1, HIR2, H18, H19.

Approved headlamp bulbs that require ballast: 9500, D1R, D1S, D2R, D2S, D3R, D3S, D4R, D4S, D5S, D7S, D8S, D9S.

Approved headlamp ballasts must be marked with the light source type (bulb) and DOT. The bulb type marked on the ballast must match the marking on the headlamp lens.

7. Any filament or bulb in headlamps fails to burn properly or headlamps are not at the same location or configuration as designed by manufacturer. (Location and type of headlamps can be found in subsection E of this section.)

8. Wiring is dangling or connections are loose, or if proper filaments do not burn at different switch positions; or if switches, including foot or hand dimmer, do not function properly and are not convenient to the driver.

9. Foreign material is placed on or in front of the headlamp lens or interferes with the beam from the lamp. No glazing may be placed over or in front of the headlamps unless it is a part of an approved headlamp assembly.

a. Reject if vehicle has wire, unapproved lens or plastic covers, any other materials that are not original equipment or any colored material placed on or in front of the headlamps.

b. Vehicles registered as street rods may have clear, rigid plastic or glass headlamp lens covers in front of sealed beam units to replace original manufacturer's equipment.

EXCEPTION: A clean impact film known as Headlight Savers produced by Grand Prix Motoring Accessories may be applied to the headlight lens to absorb impact of rocks, etc.

10. Lamps can be moved easily by hand due to a broken fender or loose support, or if a good ground is not made by the mounting.

11. Headlamps, auxiliary driving lamps and front fog lamps are not mounted so that the beams are aimable and the mounting does not prevent the aim of the lighting device from being disturbed while the vehicle is operating on public roads. All lamps shall be securely mounted on a rigid part of the vehicle.

12. A headlamp visor is over two inches long unless part of the original body design.

13. The high beam indicator in the driver's compartment does not burn when the high beam is on or does not go off when the low beam is on. (Vehicles not originally equipped with an indicator are not required to comply unless sealed beam headlamps have been installed.)

## B. Aiming the headlamps.

1. Inspectors shall rely on their education, training, and experience to determine if the headlamps are properly aimed. If improper alignment is observed, headlamps shall be checked for proper aim by using an optical headlamp aimer, except on vehicles equipped with on-board aimers.

Headlamp aim on vehicles with on-board aimers shall be checked by visually examining the leveling device mounted either on or adjacent to the headlamp. Reject the vehicle if the leveling device shows the headlamp adjustment to exceed indicated specifications.

NOTE: Driving lamp and fog lamps must be visually inspected to ensure proper aiming. If improper alignment is observed, the optical aimer shall be used to correct any misalignment.

2. Headlamps are not aimed within the following tolerances using the optical aimer.

- a. The center of the hot spot of all single element high beam lamps is set more than four inches up or down from the horizontal centerline or more than four inches to the left or right from the vertical centerline.
- b. The left edge of the lamp pattern of any low beam lamp or any combination or multi-element lamp is more than four inches to the left or right of the vertical centerline or the top edge of the lamp pattern is more than four inches above or below the horizontal centerline when checked on low beam.

C. Optical aimer.

1. Optical aimers must be properly calibrated and used in the manner recommended by the manufacturer.

The optical headlamp machine must be aligned to the vehicle in accordance with the manufacturer's specifications.

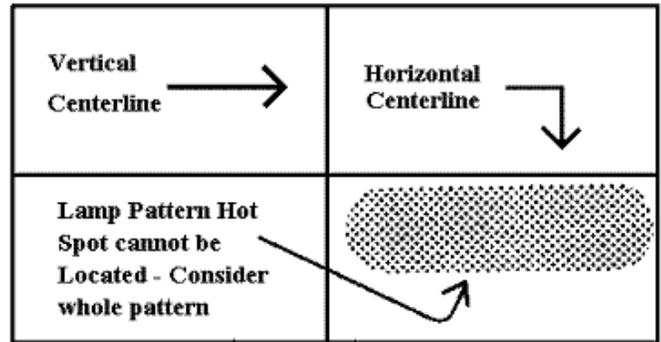
2. When aiming headlamps, first look for the type of lamp, which will be found embossed on the lens. The type determines which aiming requirements must be followed for the optical aimer.

3. All low beam or combination/multi-element headlamps must be set by aiming the lamp pattern with the lamps set on low beam.

NOTE: If attempting to align a composite or sealed beam lamp with a high and low beam within the same housing, align only the low beam. If aligning a four-lamp system with high and low beams in separate housings, it may be necessary to cover the low beam while aligning the high beam, if all four lamps are on at the same time.

4. Pattern should be aimed so that the left edge does not extend to the left or right of straight ahead, and the top of the pattern should be even with the horizontal.

Pattern "A" represents the light pattern as it should appear on the view screen of the approved aimer when checking the low-beam pattern on a single element headlamp or a combination multi-element headlamp.



**PATTERN A - COMBINATION MULTI-ELEMENT OR LOW BEAM LAMP**

5. All VOL and VOR headlamps will be aimed as follows:

To properly aim a combination multi-element or low-beam VOL or VOR headlamp assembly, the headlamp pattern should be aimed on low beam only.

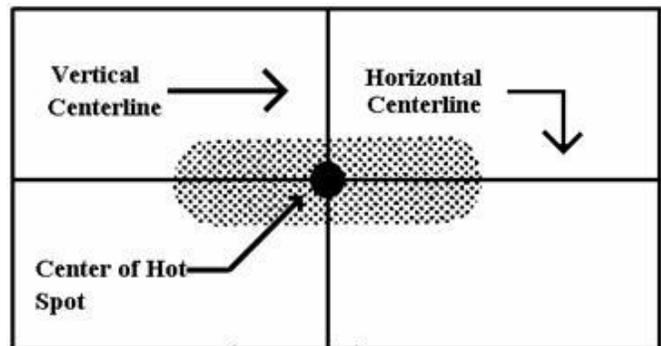
Letters marked on the headlamp cover should properly identify VOL and VOR headlamps.

NOTE: VOL and VOR headlamps will normally have only one adjustment, which will be for the vertical aim only. The horizontal aim should be disregarded, as the horizontal aim is preset at the factory.

6. All single element high beam headlamps shall be set by aiming the center of the hot spot with the lamps set on high beam.

7. Aim straight ahead-center of the hot spot should be centered with the vertical and horizontal centerlines.

Pattern "B" represents the light pattern as it should appear on the view screen of the approved aimers.



**PATTERN B - SINGLE ELEMENT HIGH BEAM LAMP**

8. When lamp pairs are mounted horizontally, the low beam lamp must be on the outer side and when mounted vertically, the low beam lamp must be at the higher position in the pair.

9. The four headlamp system must be wired so that only the lower beam lamp will burn when the light beams are

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depressed. When switched to high beams, both high beam and low beam may burn.

The "F" type halogen headlamp 1986 (LF-UF) of the four headlamp system will function in the following manner: system must be used so the low beam does not burn with the high beam.

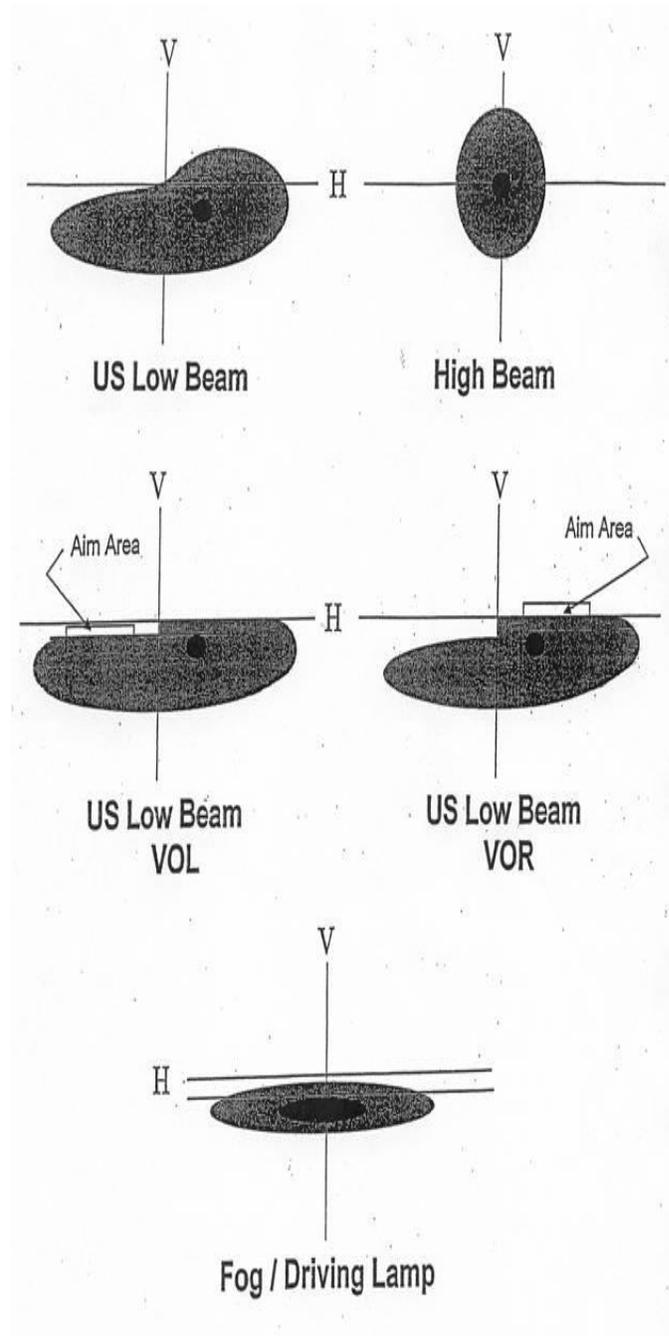
D. Headlamps on vehicles used for snow removal. Approved auxiliary headlamps may be mounted above the conventional headlamps. (These lamps must be in compliance with this section in its entirety, subdivision 7 of 19VAC30-70-150, and 19VAC30-70-170.)

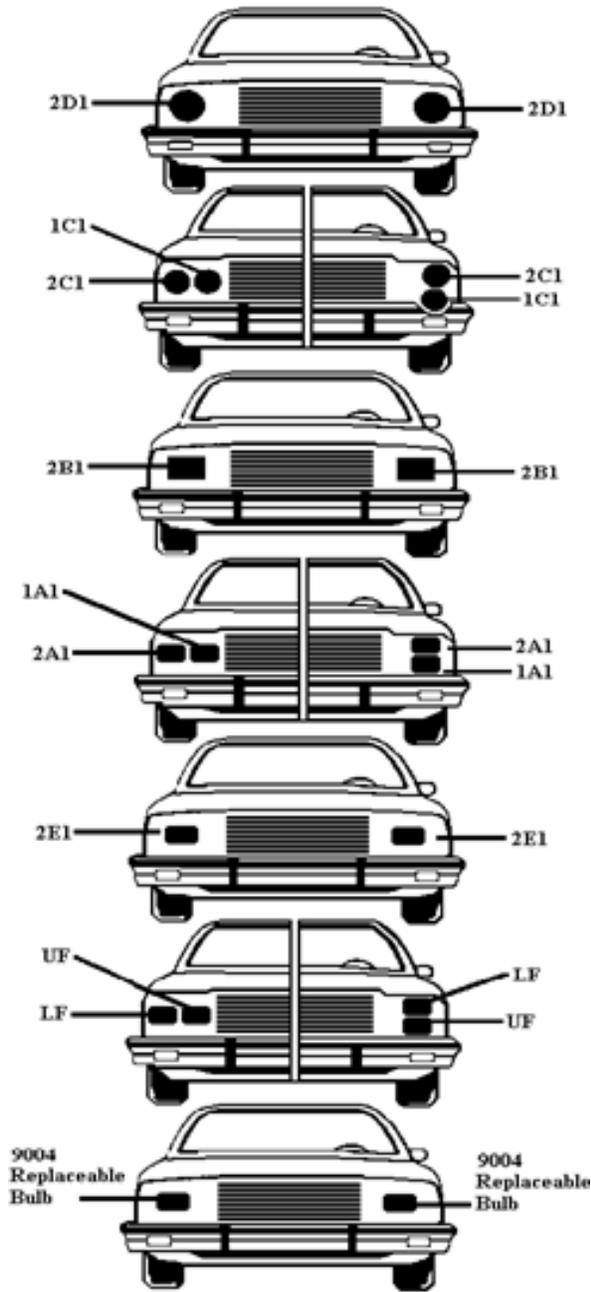
E. Inspect for and reject if:

1. Lamps are not an approved type as previously indicated in subdivision A 6 of this section.
2. Lamps are not mounted in a manner that will permit proper aiming.
3. Lamps are mounted so as to obstruct the driver's vision.
4. The auxiliary headlamp circuit does not contain a switch that will deactivate the primary headlamp system when the auxiliary headlamps are in use.
5. Auxiliary headlamps are not aimed in accordance with the provisions of subdivision B 2 of this section.
6. Headlamps are not wired in accordance with the provisions of subdivision C 8 of this section.

NOTE: Light patterns shown in the following diagram will be displayed on the most recently approved light machines produced by Hopkins and Symtech Corporations.

## HEADLAMP PATTERNS





Locations of Type 1, Type2, LF/UF, and Replaceable Bulb Headlamps

NOTE: Always inspect the following sealed beam and replaceable bulb and integral beam headlamps on LOW BEAM only:

- 5-3/4 inch, marked 2, 2C, or 2C1
- 7 inch, marked 2, 2D, or 2D1
- 100 X 165mm rectangular, marked 2A, 2A1, or 2E1, 2G1 or 2H1
- 200 X 142mm rectangular, marked 2B or 2B1

- Replaceable bulb headlamp, marked LF with 9004 (HB1)
- 92 X 160mm rectangular, marked LF
- Replaceable bulb headlamps with 9006 (HB4) alone or in combination with 9005 (HB3)
- 55 X 135mm rectangular, marked L
- Integral beam headlamp when high and low beam reflectors move together.

**19VAC30-70-160. Auxiliary lamps: backup; cornering; driving; fog; spot and warning.**

A. Auxiliary lamps on a vehicle consist of seven general types: backup lamps (SAE-R), cornering lamps (SAE-K), driving lamps (SAE-Y), front fog lamps with an amber or clear lens (SAE-F) and rear fog lamps with red lens (SAE-F2), spot lamps (SAE-O), warning lamps (SAE-W, W2, W3), and daytime running lamps (DRLs) (SAE-Y2).

B. School buses may be equipped with an eight-lamp warning system of two red and two amber warning lamps of an approved type (SAE-W2) on the front and rear of such vehicle.

1. School buses may also be equipped with roof-mounted flashing white or amber warning lamps of an approved type (SAE-W2).

2. In addition to required warning lamps, school buses may be equipped with a stop signal arm consisting of an octagonal sign which meets FMVSS specifications (Federal Motor Vehicle Safety Standards, 49 CFR Part 571). The stop signal arm shall be reflectorized or be equipped with two red warning lamps of an approved type.

C. There is no limit on the number of backup lamps that a vehicle may have so long as they are of an approved type (SAE-R).

D. No more than four lamps, including two headlamps, may be lighted at any time to provide general illumination ahead of the vehicle. An approved headlamp assembly that contains bulbs for both high and low beams within the same housing shall be considered one headlamp.

E. Approved type (SAE-W) (i) blue or; (ii) blue and red lights; (iii) blue and white; or (iv) red, white, and blue lights are permitted on Department of Corrections vehicles designated by the Director of the Department of Corrections and any law-enforcement vehicle. Law-enforcement vehicles may also be equipped with steady-burning blue or red warning lights of types approved by the superintendent.

1. Approved type secondary warning lights installed only on the four corners, on law-enforcement vehicles, Department of Corrections, fire apparatus, government-owned vehicle operated on official business by a local fire chief or other local fire official, rescue squad vehicle,

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ambulance, or any other emergency medical vehicles. These lights shall also have primary warning lights installed.

2. The hide-away or undercover strobe lights shall be installed in the headlamp assemblies, side marker lights, tail lights or parking lights. The strobe itself must be clear and the lens color must continue to be the same type and color as originally approved. ~~It will not be permissible to install the hide-away lights in the headlights.~~

3. Approved type (SAE-W) red warning lights or red and white lights showing to the front are permitted on fire department vehicles, including publicly-owned state forest warden vehicles, ambulances, any rescue vehicle used for emergency calls, local department of emergency management, animal warden vehicles, school buses and vehicles used by security personnel at the Newport News Shipbuilding and Drydock Company, Bassett-Walker, Incorporated, the Tultex Corporation, the Winchester Medical Center, or the National Aeronautics and Space Administration's Wallops Flight Facility.

4. No more than two flashing or steady-burning red lights or red and white combination lights of an approved type (SAE-W) may be installed on one vehicle owned by any member of a fire department, volunteer fire company or volunteer rescue squad, any ambulance driver employed by a privately-owned ambulance service, and any police chaplain.

F. Vehicles mentioned in subsection E of this section permitted to be equipped with flashing, blinking or alternating ~~red, red and white, blue, or blue and red~~ (i) blue; (ii) blue and red; (iii) blue and white; or (iv) red, white, and blue emergency lights (except vehicles owned by any member of a fire department, volunteer fire company, volunteer rescue squad or any ambulance driver employed by a privately-owned ambulance service) may be equipped with the means to flash their headlamps when their emergency warning lamps are activated provided:

1. The headlamps are wired to allow either the upper beam or lower beam to flash but not both.
2. The headlamp system includes a switch or device which prevents flashing of headlamps when headlamps are required to be lighted pursuant to current statute.
3. Emergency vehicles in Chesapeake, Poquoson, and York County may be equipped with flashing headlights that will function whenever their warning lights are activated.

G. Any firefighting vehicle, ambulance, rescue or life-saving vehicle, Virginia Department of Transportation vehicle, or tow truck may be equipped with clear auxiliary lamps which shall be used exclusively for lighting emergency scenes. Such lamps shall be of a type permitted by the superintendent. Any

government-owned police vehicle may be equipped with clear auxiliary lamps of a type approved by the superintendent.

H. Approved type (SAE-W) amber flashing, blinking or alternating lights are permitted on vehicles used for the principal purpose of towing or servicing disabled vehicles or in constructing, maintaining and repairing highways or utilities on or along public highways and vehicles used for the principal purpose of removing hazardous or polluting substances from the state waters or drainage areas on or along public highways. Such lamps are permitted on vehicles used for servicing automatic teller machines, refuse collection vehicles, hi-rail vehicles and on vehicles used for towing or escorting over-dimensional materials, equipment, boats, or manufactured housing units by authority of highway hauling permit.

1. Approved type (SAE-W) amber flashing, blinking or alternating lights are permitted on fire apparatus, government-owned vehicles operated on official business by a local fire chief or other local fire official, rescue squad vehicles, ambulances, and any other emergency medical vehicles to be equipped with alternating blinking or flashing red, or red and white secondary lights mounted inside the vehicle's tail lights or marker lights.

2. Approved type (SAE-W) amber flashing, blinking or alternating lights are permitted on vehicles owned and used by municipal safety officers in the performance of their official duties, businesses providing security services and vehicles used to collect and deliver the United States mail, vehicles used by law-enforcement personnel in the enforcement of laws governing motor vehicle parking, government-owned law-enforcement vehicles provided the lights are used for giving directional warning, and vehicles used to provide escort for funeral processions. Directional warning lights shall not be utilized while in motion.

3. Approved type (SAE-W) amber flashing, blinking or alternating lights are permitted on vehicles used as pace cars, security vehicles, or firefighting vehicles by any speedway or motor vehicle race track.

4. An approved type (SAE-W) amber flashing, blinking or alternating light may be mounted on the rear of any vehicle used to transport petroleum products. The light must be wired through the reverse gear circuit and activate in conjunction with the back-up lights and audible alarm.

5. An approved type (SAE-W) green warning light is permitted on vehicles used by police, firefighting, or rescue personnel as command centers at the scene of incidents. Such lights shall not be activated while the vehicle is operating upon the highway.

6. Approved type (SAE-W) colored warning lights may be used by dealers or businesses engaged in the sale of fire, emergency medical services, or law-enforcement vehicles.

They may, for demonstration purposes, equip such vehicles with colored warning lights.

I. Inspect for and reject if:

1. Auxiliary lamp is being used for a purpose other than for which it is manufactured or previously approved by the superintendent.
2. Auxiliary lamp does not have a clear lens.
3. Any reflector in such auxiliary lamp device is not clear.

EXCEPTIONS: An auxiliary lighting device that is both covered and unlit shall not be considered for inspection. An auxiliary lighting device that has a clear lens, has clear reflectors, and is unlit shall not be considered for inspection. Fog and driving lamps mounted below the level of the regular headlamps must be checked for aim as outlined in subdivisions I 12 h and 13 f of this section if not covered.

NOTE: The covers shall be a type that would be installed as original equipment and not tape, paper bags, aluminum foil or similar materials.

4. A vehicle has installed on it a warning lamp (SAE-W) that is not of an approved type or has been altered.

Reject if the vehicle has wire, unapproved lens or plastic covers, any other materials that are not original equipment or any colored material placed on or in front of any auxiliary lamps: backup, cornering, driving, fog, spot, or warning lamps.

5. Motor vehicles may be equipped with more than two fog or auxiliary lights; however, only two of these types of lights can be illuminated at any time. Reject a vehicle equipped with a headlamp mounted or used as an auxiliary lamp.

6. Vehicle is equipped with an auxiliary lamp that does not function properly. (If an auxiliary lamp has been modified by removing the wiring, bulb and socket, the unit will be considered an ornament and not a lamp and will not be considered in inspection.)

7. Vehicle is equipped with a lighted advertising sign, except commercial motor vehicles, buses operated as public carriers, taxicabs, and privately-owned passenger cars used for home delivery of commercially prepared food. Commercial motor vehicles, buses operated as public carriers, and taxicabs may be equipped with vacant and destination signs and one steady burning white light for the nighttime illumination of external advertising. Privately-owned passenger cars used for home delivery of commercially prepared food may be equipped with one steady burning white light for the nighttime illumination of a sign identifying the business delivering the food. Do not reject approved identification lights.

8. Any lamp is not of an approved type or if lamps to be burned together as a pair do not emit the same color light.

9. The lens has a piece broken from it. The lens may have one or more cracks provided an off-color light does not project through the crack. Taping or gluing cracks or pieces is not permitted.

10. Backup lamps are not required. However, if installed they must operate and be inspected.

Inspect for and reject if:

- a. Required lamps are not of an approved type (SAE-R) or a lamp has been altered;
- b. Wiring or electrical connections are defective or filaments do not burn;
- c. The lens has a piece broken from it. The lens may have one or more cracks provided an off-color light does not project through the crack. Taping or gluing cracks or pieces is not permitted;
- d. Lens is other than clear. LED (light-emitting diode) lights with a clear lens are acceptable if of an approved type. For those vehicles that are equipped with a multiple LED light (not filament-burning bulbs), they will pass inspection if more than 50% of the diode lights are burning;
- e. Lamps are not wired into the reverse gear. Vehicles manufactured without backup lamps may be wired into an independent circuit.

11. Cornering lamps are not required. However, if installed they must operate and be inspected.

Inspect for and reject if:

- a. Required lamps are not of an approved type (SAE-K) or a lamp has been altered;
- b. Wiring or electrical connections are defective or filaments do not burn;
- c. The lens has a piece broken from it. The lens may have one or more cracks provided an off-color light does not project through the crack. Taping or gluing cracks or pieces is not permitted;
- d. The color of the light is other than clear or amber;
- e. The lamps do not burn in conjunction with the turn signals.

12. Driving lamps are not required. However, if installed they must operate and be inspected.

Inspect for and reject if:

- a. Driving lamps are installed on vehicles equipped with the four-headlamp system, except the "F" type headlamp system;

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b. Driving lamps are not of an approved type or have been altered;

c. The color of the lamp is other than white;

d. The lens has a piece broken from it or is rotated away from its proper position. The lens may have one or more cracks provided an off-color light does not project through the crack. Taping or gluing cracks or pieces is not permitted;

e. Wiring or electrical connections are defective;

f. Any driving lamp is mounted above the level of the regular headlamps, or is not mounted firmly to prevent excessive vibration;

g. Driving lamps are not wired so that they will burn only when the high beams of the regular headlamps are activated;

h. Driving lamps are not aimed so that the center of the hot spot drops three inches in 25 feet so that the hot spot is directly ahead of the lamp.

NOTE: Driving lamps must be aimed using the optical headlight aimer. A tolerance of four inches in 25 feet is allowed in both the horizontal and the vertical adjustment.

13. Fog lamps are not required. However, if installed they must operate and be inspected.

Inspect for and reject if:

a. A vehicle may be equipped with more than two fog lamps; however, not more than two fog lamps can be illuminated at any time;

b. The lens is other than clear or amber. Fog lamps may have black-end bulbs or small metal caps over the end of the bulb;

c. The lens has a piece broken from it or is rotated away from its proper position. The lens may have one or more cracks provided an off-color light does not project through the crack. Taping or gluing cracks or pieces is not permitted;

d. Wiring or electrical connections are defective or filaments do not burn;

e. Any fog lamp is mounted above the level of the regular headlamps, or is not mounted firmly;

f. Lamps are not wired and aimed according to the following instructions:

(1) Fog lamps are general illumination lamps as covered in subsection A of this section. They must burn through the tail light circuit even if on a separate switch. If installed on a vehicle with a four-headlamp system, or a

vehicle equipped with driving lamps, they must be wired into the low beam circuit.

(2) Fog lamps must be aimed so that the top edge of the high intensity zone is set at the horizontal centerline and the left edge of the high intensity zone is set at the vertical centerline. (Same as low beam headlights.)

NOTE: Fog lamps must be aimed using the optical headlight aimer. A tolerance of four inches in 25 feet is allowed in both the horizontal and the vertical adjustment.

14. Spot lamps are not required; however, if installed they must operate and be inspected.

Inspect for and reject if:

a. Vehicle is equipped with more than two spot lamps;

b. Lamps are not of an approved type (SAE-O) or a lamp has been altered;

c. The lens in any spot lamp is other than clear;

d. The lens has a piece broken from it or is rotated away from its proper position. The lens may have one or more cracks provided an off-color light does not project through the crack. Taping or gluing cracks or pieces is not permitted;

e. Wiring or electrical connections are defective or filaments do not burn.

15. Daytime running lamps (DRLs) are not required. However, if installed they must operate and be inspected. DRLs must be installed in pairs.

NOTE: DRLs may or may not be wired into the tail light circuit.

Inspect for and reject if:

a. Any lamp, except headlamps, used as DRLs if not an approved type (SAE-Y2) and is not marked "DRL";

b. Fog lamps or parking lamps are used as DRLs;

c. More than one pair of lamps is used and designated as DRLs;

d. A DRL is mounted higher than 34 inches measured to the center of the lamp;

e. The color is other than white to amber;

f. DRLs do not deactivate when the headlamps are in any "on" position.

Any DRL optically combined with a turn signal or hazard lamp must deactivate when the turn signal or hazard lamp is activated and then reactivate when the turn signal or hazard lamp deactivates.

**19VAC30-70-190. Signal device (intention to stop or turn), hazard lights, stop lamp.**

A. Any motor vehicle may be equipped with a switch that will permit all turn signal lamps to flash simultaneously.

B. Supplemental turn signals, properly wired into the turn signal circuit, may be installed. These may be either approved type turn signals or clearance lamps.

C. Single face lamps are permissible on the front, except tractor units shall be equipped with two-faced lamps mounted on the front fenders or on or near the front of the vehicle.

D. Inspect for and reject if:

1. Motor vehicle, or trailer, except an antique vehicle not originally equipped with a stop lamp, is not equipped with at least ~~one stop lamp~~ two brake lights of an approved type (DOT or SAE-S) that automatically exhibits a red or amber light to the rear when the brake pedal is actuated.

2. Every passenger car manufactured for the 1986 or subsequent model year and multipurpose passenger vehicle, truck, or bus whose overall width is less than 80 inches, manufactured September 1, 1993, and subsequent model year is not equipped with a supplemental center high mount stop lamp of an approved type (DOT or SAE-U, U1 or U2) mounted at the vertical centerline of the vehicle which functions only in cooperation with the vehicle's stop lamps, brake lights and hazard lights. Any other vehicle on which a supplemental center high mount stop lamp is mounted shall have the lamp mounted at the vertical center line of the vehicle. The lamps shall be of an approved type and shall function only in conjunction with the stop lamps. The high mount stop lamp must be steady burning and not wired to flash with turn signals or other wig-wag device.

"Multipurpose passenger vehicle" means any motor vehicle that is (i) designed to carry no more than 10 persons and (ii) constructed either on a truck chassis or with special features for occasional off-road use.

NOTE: Camper shells or rear spoilers that obscure the original manufacturer's high mount stop lamp must be equipped with a center high mount stop lamp in good working order.

NOTE: The original manufacturer's center high mount stop lamp will not be considered for inspection if it is obscured by a camper shell or rear spoiler that is equipped with a center high mount stop lamp of an approved type.

NOTE: Multipurpose passenger vehicles with an overall width of 80 or more inches or GVWR of 10,000 pounds or more are not required to be equipped with a center high mount stop light.

NOTE: No sticker or other foreign material shall be affixed to the vehicle in such a manner so as to obscure the center high mount stop lamp.

3. Proper signals do not go on with each throw of the switch or if stop signals do not go on with slightest pressure on the brake pedal. Turn signals may flash, however stop signals may not flash except when the vehicle is equipped with a brake warning system or device which will cause the brake lights to flash when the vehicle is in motion but committed to an emergency or panic stop.

4. Motor vehicle was manufactured after January 1, 1955, and is not equipped with approved signaling devices (SAE-D).

5. Vehicle is not equipped with a turn signal if such signal is not working properly or does not continue to function in the same manner as when it was originally manufactured. (The turn signal switch shall lock in place when positioned for a left turn or a right turn, and the turn signal indicators must function. Do not reject a vehicle if the self-canceling mechanism in the switch does not function when the steering wheel is rotated.)

6. Switch is not convenient to the driver and not of an approved type.

7. Any vehicle so constructed so as to prevent the operator from making a hand and arm signal, if such vehicle is not equipped with an approved type signaling device.

8. Turn signal lens is not clear or amber to the front, or red or amber to the rear. Lens or bulb color has been altered or modified. If the turn signal lens is clear, then the bulb shall be amber.

NOTE: The pink color lens found on 1998 and 1999 Honda Accords emit the proper color light (amber) when the lamp is activated. There may be other manufacturers using the same configuration and are not in violation of the Federal Motor Vehicle Safety Standards.

9. Wiring or electrical connections are defective or filaments do not burn.

NOTE: LED (light-emitting diode) lights with a clear lens are acceptable if of an approved type. For those vehicles that are equipped with a multiple LED light (not filament-burning bulbs), they will pass inspection if more than 50% of the diode lights are burning.

10. Lens has a piece broken from it. The lens may have one or more cracks provided an off-color light does not project through the cracks. Taping or gluing cracks or pieces is not permitted.

11. The hazard warning signal operating unit does not operate independently of the ignition or equivalent switch and when activated cause all turn signals to flash simultaneously.

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NOTE: They are deemed not to be installed if none of the lights burn or flash when the switch is activated and the hazard warning signal flasher unit has been removed.

12. Device is not mounted near the rear for rear signals or near the front for front signals (except supplemental turn signals) or if the signal is hidden by a bolster or other part of body chassis.

13. All "Class A" signals are not mounted at least three feet apart. (This does not apply to the combination rear signal device.) However, signal lamps that are mounted as far apart as practical inside and at the rear of the frame so as to be properly visible will meet inspection requirements.

14. Any vehicle has wire, unapproved lens or plastic covers, any other materials that are not original equipment or any colored material placed on or in front of the signal device (intention to stop or turn), hazard lights or stop lamp.

## 19VAC30-70-580. Glass and glazing.

A. Motor vehicles may be inspected without windshields, side glasses, or any kind of glazing except that any motor vehicle other than a motorcycle that was manufactured, assembled, or reconstructed after July 1, 1970, must be equipped with a windshield. If glass or other glazing is installed, it must be inspected. If no windshield is installed, see 19VAC30-70-50 C for location of the sticker.

B. Inspect for and reject if:

1. Any motor vehicle manufactured or assembled after January 1, 1936, or any bus or school bus manufactured or assembled after January 1, 1935, is not equipped throughout with safety glass, or other safety glazing material. (This requirement includes slide-in campers used on pickups or trucks, caps, or covers used on pickup trucks, motor homes, and vans.)

2. Any safety glass or glazing used in a motor vehicle is not of an approved type and properly identified (refer to approved equipment section). (Replacement safety glass installed in any part of a vehicle other than the windshield need not bear a trademark or name, provided the glass consists of two or more sheets of glass separated by a glazing material, and provided the glass is cut from a piece of approved safety glass, and provided the edge of the glass can be observed.)

3. Any glass at any location where glass is used is cracked or broken so that it is likely to cut or injure a person in the vehicle.

4. Windshield has any cloudiness more than three inches above the bottom, one inch inward from the outer borders, one inch down from the top, or one inch inward from the center strip. The bottom of the windshield shall be defined

as the point where the top of the dash contacts the windshield.

5. Any distortion or obstruction that interferes with a driver's vision; any alteration has been made to a vehicle that obstructs the driver's clear view through the windshield. This may include large objects hanging from the inside mirror or mounted to the windshield, cell phone mounts, GPS devices, CB radios or tachometers mounted on the dash or windshield, hood scoops, and other ornamentation on or in front of the hood that is not transparent.

a. Any hood scoop installed on any motor vehicle manufactured for the year 1990 or earlier model year cannot exceed 2-1/4 inches high at its highest point measured from the junction of the dashboard and the windshield.

b. Any hood scoop installed on any motor vehicle manufactured for the year 1991 or subsequent model year cannot exceed 1-1/8 inches high at its highest point measured from the junction of the dashboard and the windshield.

NOTE: Antennas, transponders, and similar devices must not be mounted more than 152 mm (six inches) below the upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals.

NOTE: Vehicles 10,001 pounds (GVWR) or more, submitted for inspection, with a navigational device, video event recording device, or a crash avoidance camera mounted on the interior of the windshield, when the entire device is mounted not more than four inches below the upper edge of the area swept by the windshield wipers or ~~any other location outside the~~ not more than seven inches above the lower edge of the area swept by the windshield wipers, shall be issued an approval sticker if no other violations are detected.

6. Windshield glass, on the driver's side, has any scratch more than 1/4 inch in width and six inches long within the area covered by the windshield wiper blade, excluding the three inches above the bottom of the windshield. A windshield wiper that remains parked within the driver's side windshield wiper area shall be rejected.

EXCEPTION: Do not reject safety grooves designed to clean wiper blades if the grooves do not extend upward from the bottom of the windshield more than six inches at the highest point.

7. There is a pit, chip, or star crack larger than 3/4 inch in diameter at any location in the windshield above the topmost portion of the steering wheel except the two-inch border at each side.

8. At any location above the topmost portion of the steering wheel excluding a two-inch border at the top and one-inch border at the sides there is:

- a. Any crack over 1/4 inch in width.
- b. Any crack 1/4 inch or less in width intersected by another crack.
- c. Any damage area 3/4 inch or less in diameter if within three inches of any other damage area.

9. Any sticker is on the windshield other than an official one required by law, or permitted by the superintendent. Authorization is hereby granted for stickers or decals, to include those required by any county, town, or city, measuring not more than 2-1/2 inches in width and four inches in length to be placed in the blind spot behind the rear view mirror. The normal location for any required county, town, or city sticker or decal is adjacent to the right side of official inspection sticker when viewed from inside the vehicle. The top edge of the sticker is to be approximately four inches from the bottom of the windshield. The left side edge adjacent to the official inspection sticker shall not be more than 1/4-inch from the right edge of the official inspection sticker when viewed from inside the vehicle. Valid Commercial Vehicle Safety Alliance (CVSA) inspection decals, or similar commercial vehicle inspection decal issued by local law enforcement, may be placed at the bottom right corner of the windshield when viewed from inside the vehicle. The top edge of such decals are to be approximately four inches from the bottom of the windshield when viewed from inside the vehicle and are to be located outside the area swept by the windshield wipers.

Any sticker or decal required by the laws of any other state or the District of Columbia and displayed upon the windshield of a vehicle submitted for inspection in this state is permitted by the superintendent, provided the vehicle is currently registered in that jurisdiction and the sticker is displayed in a manner designated by the issuing authority and has not expired. This includes vehicles with dual registration, i.e., Virginia and the District of Columbia.

NOTE: Toll transponder devices may be affixed to the inside center of the windshield at the roof line just above the rear view mirror. If space does not allow, then it may be affixed to the immediate right of the mirror at the roof line.

NOTE: A licensed motor vehicle dealer may apply one transponder sticker no larger than one inch by four inches and one barcode sticker no larger than three inches by four inches to the driver's side edge of a vehicle's windshield to be removed upon the sale or lease of the vehicle provided that it does not extend below the AS-1 line. In the absence

of an AS-1 line, the sticker cannot extend more than three inches downward from the top of the windshield.

NOTE: Any vehicle displaying an expired sticker or decal on its windshield at the time of inspection, excluding a rejection sticker, shall not be issued an approval sticker unless the owner or operator authorizes its removal. A rejection sticker will be issued versus an involuntary removal.

10. Sunshading material attached to the windshield extends more than three inches downward from the top of the windshield, unless authorized by the Virginia Department of Motor Vehicles and indicated on the vehicle registration.

NOTE: Sunshading material on the windshield displaying words, lettering, numbers or pictures that do not extend below the AS-1 line are permitted.

NOTE: Vehicles with logos made into the glass at the factory that meet federal standards will pass state inspection.

11. Any sunscreening material is scratched, distorted, wrinkled or obscures or distorts clear vision through the glazing.

12. Front side windows have cloudiness above three inches from the bottom of the glass, or other defects that affect the driver's vision or one or more cracks which permit one part of the glass to be moved in relation to another part. Wind silencers, breezes or other ventilator adaptors are not made of clear transparent material.

13. Glass in the left front door cannot be lowered so a hand signal can be given. (This does not apply to vehicle equipped with approved turn signals which were not designed or manufactured for left front glass to be lowered.) If either front door has the glass removed and material inserted in place of the glass which could obstruct the driver's vision.

Exception: Sunscreening material is permissible if the vehicle is equipped with a mirror on each side.

14. Any sticker or other obstruction is on either front side window, rear side windows, or rear windows. (The price label, fuel economy label and the buyer's guide required by federal statute and regulations to be affixed to new or used vehicles by the manufacturer shall normally be affixed to one of the rear side windows.) If a vehicle only has two door windows, the labels may be affixed to one of these windows. If a vehicle does not have any door or side windows, the labels may be temporarily affixed to the right side of the windshield until the vehicle is sold to the first purchaser.

NOTE: A single sticker no larger than 20 square inches in area, if such sticker is totally contained within the lower

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five inches of the glass in the rear window or a single sticker or decal no larger than 10 square inches located in an area not more than three inches above the bottom and not more than eight inches from the rearmost edge of either front side window, is permissible and should not be rejected.

Do not reject a tractor truck having a gross vehicle weight rating of 26,001 pounds or more equipped with one optically grooved clear plastic wide angle lens affixed to the right front side window. Such wide angle lens shall not extend upward from the bottom of the window opening more than six inches or backward from the front of the window opening more than eight inches.

15. Rear window is clouded or distorted so that the driver does not have a view 200 feet to the rear.

EXCEPTIONS: The following are permissible if the vehicle is equipped with a mirror on each side:

- a. There is attached to one rear window of such motor vehicle one optically grooved clear plastic right angle rear view lens, not exceeding 18 inches in diameter in the case of a circular lens or not exceeding 11 inches by 14 inches in the case of a rectangular lens, which enables the operator of the motor vehicle to view below the line of sight as viewed through the rear window.
- b. There is affixed to the rear side windows, rear window or windows of such motor vehicle any sticker or stickers, regardless of size.
- c. There is affixed to the rear side windows, rear window or windows of such motor vehicle a single layer of sunshading material.
- d. Rear side windows, rear window or windows is clouded or distorted.

**NOTICE:** Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (19VAC30-70)

[Safety Inspector Notification Form \(rev. 6/2012\)](#)

~~Mechanics Certification Application, SP 170 B (rev. 6/2012) must be obtained from Virginia State Police area office~~

~~Criminal History Record Name Search Request, SP 167 (rev. 12/2012) must be obtained from Virginia State Police area office~~

~~Authorization for Release of Information, SP 170 D (rev. 10/2013) must be obtained from Virginia State Police area office~~

[Safety Inspector Application, SP-170-B \(rev. 8/2017\)](#)

[Virginia Criminal History Records Name Search Request, SP-167 \(rev. 10/2018\)](#)

[Authorization for Release of Information, SP-170-D \(rev. 8/2017\)](#)

[Inspection Station Complaint/Report, SP-164 \(rev. 10/2001\)](#)

[Safety Inspector Applicant Worksheet \(undated, filed 7/2020\)](#)

[Sex Offender and Crimes Against Minors Name Search Request Form, SP-266 \(rev. 4/2017\)](#)

VA.R. Doc. No. R20-6406; Filed July 10, 2020, 6:30 p.m.

## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### DEPARTMENT OF TRANSPORTATION

#### Final Regulation

**REGISTRAR'S NOTICE:** The Department of Transportation is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 2, which excludes regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority. The Department of Transportation will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **24VAC30-17. Solicitation and Use of VDOT Buildings and Grounds for Nonwork Purposes (repealing 24VAC30-17-10 through 24VAC30-17-90).**

**Statutory Authority:** § 33.2-210 of the Code of Virginia.

**Effective Date:** September 3, 2020.

**Agency Contact:** Jo Anne Maxwell, Director, Governance and Legislative Affairs, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, or email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

**Summary:**

*Based on a periodic review of 24VAC30-17, this action repeals Solicitation and Use of VDOT Buildings and Grounds for Nonwork Purposes (24VAC30-17), regarding criteria and procedures the Virginia Department of Transportation (VDOT) follows in granting access to and use of VDOT facilities for purposes other than transacting*

*official state business. This policy generally applies to the central office, district offices, and residencies that have dedicated space for meetings. VDOT is repealing the regulation and retaining two sections as written internal agency policy.*

VA.R. Doc. No. R20-6436; Filed July 13, 2020, 12:04 p.m.

**COMMONWEALTH TRANSPORTATION BOARD**

**Final Regulation**

<p><b>REGISTRAR'S NOTICE:</b> The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 11 of the Code of Virginia, which exempts regulations relating to traffic signs, markers, or control devices.</p>
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**Title of Regulation:** **24VAC30-570. Procedures for Inclusion of Routes into the Non-Interstate Qualifying Network and Virginia Access Systems (repealing 24VAC30-570-10).**

**Statutory Authority:** § 33.2-210 of the Code of Virginia.

**Effective Date:** September 3, 2020.

**Agency Contact:** Jo Anne Maxwell, Director, Governance and Legislative Affairs, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, or email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

**Summary:**

*This action repeals 24VAC30-570 based on a periodic review. The existing regulation merely incorporates by reference the procedures for requesting the inclusion of routes in the network of highways for use by over-dimensional vehicles as designated by either the Commonwealth Transportation Board or the Commissioner of Highways. The procedures impose no legal burden on the public and can be maintained as a guidance document or internal policy after the regulation is repealed.*

VA.R. Doc. No. R20-6417; Filed July 13, 2020, 12:05 p.m.

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# GUIDANCE DOCUMENTS

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## PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

### STATE BOARD OF EDUCATION

Title of Document: [Suicide Prevention Guidelines for Virginia Public Schools](#).

Public Comment Deadline: September 2, 2020.

Effective Date: September 3, 2020.

Agency Contact: Maribel Saimre, Director of Student Services, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2818, or email [maribel.saimre@doe.virginia.gov](mailto:maribel.saimre@doe.virginia.gov).

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Document: [Virginia Board of Funeral Directors and Embalmers Bylaws](#).

Public Comment Deadline: September 2, 2020.

Effective Date: September 3, 2020.

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

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [Retroactive Billing for Addiction and Recovery Treatment Services \(ARTS\) Effective July 1, 2020](#).

Public Comment Deadline: September 2, 2020.

Effective Date: September 3, 2020.

Agency Contact: Emily McClellan, Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, or email [emily.mcclellan@dmass.virginia.gov](mailto:emily.mcclellan@dmass.virginia.gov).

### VIRGINIA SOIL AND WATER CONSERVATION BOARD

Title of Document: [Draft 2021 Grant Manual for the Virginia Dam Safety, Flood Prevention and Protection Assistance Fund](#).

Public Comment Deadline: September 2, 2020.

Effective Date: September 3, 2020.

Agency Contact: Christine Watlington, Policy and Regulatory Coordinator, Department of Conservation and Recreation 600 East Main Street, Richmond, VA 23219, telephone (804) 786-3319, or email [christine.watlington@dcr.virginia.gov](mailto:christine.watlington@dcr.virginia.gov).

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Winterpock Solar I LLC, Notice of Intent for Small Renewable Energy Project (Solar) - Chesterfield County

Winterpock Solar I LLC, Cypress Creek Renewables has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (photovoltaic solar) in Chesterfield County. The proposed Winterpock Solar I project will be a 20-megawatt alternating current photovoltaic solar facility on portions of four parcels, totaling approximately 250 acres. The project is proposed to be located south of River Road and east of Eppes Falls Road in Chesterfield County.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Draft Home Health Provider Manual

Comment period: July 7, 2020, to August 6, 2020.

The draft Home Health manual (Chapters IV and VI) is now available on the Department of Medical Assistance Services website at <http://dmas.virginia.gov/#/manualdraft> for public comment until August 6, 2020.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

## STATE WATER CONTROL BOARD

### Proposed Enforcement Action for the Scott County Public Service Authority

An enforcement action has been proposed for the Scott County Public Service Authority for violations of the State Water Control Law at the Nickelsville wastewater treatment plant in Scott County. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Jonathan Chapman will accept comments by email at [jonathan.chapman@deq.virginia.gov](mailto:jonathan.chapman@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 August 4, 2020, through September 2, 2020.

## Proposed Consent Order for Woodlawn Construction Company Inc.

An enforcement action has been proposed for Woodlawn Construction Company Inc. for violations of the State Water Control Law and regulations at the construction project along Loudoun County Parkway located in Ashburn, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the construction project along Loudoun County Parkway. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Benjamin Holland will accept comments by email at [benjamin.holland@deq.virginia.gov](mailto:benjamin.holland@deq.virginia.gov), or by postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from July 31, 2020, through September 2, 2020.

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://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/cumulatab.pdf>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

## ERRATA

### DEPARTMENT OF ENVIRONMENTAL QUALITY

Title of Regulation: **9VAC25-900. Certification of Nonpoint Source Nutrient Credits.**

Publication: 36:23 VA.R. 2432-2469 July 6, 2020.

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## General Notices/Errata

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### Correction to Final Regulation:

Page 2436, 9VAC25-900-30, subsection C, line 5, after "~~chapter~~" replace "(insert the effective date of this chapter)" with "September 1, 2020,"

VA.R. Doc. No. R13-3379; Filed July 22, 2020, 9:23 a.m.

### **STATE CORPORATION COMMISSION**

Title of Regulation: **20VAC5-210. Water or Wastewater Utility Applications Seeking Fair Valuation of Acquisitions of Municipal Water or Wastewater Systems.**

Publication: 36:23 VA.R. 2496-2499 July 6, 2020.

### Correction to Title of Regulation:

Page 2496, after "**Municipal Water**" add "**or Wastewater Systems**"

### Correction to Agency Contact:

Page 2496, after "[@scc.virginia](mailto:@scc.virginia)" replace ".com" with ".gov"

### Correction to Proposed Regulation:

Page 2497, column 2, before "**20VAC5-210-10. Purpose and applicability.**" insert

#### CHAPTER 210

WATER OR WASTEWATER UTILITY APPLICATIONS  
SEEKING FAIR VALUATION OF ACQUISITIONS OF  
MUNICIPAL WATER OR WASTEWATER SYSTEMS

VA.R. Doc. No. R20-6333; Filed July 16, 2020, 2:56 p.m.