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REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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.

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; Marcus B. Simon, Vice Chair; Ward L. Armstrong; Nicole Cheuk; Leslie L. Lilley; Jennifer L. McClellan; Christopher R. Nolen; Steven Popps; Don L. Scott, Jr.; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade; Wren M. Williams.

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

PUBLICATION SCHEDULE AND DEADLINES

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

August 2022 through August 2023

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
38:26	July 27, 2022	August 15, 2022
39:1	August 10, 2022	August 29, 2022
39:2	August 24, 2022	September 12, 2022
39:3	September 7, 2022	September 26, 2022
39:4	September 21, 2022	October 10, 2022
39:5	October 5, 2022	October 24, 2022
39:6	October 19, 2022	November 7, 2022
39:7	November 2, 2022	November 21, 2022
39:8	November 14, 2022 (Monday)	December 5, 2022
39:9	November 30, 2022	December 19, 2022
39:10	December 13, 2022 (Tuesday)	January 2, 2023
39:11	December 27, 2022 (Tuesday)	January 16, 2023
39:12	January 11, 2023	January 30, 2023
39:13	January 25, 2023	February 13, 2023
39:14	February 8, 2023	February 27, 2023
39:15	February 22, 2023	March 13, 2023
39:16	March 8, 2023	March 27, 2023
39:17	March 22, 2023	April 10, 2023
39:18	April 5, 2023	April 24, 2023
39:19	April 19, 2023	May 8, 2023
39:20	May 3, 2023	May 22, 2023
39:21	May 17, 2023	June 5, 2023
39:22	May 31, 2023	June 19, 2023
39:23	June 14, 2023	July 3, 2023
39:24	June 28, 2023	July 17, 2023
39:25	July 12, 2023	July 31, 2023
39:26	July 26, 2023	August 14, 2023
40:1	August 9, 2023	August 28, 2023

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Initial Agency Notice

Title of Regulation: 18VAC115-80. Regulations Governing the Registration of Qualified Mental Health Professionals.

Statutory Authority: §§ 54.1-2400, 54.1-3500, and 54.1-3505 of the Code of Virginia.

Name of Petitioner: Jennifer Faison, Virginia Association of Community Service Boards.

Nature of Petitioner's Request: The petitioner requests that the Board of Counseling amend 18VAC115-80-40 C 1 and 18VAC115-80-50 C 1 to allow qualified mental health professionals (QMHPs) to provide supervision of QMHP-trainees. QMHPs qualified to provide such supervision would have two or more years of experience and be specifically trained for supervision.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on August 1, 2022, and on the Virginia Regulatory Town Hall. Public comment will open August 1, 2022, and close August 31, 2022. The Board of Counseling will consider the petition and all comments in support or opposition at its meeting currently scheduled for September 16, 2022. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: August 31, 2022.

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

VA.R. Doc. No. PFR22-40; Filed July 1, 2022, 9:41 a.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF LOCAL AND REGIONAL JAILS

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **6VAC15-81, Standards for Planning, Design, Construction, and Reimbursement of Local Correctional Facilities.** The review of this regulation will be guided by the principles in Executive Order 19. The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 1, 2022, and ends October 3, 2022.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Colleen Maxwell, Policy Analyst, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 659-3061.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **9VAC5-50, New and Modified Stationary Sources;** and **9VAC5-70, Air Pollution Episode Prevention.** The review of each regulation will be guided by the principles in Executive Order 19. The purpose of a periodic review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic

impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 1, 2022, and ends August 22, 2022.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Rachael Harrell, Board Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 801-2932.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **12VAC5-125, Regulations for Bedding and Upholstered Furniture Inspection Program.** The review of this regulation will be guided by the principles in Executive Order 19. The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 1, 2022, and ends August 22, 2022.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Olivia McCormick, Director, Food and General Environmental Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8146.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Accountancy conducted a periodic review and a small business impact review of **18VAC5-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated July 12, 2022, to support this decision.

This regulation is required by § 2.2-4007.02 of the Code of Virginia and establishes the mechanisms by which the agency will advise the public of the agency's regulatory actions. Notice of the agency's regulatory actions assists in protecting the public's welfare. The regulation is clearly written and easily understandable.

The agency recommends that the regulation remain in effect without change because it is mandated by law and assists in notifying the public of the agency's regulatory actions. No significant changes have occurred since this regulation was promulgated that necessitate amending it.

The agency has not received any substantive comments or complaints regarding this regulation. The regulation is not complex and is easily understood. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was promulgated in 2008 using the model public participation guidelines issued by the Department of Planning and Budget. This periodic review is the second evaluation of this regulation subsequent to its adoption in 2008; the previous review was completed in 2017. No factors have changed since 2017 that necessitate amending this regulation. This regulation places no economic burden on any small business.

Contact Information: Vasa Clarke, Regulatory Coordinator, Board of Accountancy, 9960 Mayland Drive, Suite 402, Henrico, VA 23233, telephone (804) 367-1568.

REGULATIONS

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

Symbol Key

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

TITLE 8. EDUCATION

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Final Regulation

REGISTRAR'S NOTICE: The State Council of Higher Education for Virginia is claiming an exemption from (i) the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property and (ii) Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The council will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 8VAC40-71. Virginia Tuition Assistance Grant Program Regulations (amending 8VAC40-71-10, 8VAC40-71-20; adding 8VAC40-71-70).

Statutory Authority: § 23.1-629 of the Code of Virginia.

Effective Date: August 1, 2022.

Agency Contact: Beverly Rebar, Senior Associate for Academic and Legislative Affairs, State Council of Higher Education for Virginia, 101 North 14th Street, 9th Floor, Monroe Building, Richmond, VA 23219, telephone (804) 371-0571, or email beverlyrebar@schev.edu.

Background: Since 1973, the Virginia Tuition Assistance Grant (VTAG) Program has provided state grants, projected to be \$4,000 for undergraduate students in fiscal year (FY) 2022, to eligible Virginians enrolled at one of 28 participating private Virginia nonprofit colleges and universities. State Council of Higher Education for Virginia is responsible for program oversight, including the development and adoption of VTAG regulations when program changes are authorized by state legislation.

Summary:

Pursuant to Item 150 C 11 of Chapter 552 of the 2021 Acts of Assembly, the amendments include (i) instructions on how to determine which online education or distance learning students remain eligible for VTAG at the FY2020 award amounts and which online education or distance learning students are eligible for a reduced award; (ii) an updated definition of domiciliary resident in accordance

with recent changes to statute; and (iii) the new institutional program eligibility compliance requirements.

8VAC40-71-10. Definitions.

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

"Academic year" means the enrollment period that normally extends from late August to May or early June and that is normally comprised of two semesters 15 to 16 weeks in length or three quarters 10 to 11 weeks in length.

"Accredited" means approved to confer degrees pursuant to the provisions of Article 3 (§ 23.1-213 et seq.) of Chapter 2 of Title 23.1 of the Code of Virginia and requirements of the annual appropriation act, as the same are now constituted or hereafter amended. Unless otherwise provided by law, an institution must be accredited by a nationally recognized regional accrediting agency prior to participation in the program.

"Award" means a grant of Virginia Tuition Assistance Grant Program funds given during fall and spring terms at semester institutions and fall, winter, and spring terms at quarter institutions.

"Census date" means the time during a term when a count of enrolled students is made for reporting purposes. For all standard terms, the census date shall be the end of the program add/drop period. For nonstandard terms, the census date shall be determined by council on a program by program basis.

"Cost of attendance" means the sum of tuition, fees, room, board, books, supplies, and other education-related expenses, as determined by an eligible institution for purposes of calculating a student's financial need and awarding federal student aid funds.

"Council" or "**SCHEV**" means the State Council of Higher Education for Virginia or its designated staff.

"Domiciliary resident" means a student who is determined by the enrolling institution to be a domiciliary resident of Virginia ~~or deemed as domiciled as specified by § 23.1-502 of the Code of Virginia and the council's guidelines for domiciliary status determinations~~ under § 23.1-502 of the Code of Virginia and augmented by the Domicile Guidelines or provided the equivalent educational benefits of the same under § 23.1-505 or 23.1-505.1 of the Code of Virginia. In cases where there are disputes between students and the enrolling institutions, the

council shall make the final determinations (see 8VAC40-71-40 E).

"Eligible institution" means private nonprofit institutions of collegiate education in the Commonwealth whose primary purpose is to provide collegiate, graduate, or professional education and not to provide religious training or theological education. Eligible institutions not admitted to this program before January 1, 2011, shall also:

1. Be formed, chartered, established, or incorporated within the Commonwealth;
2. Have their principal place of business within the Commonwealth;
3. Conduct their primary educational activity within the Commonwealth;
4. Be accredited by a nationally recognized regional accrediting agency; and
5. Comply with applicable reporting requirements as:
 - a. Found in the Code of Virginia or supporting administrative code for institutions operating in Virginia or participating in state financial aid programs; or
 - b. Identified by the council as necessary for the administration of the program.

"Eligible program" means a curriculum of courses at the undergraduate, graduate, or first professional level for those institutions eligible under the definition of eligible institution. For those institutions chartered under an act of Congress and admitted to this program prior to January 1, 2011, only a curriculum of courses offered at a campus located in the Commonwealth are eligible programs.

1. Undergraduate programs are those programs that lead to an associate's or baccalaureate degree and that require at least two academic years (minimum 60 semester hours or its equivalent in quarter hours) to complete or an undergraduate teacher certification program.
2. Graduate programs are those programs leading to a degree higher in level than the baccalaureate degree and that require at least one academic year (minimum 30 semester hours or its equivalent in quarter hours) to complete. Only graduate programs in a health-related professional program classified in the National Center for Education Statistics' Classification of Instructional Programs (CIP) Code 51-series programs are eligible graduate programs.
3. First-professional programs are those post-undergraduate programs leading to a degree in dentistry, medicine, veterinary medicine, or pharmacy. Only professional programs in a health-related professional program classified as CIP Code 51-series programs are eligible first-professional programs.

4. Programs that provide religious training or theological education, classified as CIP Code 39-series programs, are not eligible programs.

5. Students enrolled in a declared double-major that includes an ineligible degree program may receive an award only for those terms in which the student's enrollment includes an equal or greater number of courses required for an eligible major or concentration than the number of courses enrolled for an ineligible major or concentration (excludes general education or elective courses). Exceptions may be made by council based on circumstances beyond the control of the student.

"First-professional student" means a student enrolled and program placed in any of the following post-undergraduate programs: dentistry, medicine, veterinary medicine, or pharmacy.

"Fiscal year" means the period extending from July 1 to June 30.

"Formed, chartered, established, or incorporated within the Commonwealth" means the institution is, and continues to be, recognized as a domestic or in-state institution under the council's certification to operate in Virginia and under state law.

"Full-time student" means a student who is enrolled for at least 12 credit hours per semester or its equivalent in quarter hours at the undergraduate level or nine credit hours per semester or its equivalent in quarter hours at the graduate or first-professional level. The total hours counted do not include courses taken for audit, but may include required developmental, remedial, or prerequisite courses and other elective for-credit courses that normally are not counted toward a degree at the institution. For students enrolled in:

1. Nonstandard terms: the full-time enrollment requirement, as approved by council, will be proportionate based on the length of the terms, the number of contact hours, or other measures of comparability with the institution's normal academic year.
2. Concurrent undergraduate, graduate, or first-professional courses: the full-time enrollment requirement may be met by a combination of the total credit hours, providing that the combination totals at least the minimum credit hours for full-time status, as described above, for the student's institutionally recognized student level.
3. Programs leading to a doctoral degree: the full-time enrollment requirement may be met by enrollment in nine credit hours per semester or its equivalent in quarter hours or the minimum full-time enrollment as defined by the institution, whichever is less.

"Graduate student" means a student enrolled and program placed in a master's or doctoral program.

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"Nonprofit institution" means an educational institution operated by one or more nonprofit corporations, and said institution's earnings are applied solely to the support of said institution and its educational programs and activities.

"Nonstandard degree program" means a degree program where the terms of the program do not conform to the standard terms of the institution's academic year. Nonstandard programs must be approved by council before students enrolled in the programs can receive awards.

"Participating eligible institution" means an eligible institution that has been approved to participate in the program by council.

"Principle place of business" means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the institution as a whole primarily exercise that function considering the following factors:

1. The state in which the primary executive and administrative offices of the institution are located. The primary executive and administrative offices are those most often physically used in the performance of the executive and administrative functions of the institution;
2. The state in which the principal office of the chief executive officer of the institution is located. The principal office of the chief executive officer is the location that is most often physically occupied by the chief executive officer when in performance of official institution duties;
3. The state in which the board of trustees or similar governing person or persons of the institution conducts a majority of its meetings; and
4. The state from which the overall operations of the institution are directed in that the institution is not subject to control or directives from an office, agency, or board located within another state.

"Program" means the Virginia Tuition Assistance Grant Program.

"Term" means the fall semester or quarter, winter quarter, or the spring semester or quarter.

"Undergraduate student" means a student in a program leading to an associate's or baccalaureate degree or a student enrolled in an undergraduate teacher certification program.

"VTAG" means the Virginia Tuition Assistance Grant.

8VAC40-71-20. Institutional participation in the program: application procedures.

In order to participate in the program, eligible institutions not previously approved by the council to participate must file formal application with the council no later than January 31 of the calendar year preceding the calendar year in which fall term awards would first be available to students.

Applications shall be addressed to the council and shall include:

1. Estimates of the number of students who would be eligible to receive awards in the first and second years of participation;
2. A copy of the Fiscal Operations Report and Application to Participate in Federal Student Financial Aid Programs (FISAP) if participating in federal Title IV programs; and
3. Certifications from the institution's chief executive officer that the institution:
 - a. Meets each aspect of the definition of an eligible institution as defined in this chapter;
 - b. Offers academic programs that meet the definition of an eligible program and provides a list of such programs, including the officially recognized CIP codes for each program;
 - c. Will furnish whatever data the council may request in order to verify its institutional eligibility claims;
 - d. Will promptly notify the council within 30 days following any change in governance or mission that may affect the institution's status as an eligible institution;
 - e. By its governing body, has authorized its adherence to the requirements of this chapter, as the same are now constituted or hereafter amended, until such time as the institution may withdraw from participation in the program; ~~and~~
 - f. Will comply with the council's reports requirements and deadlines; and
 - g. Follows the guidance available in the SCHEV Financial Aid Award Letters Policies and Guidance by providing a sample of an undergraduate award notification for SCHEV review.

Applications must be approved and all documents must be on file before any funds are disbursed.

Council retains the prerogative to issue conditional approval to participate in the program if deemed necessary and provide a timeframe in which a follow-up review will be conducted before issuing final approval.

All subsequent new programs or site locations must be reported to the council by no later than August 1 of the calendar year preceding the calendar year in which fall term awards would first be available to students in the program or at the new site location.

8VAC40-71-70. Administration of awards for students enrolled in online or distance learning programs.

A. Definitions. The following words and terms shall have the following meanings in this section unless context clearly indicates otherwise:

"Distance learning program" means a program of study with degree completion requirements that are unique to students intending to receive instruction primarily or solely through distance learning. Distance learning programs occasionally require an on-campus or other in-person course. If an institution does not differentiate between the two modes of degree requirements, "distance learning program" refers to any term in which the student is enrolled entirely in distance learning courses.

"Distance learning student" means any student placed into a distance learning program. Students enrolling into a course that is required by their distance learning program of study to be on-campus or in-person are still considered a distance learning student.

"Enrolled exclusively" means the student's participation in a distance learning program by declaring the intent to complete a degree through this mode of delivery. A place-based student taking online courses as a supplement to their education is not "enrolled exclusively" in a distance learning or online education program.

"Online education" or "distance learning" means an option for earning course credit at off-campus locations via cable television, Internet, (telecommunication) satellite classes, videotapes, correspondence courses, or other means. "Online education" or "distance learning" includes online education and does not include instruction that is covered under the definition of "place-based instruction".

"Place-based instruction" means instruction that the institution has determined to be delivered at a specific physical location under the control of the institution. "Place-based instruction" includes instruction that takes place in a standard in-class setting though remote participation may be available and on-campus residential learning, satellite locations specified by the institution, internships, and residencies.

"Place-based student" means a student pursuing a degree predominantly by place-based instruction. "Place-based student" includes students whose course selections in a given term include, though not exclusively, distance learning courses.

"VTAG-eligible" means a student who is eligible to receive a VTAG award as long as all VTAG criteria are met, subject to VTAG application deadlines and available funding.

B. Exempt distance learning students.

1. Exempt distance learning students are returning students who were enrolled as a distance learning student in 2019-2020 at a VTAG-eligible institution. These students are exempt from the requirement that VTAG awards for distance program be limited to up to \$2,000.

2. Exempt students may receive a VTAG award of up to the 2019-2020 award amounts as long as the student is VTAG-eligible.

a. Exempt undergraduate students may receive a VTAG award at the 2019-2020 maximum annual award amount for undergraduate students, which was \$3,400, split into \$1,700 awards each for fall and spring terms.

b. Exempt graduate students may receive a VTAG award at the 2019-2020 maximum annual award amount for graduate students, which was \$1,700, split into \$850 awards each for fall and spring terms.

c. If funding levels are insufficient to provide full awards for all priority VTAG-eligible students, these award levels may be reduced at the same rate of reduction used for all other priority VTAG awards for the same term.

3. Exempt distance learning students remain eligible for the 2019-2020 award levels under the following conditions:

a. The student maintains enrollment in each successive fiscal year, unless granted an exception for cause by SCHEV.

(1) To maintain enrollment, the student must enroll into at least one course in any term per fiscal year (fall/winter/spring, if applicable) at a VTAG-eligible institution, whether as a continuing student or as a transfer student.

(a) Students maintaining enrollment retain current and future eligibility at the 2019-2020 award levels as long as the student is VTAG-eligible.

(b) Non-enrollment in a summer term does not disqualify the student.

(2) Students failing to maintain continuous enrollment due to circumstances beyond their control may appeal to SCHEV. SCHEV authorizes the institutions to grant exceptions for breaks in enrollment specifically due to a military-related move or a verified health-related circumstance.

b. The student is eligible until current degree completion.

(1) Eligibility at the 2019-2020 award levels continues until completion of the degree level at which the student was last enrolled in 2019-2020.

(a) If the student's 2019-2020 enrollment includes multiple degree levels, eligibility tracks with the last degree level officially recognized in 2019-2020.

(b) Eligibility at the 2019-2020 award levels is not impacted by a change in major as long as the student remains enrolled within the same degree level.

(2) Eligibility at the 2019-2020 award levels does not extend to a subsequent second degree at the same level, even if continuous enrollment is maintained.

(3) Eligibility at the 2019-2020 award levels does not extend to an advanced degree, even if continuous enrollment is maintained.

c. The student is eligible until current degree program eligibility limits have otherwise expired.

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(1) Students pursuing an associate degree in 2019-2020 may receive a maximum lifetime total of two years of VTAG toward an associate degree, regardless of whether the degree program has been completed after two years.

(2) Students pursuing a baccalaureate degree in 2019-2020 may receive a maximum lifetime total of four years of VTAG toward an undergraduate degree (associate and baccalaureate combined), regardless of whether the degree program has been completed after four years.

(3) Students pursuing a graduate degree in health professions in 2019-2020 may receive a maximum lifetime total of four years of VTAG toward a graduate or professional level degree, regardless of whether the degree program has been completed after four years.

(4) Such usage restrictions are lifetime cumulative receipt of VTAG regardless of mode of learning or award differentials.

d. Students are disqualified from retaining future eligibility at the 2019-2020 award levels once any one or more of the disqualifiers in this section occurs.

e. Such students enrolled in 2019-2020 retain eligibility for the 2019-2020 award amounts regardless of whether VTAG was actually received. As long as the student meets the requirements in this section, the student does not lose future eligibility at the 2019-2020 award level if VTAG is removed:

(1) Due to less than full-time enrollment; or

(2) To avoid a financial aid over award.

4. Exempt distance learning students transitioning to a place-based or residential degree program.

a. Nothing in the restriction prohibits such student from receiving VTAG at the prevailing rate for place-based students upon transitioning to place-based instruction.

b. Exempt students moving from distance learning to place-based instruction and then back to distance learning retain eligibility at the 2019-2020 award rate as long as the eligibility requirements listed in this section continue to be met.

5. Exempt distance learning students failing to meet the eligibility criteria listed in this section.

a. If moving to place-based instruction are eligible at the prevailing place-based award amount.

b. If remain enrolled in distance learning are eligible at the reduced distance learning award amount.

C. Distance learning nonexempt students.

1. New students enrolled into a distance-learning program of study are eligible for VTAG at the reduced distance learning award amount as long as the student is VTAG-eligible.

2. Distance learning nonexempt student status includes:

a. Students who were previously place-based who subsequently enroll into a distance learning program of study but were not in a distance learning program in 2019-2020.

b. Place-based students whose enrollment within a single term consists entirely of distance learning courses. Exceptions may be applicable if the institution differentiates between a place-based (residential) degree program and a distance learning program and the student is charged the place-based tuition rate.

c. Former distance learning students who were not enrolled in 2019-2020 into a VTAG participating institution who then return to distance learning instruction.

d. All new incoming students enrolled into a distance learning program. A new incoming student enrolled exclusively in an online education or distance learning program is any student who was not enrolled as a distance learning student into a VTAG-eligible institution in the 2019-2020 academic year, which includes (i) incoming first-year students beginning as of fall 2020, (ii) students previously enrolled at the institution, and (iii) transfer students who were not enrolled at a VTAG-eligible institution in 2019-2020 in a distance learning program, regardless of class level.

e. All distance learning students will fall under either exempt or nonexempt categories of distance learning students.

D. Place-based students.

1. Place-based students are eligible for VTAG at the prevailing award amount as long as the student is VTAG-eligible.

2. Being VTAG-eligible includes:

a. Place-based students partially enrolled into distance learning courses. Partial enrollment into distance learning courses does not disqualify the student and these courses may count toward the full-time enrollment requirement.

b. Former distance learning students who subsequently enroll into place-based instruction.

c. Place-based students whose enrollment within a single term consists entirely of distance learning courses are eligible at the reduced distance learning award amount. Exceptions may be made for special circumstances, including medical, if the student continues to be enrolled into a place-based program and charged at the place-based tuition rates.

E. Special rules during a declared pandemic:

1. The special rules in this subsection are effective for any term in which the institution opts to provide only distance learning education for fall 2020 or thereafter as long as a pandemic is declared.

2. New students and returning students enrolled into place-based instruction retain VTAG eligibility at the prevailing award amount if the student is enrolled entirely in distance learning courses as required by the institution due to ongoing COVID-19 related concerns or for validated individual student COVID-19 health concerns. Eligibility shall continue for such students provided that the student returns to place-based instruction as soon as it is available.

3. New incoming students enrolled into a distance learning program shall be eligible for the reduced distance learning award amount regardless of whether distance learning is the only option available due to on-going COVID-19 related concerns.

VA.R. Doc. No. R22-7309; Filed July 7, 2022, 3:00 p.m.



TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

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

Title of Regulation: 9VAC25-410. **Occoquan Policy (amending 9VAC25-410-20, 9VAC25-410-30, 9VAC25-410-40).**

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

Effective Date: August 31, 2022.

Agency Contact: Sarah Sivers, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (571) 408-3157, FAX (804) 698-4178, or email sarah.sivers@deq.virginia.gov.

Summary:

Pursuant to Chapters 144 and 356 of the 2022 Acts of Assembly, the amendments (i) incorporate a provision that Virginia Pollutant Discharge Elimination System permits may also be issued to an existing sewage treatment plant constructed and placed into service prior to January 1, 2001, serving no fewer than 10 homes but no more than 25 homes if such sewage treatment plant has a documented history of substantial noncompliance and it is not feasible to connect to a publicly owned sewage treatment plant and (ii) transfer the State Water Control Board's existing authority to issue permits and orders to

the Department of Environmental Quality and provide procedures for public comment on pending controversial permits

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~~ Department of Environmental Quality (department).

B. Regional plant capacity allocations for the Occoquan basin.

1. The initial allotment of plant capacity for the Upper Occoquan 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 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~~ department based on the results of a monitoring program 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~~ department 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~~ department 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~~

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department 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 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 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~~ five 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~~ department; 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~~ department 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~~ department approval. These submittals shall also include:

a. Simplified fluid system diagrams 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 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 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 department 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 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 department 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 department for review that the sewer system tributary to the pump station meets the criteria established by the most recent edition of the Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) for infiltration/inflow, and any other such information that the board department may require.

6. The major junctions in the collection system (e.g., at least at the \pm one to \pm two 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 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 department.

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 department 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 department.

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

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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~~ department, at its discretion, can request the owner to submit to the ~~board~~ department for its approval the ordinances and rules that will be used to meet the ~~board's~~ department'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 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~~ department 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 (9VAC25-31-10 et seq.).

2. VPDES permits may be issued ~~for~~:

a. 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 that are shown to be feasible and no other alternatives are available.

b. To an existing sewage treatment plant constructed and placed into service prior to January 1, 2001, serving no fewer than 10 homes but no more than 25 homes if such sewage treatment plant has a documented history of substantial noncompliance and it is not feasible to connect to a publicly owned sewage treatment plant.

3. No permit as authorized in subdivisions 1 and 2 a 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.

9VAC25-410-30. Expansion of existing plants in the Occoquan watershed.

A. One of the objectives of the Occoquan Policy is to reduce water quality problems in the Occoquan watershed due to pollution from point sources. To date the means of accomplishing this objective have been the construction and utilization of a high-performance regional plant - the Upper Occoquan Sewage Authority (UOSA) - and the elimination of 11 low-performance treatment plants in favor of the UOSA facility. The 11 low-performance treatment plants constituted the major point sources of pollution in the Occoquan Watershed; however, there are a number of smaller sewage treatment facilities which are still discharging. These facilities were not connected to the regional facility for at least one of the following reasons: (i) a collector system to the regional plant was not constructed in close enough proximity to provide service, or (ii) the small facility was outside of the service area for the regional plant. At some point in the future, these remaining plants may wish to expand and increase their flows.

B. Existing waste treatment facilities may be expanded to receive increased sewage flows; however, the degree of treatment must also be upgraded so that there will be no increase in the quantity of pollutant loadings discharged to the receiving stream. A no-discharge land-application system may be considered in lieu of upgrading a facility.

C. Plants not meeting approved design performance limits will not be allowed additional capacity until the owner has installed additional treatment and demonstrated by means of a minimum of three months of performance data that the plant has been brought within its approved design performance levels and can accept additional waste loads without exceeding such approved design performance levels.

D. No expansion or continued discharge shall be approved if it is feasible for the flow to be directed to a regional plant.

E. Proposed interim expansion of plants shall be reviewed with the appropriate regional sewage authority to assure that such expansions are coordinated with the authority regional plans and can be readily incorporated into the regional system.

F. The plans and specifications for expansion of collection and interceptor systems shall be reviewed with the appropriate regional sewage authority for its comments before they are submitted to the ~~board~~ Department of Environmental Quality (department) and the Virginia Department of Health for approval. Any proposed expansion of collection and interceptor systems shall meet the technical and administrative requirements of 9VAC25-410-20 F, and the jurisdiction proposing such an expansion shall submit a formal letter to the ~~board~~ department stating that its expansion will meet the requirements of 9VAC25-410-20 F.

9VAC25-410-40. Occoquan Watershed Monitoring Program (OWMP).

Due to the critical nature of the receiving waters, intensive monitoring will be required to ensure that plants achieve desired performance levels at all times, and the effects of point sources and nonpoint sources on the receiving waters are measured and projected.

1. Watershed monitoring subcommittee.

a. In order to ensure that performance levels are maintained and that the effects of point sources and nonpoint sources on receiving waters are known, a watershed monitoring subcommittee shall be established and shall be convened at least once each calendar year. A subcommittee of this type must necessarily be composed of high-caliber personnel knowledgeable in the field of water and wastewater treatment and management. Accordingly, the subcommittee shall consist of two ex-officio members or their designated representatives as follows:

(1) Director of Virginia Department of Health's Division of Water Programs;

(2) Director of Virginia Department of Conservation and Recreation's Division of Soil and Water Conservation; and three other members or their designated representatives as follows:

(a) A representative of the Environmental Protection Agency;

(b) A representative of a state university in Virginia; and

(c) A nationally recognized consultant in the water and wastewater treatment or water quality management fields.

b. The ex-officio members shall select and submit to the ~~board~~ Department of Environmental Quality (department) for approval the names of the other members of the subcommittee. The subcommittee shall elect a chairman.

c. From time to time the subcommittee may seek additional expert advice.

2. Monitoring subcommittee's responsibilities. The watershed monitoring subcommittee shall have the following responsibilities:

a. To oversee that there is adequate monitoring of the regional plant effluent and process control testing at the regional plant;

b. To develop a water quality monitoring program for the Occoquan reservoir and its tributary streams to ensure that there is a continuous record of water quality available. To further ensure that projections are made to determine the effect of additional waste loading from point sources as well as nonpoint sources;

c. To ensure that the stream monitoring program is separate and distinct from plant process control testing and effluent monitoring;

d. To review data collected from the monitoring program and submit to the ~~board~~ department and the various jurisdictions reports on the status of plant performance and water quality in the watershed at least once each year;

e. To report to the ~~board~~ department immediately significant changes in plant performance or water quality due to either point source or non-point source pollution;

f. To maintain close liaison with the Fairfax County Water Authority in order to ensure satisfactory raw water which can be adequately treated at the authority's facilities; and

g. To establish the Occoquan Watershed Monitoring Laboratory (OWML) to conduct sampling and analyses to fulfill the above responsibilities.

3. Provision for restructuring of the OWMP.

a. The Occoquan Watershed Monitoring Program (OWMP) and the Occoquan Watershed Monitoring Laboratory (OWML) were established in accordance with the above provisions. This was done on July 1, 1972. Since that time a large body of information regarding the functioning of the Occoquan reservoir system has been accumulated. Major point sources have been consolidated into and eliminated by a high-performance sewage treatment facility (UOSA). As growth increases in the watershed, this trend is expected to continue.

b. The work performed by OWML has indicated that the key to water quality is a two part issue. Those parts are point source pollution and non-point source pollution. Point source discharges in the watershed are currently regulated by the ~~board's~~ department's VPDES permit program. Non-point sources of pollution are currently being addressed by state and local voluntary and mandatory control programs. However, in the future it may be necessary that additional mandatory programs be adopted.

c. The program shall be evaluated periodically for restructuring to account for shifts in monitoring trends and funding and any recommended restructuring approved by the ~~board~~ department prior to implementation. The regional sewage plants are ultimately responsible for the monitoring program with the exception of the non-point source elements.

4. Financing the OWMP.

a. It is recommended that the cost of the OWMP be split equally between water supply and sewage uses. This would mean that the Fairfax County Water Authority would have to fund half of the OWMP budget while the counties of Fairfax, Prince William, Loudoun, and Fauquier and the cities of Manassas and Manassas Park would be responsible for jointly funding the other half. That portion of the OWMP budget funded by the counties and cities would be divided so that each jurisdiction would be charged in proportion to its allotted sewage capacity in

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the Occoquan watershed. The budget shall be reviewed by the jurisdictions prior to approval by the subcommittee.

b. Written agreements shall be obtained from each of the jurisdictions which shall commit them to supply the above funds yearly to finance the OWMP. This monitoring program is for their protection and benefit. If for some reason a county or city does not wish to retain its sewage allotment in the Occoquan watershed or will not fund the monitoring program, then its allotment can be divided up among the remaining participating jurisdictions, with their portion of the cost of the monitoring program rising accordingly. The regional sewage plants are ultimately responsible for monitoring with the exception of non-point source elements.

c. If federal funds and assistance can be obtained, the cost to the counties and the Fairfax County Water Authority will be reduced proportionally. The funding of the program without federal funds is to be assumed, so as not to further delay or complicate the initiation of this program.

d. The Office of Sponsored Programs, Virginia Polytechnic Institute and State University, has agreed to be responsible for billing, receiving, and disbursement of funds to the OWMP.

VA.R. Doc. No. R22-7164; Filed June 30, 2022, 7:18 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 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC25-830. Chesapeake Bay Preservation Area Designation and Management Regulations (amending 9VAC25-830-40, 9VAC25-830-60, 9VAC25-830-90, 9VAC25-830-130, 9VAC25-830-140, 9VAC25-830-210, 9VAC25-830-220, 9VAC25-830-240 through 9VAC25-830-270; repealing 9VAC25-830-280).

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

Effective Date: August 31, 2022.

Agency Contact: Justin L. Williams, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1125, FAX (804) 698-4178, or email justin.williams@deq.virginia.gov.

Summary:

Pursuant to Chapters 207, 356, and 485 of the 2022 Acts of the Assembly, the amendments (i) replace "board" with "department" to reflect the limitation of the State Water Control Board's authority; (ii) add requirements effective July 1, 2023, related to compliance with onsite sewage system pump-outs to be managed and enforced by the Virginia Department of Health in Accomack, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland Counties and the incorporated towns within those counties; and (iii) require localities in Tidewater Virginia to publish criteria and elements adopted by the locality to implement its local plan on the locality's website as required by the Chesapeake Bay Preservation Act.

9VAC25-830-40. Definitions.

The following words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 62.1-44.15:68 of the Act.

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

"Adaptation measure" means a project, practice, or approach to mitigate or address an impact of climate change including sea-level rise, storm surge, and flooding including increased or recurrent flooding.

"Best management practice" means a practice, or combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Buffer area" means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

"Canopy tree" means a tree that typically reaches 35 feet in height or taller when mature.

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

"Daylighted stream" means a stream that had been previously diverted into an underground drainage system and has been redirected into an aboveground channel using natural channel design concepts as defined in § 62.1-44.15:51 of the Code of Virginia, and where the adjacent lands would meet the criteria for being designated as a Resource Protection Area (RPA) as defined by the ~~board~~ department under this chapter.

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

"Development" means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

"Director" means the Director of the Department of Environmental Quality.

"Erosion and Sediment Control Law" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Floodplain" means all lands that would be inundated by flood water as a result of a storm event of a 100-year return interval.

"Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula $RKLS/T$, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

"Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation Service.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include roofs, buildings, streets, parking areas, and any concrete, asphalt or compacted gravel surface.

"Infill" means utilization of vacant land in previously developed areas.

"Intensely Developed Areas" means those areas designated by the local government pursuant to 9VAC25-830-100.

"Local governments" means counties, cities, and towns. This chapter applies to local governments in Tidewater Virginia, as defined in § 62.1-44.15:68 of the Act, but the provisions of this chapter may be used by other local governments.

"Local program" means the measures by which a local government complies with the Act and this chapter.

"Local program adoption date" means the date a local government meets the requirements of subdivisions 1 and 2 of 9VAC25-830-60.

"Mature tree" means a canopy tree with a diameter at breast height (DBH) of 12 inches or greater or an understory tree with a DBH of four inches or greater.

"Nature-based solution" means an approach that reduces the impacts of sea-level rise, flooding and storm events through the use of environmental processes and natural systems.

"Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 33 CFR 328.3b.

"Plan of development" means any process for site plan review in local zoning and land development regulations designed to ensure compliance with § 62.1-44.15:74 of the Act and this chapter, prior to issuance of a building permit.

"Public road" means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law and (ii) the Virginia Stormwater Management Act. This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government.

"Redevelopment" means the process of developing land that is or has been previously developed.

"Resource Management Area" means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area.

"Resource Protection Area" means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts that may result in significant degradation to the quality of state waters.

"Silvicultural activities" means forest management activities, including the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation

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of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under § 58.1-3230 of the Code of Virginia.

"Substantial alteration" means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the Resource Management Area only.

"Tidal shore" or "shore" means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

"Tidal wetlands" means vegetated and nonvegetated wetlands as defined in § 28.2-1300 of the Code of Virginia.

"Tidewater Virginia" means those jurisdictions named in § 62.1-44.15:68 of the Act.

"Understory tree" means a tree that typically reaches 12 feet to 35 feet in height when mature.

"Use" means an activity on the land other than development including agriculture, horticulture and silviculture.

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

"Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources facilities.

9VAC25-830-60. Elements of program.

A. Local programs shall contain the elements listed below.

1. A map delineating Chesapeake Bay Preservation Areas.
2. Performance criteria applying in Chesapeake Bay Preservation Areas that employ the requirements in Part IV (9VAC25-830-120 et seq.) of this chapter.
3. A comprehensive plan or revision that incorporates the protection of Chesapeake Bay Preservation Areas and of the quality of state waters, in accordance with criteria set forth in Part V (9VAC25-830-160 et seq.) of this chapter.
4. A zoning ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, as set forth in Part VI (9VAC25-830-180 et seq.) of this chapter, and (ii) requires compliance

with all criteria set forth in Part IV (9VAC25-830-120 et seq.) of this chapter.

5. A subdivision ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, as set forth in Part VI (9VAC25-830-180 et seq.) of this chapter, and (ii) assures that all subdivisions in Chesapeake Bay Preservation Areas comply with the criteria set forth in Part IV (9VAC25-830-120 et seq.) of this chapter.

6. A plan of development process prior to the issuance of a building permit to assure that use and development of land in Chesapeake Bay Preservation Areas is accomplished in a manner that protects the quality of state waters.

B. Each local government in Tidewater Virginia shall publish on its website the elements and criteria adopted to implement the local government's local plan, including those elements and criteria required by subsection A of this section.

9VAC25-830-90. Resource Management Areas.

A. Resource Management Areas shall include land types that, if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

B. A Resource Management Area shall be provided contiguous to the entire inland boundary of the Resource Protection Area. The following land categories shall be considered for inclusion in the Resource Management Area and, where mapping resources indicate the presence of these land types contiguous to the Resource Protection Area, should be included in designations of Resource Management Areas:

1. Floodplains;
2. Highly erodible soils, including steep slopes;
3. Highly permeable soils;
4. Nontidal wetlands not included in the Resource Protection Area; and
5. Such other lands considered by the local government to meet the provisions of subsection A of this section and to be necessary to protect the quality of state waters.

C. Resource Management Areas shall encompass a land area large enough to provide significant water quality protection through the employment of the criteria in Part IV (9VAC25-830-120 et seq.) and the requirements in Parts II (9VAC25-830-50 et seq.) and V (9VAC25-830-160 et seq.) of this chapter.

1. Local governments with few or no Resource Management Area land types evident from available mapping resources should evaluate the relationships of the following land categories to water quality protection in making their Resource Management Area designations. The ~~board~~ department will consider the degree to which these land

categories are included when evaluating the consistency of a locality's Resource Management Area designation for achievement of significant water quality protection:

- a. Known Resource Management Area land types;
- b. Developable land within the jurisdiction;
- c. Areas targeted for redevelopment; and
- d. Areas served by piped or channelized stormwater drainage systems which provide no treatment of stormwater discharges.

2. Localities with no mapping resources or with mapping resources for only portions of their jurisdiction should evaluate the relationships of the following land categories to water quality protection in making their Resource Management Area designations. The ~~board~~ department will consider the degree to which these land categories are included when evaluating the consistency of a local government's Resource Management Area designation for achievement of significant water quality protection. Furthermore, such designations may be considered an interim designation until such time as appropriate mapping resources become available if such resources are considered by the ~~board~~ department to be useful in determining the Resource Management Area boundaries, in which case the ~~board~~ department will reevaluate the interim Resource Management Area designations at a later date:

- a. Known Resource Management Area land types;
- b. Developable land within the jurisdiction;
- c. Areas targeted for redevelopment; and
- d. Areas served by piped or channelized stormwater drainage systems which provide no treatment of stormwater discharges.

3. Local governments should consider extending the Resource Management Area boundary to the remainder of the lot, parcel, or development project upon which Resource Management Area-type features are present.

4. Local governments shall demonstrate how significant water quality protection will be achieved within designated Resource Management Areas, as well as by each local program as a whole, and to explain the rationale for excluding eligible Resource Management Area components that are not designated.

5. It is not the intent of the board, nor is it the intent of the Act or this chapter, to require that local governments designate all lands within their jurisdiction as Chesapeake Bay Preservation Areas. It is also not the intent of the board to discourage or preclude jurisdiction-wide designations of Resource Management Areas when the local government considers such designations appropriate, recognizing that greater water quality protection will result from more expansive implementation of the performance criteria. The extent of the Resource Management Area designation should

always be based on the prevalence and relation of Resource Management Area land types and other appropriate land areas to water quality protection.

9VAC25-830-130. General performance criteria.

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

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

2. Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development proposed. Mature trees shall be protected during development and only removed where necessary, including to provide for the proposed use or development.

A locality which has an ordinance providing for the conservation, planting, and replacement of trees during the land development process pursuant to § 15.2-961 or 15.2-961.1 of the Code of Virginia may rely on such ordinance for demonstrating compliance with this requirement related to mature trees in Resource Management Areas.

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

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

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

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

7. Onsite sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:

- a. Have pump-out accomplished for all such systems at least once every five years.

(1) If deemed appropriate by the local health department and subject to conditions the local health department may

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set, local governments may offer to the owners of such systems, as an alternative to the mandatory pump-out, the option of having a plastic filter installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter should satisfy standards established in the Sewage Handling and Disposal Regulations (12VAC5-610) administered by the Virginia Department of Health.

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

(3) Effective July 1, 2023, requirements of this section directly related to compliance with onsite sewage system pump-outs shall be managed and enforced by the Virginia Department of Health in Accomack, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland Counties and the incorporated towns within those counties.

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

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

(2) An area equaling 50% of the area that would otherwise be required for the primary drainfield site must be reserved for subsurface absorption systems that utilize a flow diversion device, in order to provide for future replacement or repair to meet the requirements for a

sewage disposal system. Expansion of the primary system will require an expansion of this reserve area.

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

(a) Sand mounds;

(b) Low-pressure distribution systems;

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

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

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

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

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

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

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

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

8. Land upon which agricultural activities are being conducted, including crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and, where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Act and this chapter.

a. Recommendations for additional conservation practices need address only those conservation issues applicable to

the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

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

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

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

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

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

9. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this chapter provided that

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

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

9VAC25-830-140. Development criteria for Resource Protection Areas.

In addition to the general performance criteria set forth in 9VAC25-830-130, the criteria in this section are applicable in Resource Protection Areas.

1. Land development may be allowed in the Resource Protection Area, subject to approval by the local government, only if it (i) is water dependent; (ii) constitutes redevelopment; (iii) constitutes development or redevelopment within a designated Intensely Developed Area; (iv) is a new use established pursuant to subdivision 4 a of this section; (v) is a road or driveway crossing satisfying the conditions set forth in subdivision 1 d of this section; or (vi) is a flood control or stormwater management facility satisfying the conditions set forth in subdivision 1 e of this section.

a. A water quality impact assessment in accordance with subdivision 6 of this section shall be required for any proposed land disturbance.

b. A new or expanded water-dependent facility may be allowed provided that the following criteria are met:

(1) It does not conflict with the comprehensive plan;

(2) It complies with the performance criteria set forth in 9VAC25-830-130;

(3) Any nonwater-dependent component is located outside of Resource Protection Areas; and

(4) Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

c. Redevelopment outside locally designated Intensely Developed Areas shall be permitted in the Resource Protection Area only if there is no increase in the amount of impervious cover and no further encroachment within the Resource Protection Area, and it shall conform to applicable erosion and sediment control and stormwater management criteria set forth in the Erosion and Sediment Control Law and the Virginia Stormwater Management Act and their attendant regulations, as well as all applicable stormwater management requirements of other state and federal agencies.

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d. Roads and driveways not exempt under subdivision B 1 of 9VAC25-830-150 and which, therefore, must comply with the provisions of this chapter, may be constructed in or across Resource Protection Areas if each of the following conditions is met:

(1) The local government makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area;

(2) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality;

(3) The design and construction of the road or driveway satisfy all applicable criteria of this chapter, including submission of a water quality impact assessment; and

(4) The local government reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with local government site plan, subdivision and plan of development approvals.

e. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas provided such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and its attendant regulations, and provided that (i) the local government has conclusively established that location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 9VAC25-870-92 of the Virginia Stormwater Management Program (VSMP) regulations; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

2. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempt from the criteria of this part provided that they comply with subdivisions a and b of this subdivision 2: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities:

a. Local governments shall establish administrative procedures to review such exemptions.

b. Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control criteria in subdivision 5 of 9VAC25-830-130.

3. Buffer area requirements. The 100-foot wide buffer area shall be the landward component of the Resource Protection Area as set forth in subdivision B 5 of 9VAC25-830-80. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width. To minimize the adverse effects of human activities on the other components of the Resource Protection Area, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. Where such buffer must be established, the planting of trees shall be incorporated as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.

a. The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.

b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this chapter. Where such buffer must be reestablished, the planting of trees shall be incorporated as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.

4. Permitted encroachments into the buffer area.

a. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

(1) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.

(2) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel. Such vegetated area where established shall include the planting of trees as appropriate to site conditions. Inclusion of native species in tree planting is preferred.

(3) The encroachment may not extend into the seaward 50 feet of the buffer area.

b. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989, and March 1, 2002, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

(1) The lot or parcel was created as a result of a legal process conducted in conformity with the local government's subdivision regulations;

(2) Conditions or mitigation measures imposed through a previously approved exception shall be met;

(3) If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and

(4) The criteria in subdivision 4 a of this section shall be met.

5. Permitted modifications of the buffer area.

a. In order to maintain the functional value of the buffer area, existing vegetation may be removed, subject to approval by the local government, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows:

(1) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. Mature trees shall be preserved and trimmed or pruned in lieu of removal as site conditions permit and any removal should be limited to the fewest number of trees feasible. When trees are removed to provide for sight lines and vista, they shall be replaced with trees as appropriate to site conditions and in such a manner as to maximize the buffer function and to protect the quality of state waters. Inclusion of native species in tree replanting is preferred.

(2) Any path shall be constructed and surfaced so as to effectively control erosion.

(3) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practice incorporated into locally-adopted standards.

(4) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the

best available technical advice and applicable permit conditions or requirements. Mature trees shall be removed only as necessary for the installation and maintenance of the projects consistent with the best available technical advice project plans, and applicable permit conditions or requirements. Trees shall be utilized in the project when vegetation is being established as appropriate to the site conditions and the project specifications. Inclusion of native species in tree planting is preferred.

b. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:

(1) Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—erosion control or nutrient management—is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the Nutrient Management Training and Certification Regulations (4VAC50-85) administered by the Virginia Soil and Water Conservation Board.

(2) Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be developed, consistent with the Nutrient Management Training and Certification Regulations (4VAC50-85) administered by the Virginia Soil and Water Conservation Board. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

(3) The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best

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management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—either erosion control or nutrient management—is being implemented on the adjacent land.

(4) If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the local government, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

(5) In cases where the landowner or the landowner's agent or operator has refused assistance from the local soil and water conservation district in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the local government. The local government shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

6. Water quality impact assessment. A water quality impact assessment shall be required for any proposed development within the Resource Protection Area consistent with this part and for any other development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.

a. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in the Resource Protection Areas consistent with the goals and objectives of the Act, this chapter, and local programs, and to determine specific measures for mitigation of those impacts. The specific content and procedures for the water quality impact assessment shall be established by each local government. Local governments should notify the board department of all development requiring such an assessment.

b. The water quality impact assessment shall be of sufficient specificity to demonstrate compliance with the criteria of the local program.

7. Buffer area requirements for Intensely Developed Areas. In Intensely Developed Areas the local government may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, local governments shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation. In considering such measures, local governments shall consider the planting of trees as a component of any such measure. Inclusion of native species in tree planting is preferred.

9VAC25-830-210. Local assistance guidance.

A. The department will prepare guidance to assist local governments in the administration of local programs in order to implement the Act and this chapter. The guidance will be updated periodically to reflect the most current planning and zoning techniques, effective best management practices, and amendments to the Act or regulations. The guidance will be made available to the public.

B. The guidance will recommend a schedule for the completion of local program elements and their submission to the board department for its information to ensure timely achievement of the requirements of the Act and timely receipt of assistance. The board department will consider compliance with the schedule in allocating financial and technical assistance.

9VAC25-830-220. ~~Board~~ Department to establish liaison.

The board department will establish liaison with each local government to assist the local government in developing and implementing its local program, in obtaining technical and financial assistance, and in complying with the Act and this chapter.

9VAC25-830-240. Preparation and submission of management program.

Local governments must adopt the full management program, which will consist of Phases I-III as defined in this section and including any revisions to comprehensive plans, zoning ordinances, subdivision ordinances, and other local authorities necessary to implement the Act. Prior to adoption, local governments may submit any proposed revisions to the board department for comments. Criteria are provided below for local government use in preparing local programs and the board's department's use in determining local program consistency.

1. Phase I shall consist of the designation of Chesapeake Bay Preservation Areas and adoption of the performance criteria. This phase of designating Chesapeake Bay Preservation Areas as an element of the local program should include:

a. Utilizing existing data and mapping resources to identify and describe tidal wetlands, nontidal wetlands,

tidal shores, water bodies with perennial flow, flood plains, highly erodible soils including steep slopes, highly permeable areas, and other sensitive environmental resources as necessary to comply with Part III (9VAC25-830-70 et seq.) of this chapter;

b. Determining, based upon the identification and description, the extent of Chesapeake Bay Preservation Areas within the local jurisdiction;

c. Preparing an appropriate map or maps delineating Chesapeake Bay Preservation Areas;

d. Preparing amendments to local ordinances that incorporate the performance criteria of Part IV (9VAC25-830-120 et seq.) of this chapter or the model ordinance prepared by the board department;

e. Establishing, if necessary, and incorporating a plan of development review process. Local governments shall make provisions as necessary to ensure that any development of land within Chesapeake Bay Preservation Areas shall be accomplished through a plan of development procedure pursuant to § 15.2-2286 A 8 of the Code of Virginia to ensure compliance with the Act and this chapter. Any exemptions from those review requirements shall be established and administered in a manner that ensures compliance with this chapter.

f. Conducting a public hearing. Prior to adopting Chesapeake Bay Preservation Areas and the performance criteria, each local government shall hold a public hearing to solicit public comment regarding these local program components.

g. Providing copies of the adopted program documents and subsequent changes thereto to the board department for consistency review, as set forth in subdivision 5 of this section.

2. Phase II shall consist of local governments reviewing and revising their comprehensive plans, as necessary, for compliance with § 62.1-44.15:74 of the Act, in accordance with the provisions set forth in Part V (9VAC25-830-160 et seq.) of this chapter.

3. Phase III shall consist of local governments reviewing and revising their land development regulations and processes, which include but are not limited to zoning ordinances, subdivision ordinances, and the plan of development review process, as necessary, to comply with § 62.1-44.15:74 of the Act and to be consistent with the provisions set forth in Part VI (9VAC25-830-180 et seq.) of this chapter.

4. Consistent with §§ 62.1-44.15:73, 62.1-44.15:74, and 62.1-44.15:77 of the Act local governments may use civil penalties to enforce compliance with the requirements of local programs.

5. Review by the board department.

a. The board department will review proposed elements of a program phase within 60 days according to review

policies adopted by the board department. If the proposed program phase is consistent with the Act, the board department will schedule a conference with the local government to determine what additional technical and financial assistance may be needed and available to accomplish the proposed program phase. If the proposed program phase or any part thereof is not consistent, the board department will notify the local government in writing, stating the reasons for a determination of inconsistency and specifying needed changes. Copies of the adopted program documents and subsequent changes thereto shall be provided to the board department.

b. The board department will review locally adopted elements of a program phase according to review policies adopted by the board and as set forth in 9VAC25-830-260.

9VAC25-830-250. Applicability.

The Act requires that the board department ensure that local governments comply with the Act and regulations and that their comprehensive plans, zoning ordinances and subdivision ordinances are in accordance with the Act. To satisfy these requirements, the board has adopted this chapter, and the department will monitor each local government's compliance with the Act and this chapter.

9VAC25-830-260. Administrative proceedings.

Subdivision 8 of § 62.1-44.15:69 and § 62.1-44.15:71 of the Act provide that the board department shall ensure that local government comprehensive plans, subdivision ordinances and zoning ordinances are in accordance with the provisions of the Act, and that it shall determine such compliance in accordance with the provisions of the Administrative Process Act. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern the review activities and proceedings of the board department and the judicial review thereof. The board department will provide a copy of its decision to the local government. If any deficiencies are found, the board department will establish a schedule for the local government to come into compliance.

1. In order to carry out its mandated responsibilities under subdivision 10 of § 62.1-44.15:69 and § 62.1-44.15:71 of the Act, the board department will:

a. Require that each Tidewater local government submit an annual implementation report outlining the implementation of the local program. The board department will develop reporting criteria which outline the information to be included in the reports and the time frame for their submission. The board department will use the information in these reports to assess local patterns of compliance with the Act and this chapter and to evaluate the need for an administrative proceeding to more closely review any individual local government's compliance. All proceedings of this nature will be developed and conducted in accordance with this section.

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b. Develop a compliance review process. Reviews will occur on a five-year cycle, and, when feasible, will be conducted as part of the local government's comprehensive plan review and update process. The department may also conduct a comprehensive or partial program compliance review and evaluation of a local government program more frequently than the standard schedule. The review process shall consist of a self-evaluation by each local government of local program implementation and enforcement as well as an evaluation by department staff. Based on these evaluations, the board department may find the program compliant or, if deficiencies are found, the board department will establish a corrective action plan and a schedule for the local government to come into compliance. The board department shall provide a copy of its decision to the local government that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule. If the local government has not implemented the necessary compliance actions identified by the board department within the schedule established by the board department, or such additional period as is granted to complete the implementation of the compliance actions, then the board department shall have the authority to issue a special order to any local government imposing a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per day per violation for noncompliance with the state program, to be paid into the state treasury and deposited into the Virginia Stormwater Management Fund established by § 62.1-44.15:29 of the Code of Virginia.

(1) The self-evaluation shall be conducted by each local government according to procedures developed by the board department.

(2) At a minimum, the department staff's evaluation will include a review of previous annual reports and site visits.

2. Certification of a local program. Upon a satisfactory finding resulting from the compliance review process, the board department will certify that the local program is being implemented and enforced by the local government consistent with the Act and this chapter and is, therefore, in compliance. Such a certification shall be valid for a period of five years until the local government's next scheduled review, unless the board department finds a pattern of noncompliance during the interim period of time, pursuant to subdivision 1 of this section.

9VAC25-830-270. Legal proceedings.

Subdivision 10 of § 62.1-44.15:69 and § 62.1-44.15:71 of the Act provide that the board department shall take administrative and legal actions to ensure compliance by local governments with the provisions of the Act. Before taking legal action against a local government to ensure compliance, the board department shall, unless it finds extraordinary circumstances,

initiate a proceeding under the Act and 9VAC25-830-260 to obtain such compliance and give the local government at least 15 days notice of the time and place at which it will decide whether or not to take legal action. If it finds extraordinary circumstances, the board department may proceed directly to request the Attorney General to enforce compliance with the Act and this chapter. Administrative actions will be taken pursuant to 9VAC25-830-260.

9VAC25-830-280. Delegation of authority. (Repealed.)

~~The director, 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.~~

VA.R. Doc. No. R22-7180; Filed July 12, 2022, 9:06 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 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC25-870. Virginia Stormwater Management Program (VSMP) Regulation (amending 9VAC25-870-10, 9VAC25-870-20, 9VAC25-870-45, 9VAC25-870-62, 9VAC25-870-65, 9VAC25-870-66, 9VAC25-870-69, 9VAC25-870-100, 9VAC25-870-102, 9VAC25-870-114, 9VAC25-870-116, 9VAC25-870-118, 9VAC25-870-142, 9VAC25-870-144, 9VAC25-870-146, 9VAC25-870-150, 9VAC25-870-300, 9VAC25-870-310, 9VAC25-870-330 through 9VAC25-870-460, 9VAC25-870-480, 9VAC25-870-490, 9VAC25-870-500, 9VAC25-870-520 through 9VAC25-870-590, 9VAC25-870-610 through 9VAC25-870-660, 9VAC25-870-680, 9VAC25-870-700, 9VAC25-870-740, 9VAC25-870-780, 9VAC25-870-820, 9VAC25-870-825, 9VAC25-870-830; adding 9VAC25-870-365, 9VAC25-870-555, 9VAC25-870-556, 9VAC25-870-557; repealing 9VAC25-870-670).

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

Effective Date: August 31, 2022.

Agency Contact: Scott Van Der Hyde, Regulatory Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 659-1541, FAX (804) 698-4178, or email scott.vanderhyde@deq.virginia.gov.

Summary:

Pursuant to Chapters 32, 160, and 356 of the 2022 Acts of Assembly, the amendments (i) transfer the State Water Control Board's existing authority to issue permits and

orders to the Department of Environmental Quality and provide procedures for public comment on pending controversial permits, including changing designations from board to department where appropriate and the definition of "board"; adding a definition for "controversial permit," language establishing permit rationale, criteria for requesting and granting a public hearing in a permit action, and language related to controversial permits and controversial permits reporting; and updating citations to the Code of Virginia; (ii) provide for certification and use of a proprietary best management practice if another state, regional, or national program has verified its nutrient or sediment removal effectiveness to having met or exceeded all of such program's established test protocol requirements; and (iii) authorize a locality that administers a Virginia Stormwater Management Program (VSMP) or a Virginia Erosion and Stormwater Management Program (VESMP) to administer such program of a regional industrial facility authority of which the locality is a member, which shall be conducted in accordance with an agreement entered into by relevant localities and the existing VSMP or VESMP for the property.

9VAC25-870-10. Definitions.

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

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

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

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

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

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

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

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

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

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

1. "Nonproprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are in the public domain and are not protected by trademark or patent or copyright.
2. "Proprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are privately owned and controlled and may be protected by trademark or patent or copyright.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

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

"Channel" means a natural or manmade waterway.

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

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

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area Designation and Management Regulations and § 62.1-

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44.15:74 of the Chesapeake Bay Preservation Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

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

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

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

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

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

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

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

"Controversial permit" means a water permitting action for which a public hearing has been granted pursuant to 9VAC25-870-550 and 9VAC25-870-555.

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

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

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations published in the Code of Federal

Regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

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

"Department" means the Department of Environmental Quality.

"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The regulation of discharges from development, for purposes of this chapter, does not include the exemptions found in 9VAC25-870-300.

"Direct discharge" means the discharge of a pollutant.

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

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

"Discharge of a pollutant" means:

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

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

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

"Draft state permit" means a document indicating the board's department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a state individual or general permit. A notice of intent to deny a state individual or general permit is a type of draft state permit. A denial of a

request for modification, revocation and reissuance, or termination is not a draft state permit.

"Drainage area" means a land area, water area, or both from which runoff flows to a common point.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

"Erosion and Sediment Control Law" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"ESC" means erosion and sediment control.

"Existing state permit" means for the purposes of this chapter a state permit issued by the ~~board~~ department and currently held by a state permit applicant.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VSMP.

"Flood fringe" means the portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes the flood or floodway fringe designated by the Federal Emergency Management Agency.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Floodplain" means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes the floodplain designated by the Federal Emergency Management Agency.

"Flood-prone area" means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than one foot. This includes the floodway designated by the Federal Emergency Management Agency.

"General permit" means a state permit authorizing a category of discharges under the CWA and the Act within a geographical area.

"Hazardous substance" means any substance designated under the Code of Virginia or 40 CFR Part 116 pursuant to § 311 of the CWA.

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically identified as another order.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or state permit (other than the state permit for discharges from the municipal separate storm sewer), discharges resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-870-400 D 2 c (3).

"Impervious cover" means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works (POTW)."

"Inspection" means an on-site review of the project's compliance with the permit or the state permit, the VSMP, and any applicable design criteria, or an on-site review to obtain

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information or conduct surveys or investigations necessary in the implementation or enforcement of the Act and this chapter.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Karst area" means any land area predominantly underlain at the surface or shallow subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface karst features.

"Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in § 62.1-44.15:34 of the Code of Virginia.

"Large construction activity" means construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);
2. Located in the counties listed in 40 CFR Part 122 Appendix H, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board department may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;

b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

c. The quantity and nature of pollutants discharged to surface waters;

d. The nature of the receiving surface waters; and

e. Other relevant factors;

4. The board department may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Layout" means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; (iii) highway construction projects; (iv) construction of stormwater channels and stream restoration activities; and (v) water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

"Locality" means a county, city, or town.

"Localized flooding" means smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions.

"Main channel" means the portion of the stormwater conveyance system that contains the base flow and small frequent storm events.

"Major facility" means any facility or activity classified as such by the regional administrator in conjunction with the board department.

"Major modification" means, for the purposes of this chapter, the modification or amendment of an existing state permit before its expiration that is not a minor modification as defined in this regulation.

"Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate

storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Manmade" means constructed by man.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G);
2. Located in the counties listed in 40 CFR Part 122 Appendix I, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board department may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;
 - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
 - c. The quantity and nature of pollutants discharged to surface waters;
 - d. The nature of the receiving surface waters; or
 - e. Other relevant factors;

4. The board department may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2, and 3 of this definition.

"Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls that are technologically available and economically practicable.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing state permit before its expiration for the reasons listed at 40 CFR 122.63 and as specified in 9VAC25-870-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor state permit modification or amendment does not substantially alter state permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 9VAC25-870-380 A 1.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a state permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of

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pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing state permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the CWA. The term includes an approved program.

"Natural channel design concepts" means the utilization of engineering analysis based on fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its floodplain.

"Natural stream" means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams; however, channels designed utilizing natural channel design concepts may be considered natural streams.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective separate VPDES or state permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a separate VPDES or state permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal

mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New permit" means, for the purposes of this chapter, a state permit issued by the ~~board~~ department to a state permit applicant that does not currently hold and has never held a state permit of that type, for that activity, at that location. An application for a new permit issued pursuant to this chapter, 9VAC25-880, or 9VAC25-890 shall not be subject to §§ 62.1-44.15:3 A and 62.1-44.15:4 D of the Code of Virginia.

"New source," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under § 306 of the CWA that are applicable to such source; or
2. After proposal of standards of performance in accordance with § 306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

"Oil and gas exploration, production, processing, or treatment operations or transmission facilities" means all field activities or operations associated with exploration, production, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity. (33 USC § 1362(24))

"Operator" means the owner or operator of any facility or activity subject to the Act and this chapter. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other state permit or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a

municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes or pollutants to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia, the Act and this chapter.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of general permit coverage has been provided where applicable.

"Permittee" means the person to whom the state permit or VSMP authority permit is issued, including any owner or operator whose construction site is covered under a state construction general permit.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including a federal, state, or local entity as applicable, any interstate body or any other legal entity.

"Point of discharge" means a location at which concentrated stormwater runoff is released.

"Point source" means any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well is used either to facilitate production or for disposal purposes and is approved by the board department and if the board department determines that the injection or disposal will not result in the degradation of groundwater or surface water resources.

"Pollutant discharge" means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered by stormwater runoff.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Postdevelopment" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site.

"Predevelopment" refers to the conditions that exist at the time that plans for the land development of a tract of land are submitted to the VSMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the first item being submitted shall establish predevelopment conditions.

"Prior developed lands" means land that has been previously utilized for residential, commercial, industrial, institutional,

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recreation, transportation, or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbing activity.

"Privately owned treatment works" or "PVOTW" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Qualified personnel" means a person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity. For VSMP authorities this requires the use of a person who holds a certificate of competency from the ~~board~~ department in the area of project inspection for ESC and project inspection for SWM or combined administrator for ESC and combined administrator for SWM as defined in 9VAC25-850-10 or a combination of ESC and SWM qualifications from these two areas.

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Revoked state permit" means, for the purposes of this chapter, an existing state permit that is terminated by the ~~board~~ department before its expiration.

"Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Runoff characteristics" includes maximum velocity, peak flow rate, volume, and flow duration.

"Runoff volume" means the volume of water that runs off the site from a prescribed design storm.

"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia) and (ii) eligible to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2 of the Code of Virginia.

"Schedule of compliance" means a schedule of remedial measures included in a state permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act, the CWA, and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns which are part of the county.

"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

"Site hydrology" means the movement of water on, across, through, and off the site as determined by parameters including soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and

less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The ~~board~~ department may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved "total maximum daily load" (TMDL) that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the ~~board~~ department that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis. As of the start date in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the waiver shall be submitted electronically by the owner or operator to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

2. Any other construction activity designated by either the ~~board~~ department or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal

separate storm sewer systems or designated under 9VAC25-870-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"State" means the Commonwealth of Virginia.

"State application" or "application" means the standard form or forms, including any additions, revisions, or modifications to the forms, approved by the administrator and the ~~board~~ department for applying for a state permit.

"State/EPA agreement" means an agreement between the EPA regional administrator and the state that coordinates EPA and state activities, responsibilities, and programs including those under the CWA and the Act.

"State permit" means an approval to conduct a land-disturbing activity issued by the ~~board~~ department in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the ~~board~~ department for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Act, and this chapter. As the mechanism that imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, a state permit for stormwater discharges from an MS4 and, after June 30, 2014, a state permit for conducting a land-disturbing activity issued pursuant to the Act, are also types of Virginia Pollutant Discharge Elimination System (VPDES) Permits. State permit does not include any state permit that has not yet been the subject of final ~~board~~ department action, such as a draft state permit. Approvals issued pursuant to this chapter, 9VAC25-880, and 9VAC25-890 are not issuances of a permit under § 62.1-44.15.01 of the Code of Virginia.

"State project" means any land development project that is undertaken by any state agency, board, commission, authority, or any branch of state government, including state-supported institutions of higher learning.

"State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

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"Stormwater conveyance system" means a combination of drainage components that are used to convey stormwater discharge, either within or downstream of the land-disturbing activity. This includes:

1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;
2. "Natural stormwater conveyance system" means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or
3. "Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

"Stormwater discharge associated with construction activity" means a discharge of stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

"Stormwater management facility" means a control measure that controls stormwater runoff and changes the characteristics of that runoff including the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a document containing material for describing methods for complying with the requirements of the VSMP or this chapter. An agreement in lieu of a stormwater management plan as defined in this chapter shall be considered to meet the requirements of a stormwater management plan.

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures and shall include or incorporate by reference an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. That are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

"SWM" means stormwater management.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"TMDL Action Plan" means the scheduled steps of activities that the MS4 operator will take to address the assumptions and

requirements of the TMDL wasteload allocation. TMDL action plans may be implemented in multiple phases over more than one state permit cycle.

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based state permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40 CFR Part 125, or in the applicable federal effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on § 301(c), § 301(g), § 301(h), § 301(i), or § 316(a) of the CWA.

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

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

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the ~~State Water Control Board~~ department pursuant to the State Water Control Law authorizing, under prescribed conditions,

the potential or actual discharge of pollutants from a point source to surface waters.

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

"Virginia Stormwater BMP Clearinghouse Website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the Act and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

"Virginia Stormwater Management Program" or "VSMP" means a program approved by the ~~board~~ department after September 13, 2011, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in the Act and associated regulations, and evaluation consistent with the requirements of the SWM Act and associated regulations.

"VSMP authority" means an authority approved by the ~~board~~ department after September 13, 2011, to operate a Virginia Stormwater Management Program or the department. An authority may include a locality as set forth in § 62.1-44.15:27 of the Code of Virginia; state entity, including the department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 62.1-44.15:31 of the Code of Virginia, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. Prior to approval, the ~~board~~ department must find that the ordinances adopted by the locality's VSMP authority are consistent with the Act and this chapter including the General Permit for Discharges of Stormwater from Construction Activities (9VAC25-880).

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of

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water, and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Act (§ 62.1-44.15:24 et seq. of the Code of Virginia), and the CWA (33 USC § 1251 et seq.).

"Water quantity technical criteria" means standards that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which the water drains may be considered the single outlet for the watershed.

"Wetlands" means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

9VAC25-870-20. Purposes.

The purposes of this chapter are to provide a framework for the administration, implementation and enforcement of the Virginia Stormwater Management Act (Act) and to delineate the procedures and requirements to be followed in connection with state permits issued by the ~~board~~ department pursuant to the Clean Water Act (CWA) and the Virginia Stormwater Management Act and permits issued by a VSMP authority, while at the same time providing flexibility for innovative solutions to stormwater management issues. The chapter also establishes the ~~board's department's~~ department's procedures for the authorization of a VSMP, the ~~board's department's~~ department's procedures for approving the administration of a VSMP by a VSMP authority, ~~board~~ and department oversight authorities for a VSMP, and the required technical criteria for stormwater management for land-disturbing activities.

9VAC25-870-45. Implementation date.

The technical criteria in Part II A and Part II B shall be implemented by a VSMP authority when a General Permit for Discharges of Stormwater from Construction Activities has been issued that incorporates such criteria. Until that time, the required technical criteria shall be found in Part II C. VSMPs adopted in accordance with the Act and this chapter shall become effective July 1, 2014, unless otherwise specified by the ~~board~~ department.

9VAC25-870-62. Applicability.

In accordance with the board's authority and except as provided in 9VAC25-870-48, this part establishes the minimum technical criteria that shall be employed by a state agency in accordance with an implementation schedule set by

the board, or by a VSMP authority that has been approved by the board prior to July 1, 2022, or the department thereafter, to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities.

9VAC25-870-65. Water quality compliance.

A. Compliance with the water quality design criteria set out in subdivisions A 1 and A 2 of 9VAC25-870-63 shall be determined by utilizing the Virginia Runoff Reduction Method or another equivalent methodology that is approved by the ~~board~~ department.

B. The nonproprietary BMPs listed in this subsection are approved for use in accordance with the Virginia Runoff Reduction Method. Other approved nonproprietary BMPs found on the Virginia Stormwater BMP Clearinghouse Website may also be utilized. Design specifications and the pollutant removal efficiencies for all approved nonproprietary BMPs are found on the Virginia Stormwater BMP Clearinghouse Website.

1. Vegetated Roof (Version 2.3, March 1, 2011);
2. Rooftop Disconnection (Version 1.9, March 1, 2011);
3. Rainwater Harvesting (Version 1.9.5, March 1, 2011);
4. Soil Amendments (Version 1.8, March 1, 2011);
5. Permeable Pavement (Version 1.8, March 1, 2011);
6. Grass Channel (Version 1.9, March 1, 2011);
7. Bioretention (Version 1.9, March 1, 2011);
8. Infiltration (Version 1.9, March 1, 2011);
9. Dry Swale (Version 1.9, March 1, 2011);
10. Wet Swale (Version 1.9, March 1, 2011);
11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);
12. Extended Detention Pond (Version 1.9, March 1, 2011);
13. Filtering Practice (Version 1.8, March 1, 2011);
14. Constructed Wetland (Version 1.9, March 1, 2011); and
15. Wet Pond (Version 1.9, March 1, 2011).

C. Nonproprietary BMPs differing from those listed in subsection B of this section shall be reviewed and approved by the director in accordance with procedures established by the department.

D. Proprietary BMPs listed on the Virginia Stormwater BMP Clearinghouse Website are approved for use in accordance with the Virginia Runoff Reduction Method. Any proprietary BMP approved for use after July 1, 2020, must meet the requirements of § 62.1-44.15:28 A 9 of the Code of Virginia.

~~1. Any proprietary BMP listed on the Virginia Stormwater BMP Clearinghouse Website prior to July 1, 2020, shall by December 31, 2021, provide documentation to the department showing that another state, regional, or national certification program has verified and certified its nutrient or sediment removal effectiveness. Any proprietary BMP that fails to provide the department with the documentation required by December 31, 2021, shall not be approved for use in any stormwater management plan submitted on or after January 1, 2022, until such proprietary BMP provides the department with such required documentation.~~

~~2. Any proprietary BMP approved for use after July 1, 2020, must meet the requirements of § 62.1-44.15:28 A 9 of the Code of Virginia.~~

E. A VSMP authority may establish limitations on the use of specific BMPs in accordance with § 62.1-44.15:33 of the Code of Virginia.

F. The VSMP authority shall have the discretion to allow for application of the design criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 9VAC25-870-92.

G. Offsite alternatives where allowed in accordance with 9VAC25-870-69 may be utilized to meet the design criteria of subsection A of 9VAC25-870-63.

H. Any publicly owned treatment works that is permitted under the watershed general VPDES permit pursuant to § 62.1-44.19:14 of the Code of Virginia and is constructing or expanding the treatment works, wastewater collection system, or other facility used for public wastewater utility operations may, in accordance with § 62.1-44.19:21.2 C of the Code of Virginia, permanently retire a portion of its wasteload allocation to meet the design criteria of subsection A of 9VAC25-870-63. Notice shall be given by such applicant to the VSMP authority and to the department.

9VAC25-870-66. Water quantity.

A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of § 62.1-44.15:28 of the Code of Virginia or as permitted in accordance with § 62.1-44.15:27.2 of the Code of Virginia. Nothing in this section shall prohibit a locality's VSMP authority from establishing a more stringent standard in accordance with § 62.1-44.15:33 of the Code of Virginia especially where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters. Compliance with the minimum standards set out in this section shall be deemed to satisfy the requirements of subdivision 19 of 9VAC25-840-40 (Minimum

standards; Virginia Erosion and Sediment Control Regulations).

B. Channel protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet the criteria in subdivision 1, 2, or 3 of this subsection, where applicable, from the point of discharge to a point to the limits of analysis in subdivision 4 of this subsection.

1. Manmade stormwater conveyance systems. When stormwater from a development is discharged to a manmade stormwater conveyance system, following the land-disturbing activity, either:

a. The manmade stormwater conveyance system shall convey the postdevelopment peak flow rate from the two-year 24-hour storm event without causing erosion of the system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VSMP authority; or

b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

2. Restored stormwater conveyance systems. When stormwater from a development is discharged to a restored stormwater conveyance system that has been restored using natural design concepts, following the land-disturbing activity, either:

a. The development shall be consistent, in combination with other stormwater runoff, with the design parameters of the restored stormwater conveyance system that is functioning in accordance with the design objectives; or

b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

3. Natural stormwater conveyance systems. When stormwater from a development is discharged to a natural stormwater conveyance system, the maximum peak flow rate from the one-year 24-hour storm following the land-disturbing activity shall be calculated either:

a. In accordance with the following methodology:

$$Q_{\text{Developed}} \leq I.F. * (Q_{\text{Pre-developed}} * RV_{\text{Pre-Developed}}) / RV_{\text{Developed}}$$

Under no condition shall $Q_{\text{Developed}}$ be greater than $Q_{\text{Pre-Developed}}$ nor shall $Q_{\text{Developed}}$ be required to be less than that calculated in the equation $(Q_{\text{Forest}} * RV_{\text{Forest}}) / RV_{\text{Developed}}$; where

I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre.

$Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.

$RV_{\text{Developed}}$ = The volume of runoff from the site in the developed condition.

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$Q_{\text{Pre-Developed}}$ = The peak flow rate of runoff from the site in the pre-developed condition.

$RV_{\text{Pre-Developed}}$ = The volume of runoff from the site in pre-developed condition.

Q_{Forest} = The peak flow rate of runoff from the site in a forested condition.

RV_{Forest} = The volume of runoff from the site in a forested condition; or

b. In accordance with another methodology that is demonstrated by the VSMP authority to achieve equivalent results and is approved by the board department.

4. Limits of analysis. Unless subdivision 3 of this subsection is utilized to show compliance with the channel protection criteria, stormwater conveyance systems shall be analyzed for compliance with channel protection criteria to a point where either:

- a. Based on land area, the site's contributing drainage area is less than or equal to 1.0% of the total watershed area; or
- b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour storm prior to the implementation of any stormwater quantity control measures.

C. Flood protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of acceptable hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to stormwater conveyance systems that currently do not experience localized flooding during the 10-year 24-hour storm event: The point of discharge releases stormwater into a stormwater conveyance system that, following the land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VSMP authority.
2. Concentrated stormwater flow to stormwater conveyance systems that currently experience localized flooding during the 10-year 24-hour storm event: The point of discharge either:
 - a. Confines the postdevelopment peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system to avoid the localized flooding. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VSMP authority; or
 - b. Releases a postdevelopment peak flow rate for the 10-year 24-hour storm event that is less than the

predevelopment peak flow rate from the 10-year 24-hour storm event. Downstream stormwater conveyance systems do not require any additional analysis to show compliance with flood protection criteria if this option is utilized.

3. Limits of analysis. Unless subdivision 2 b of this subsection is utilized to comply with the flood protection criteria, stormwater conveyance systems shall be analyzed for compliance with flood protection criteria to a point where:

- a. The site's contributing drainage area is less than or equal to 1.0% of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system;
- b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-hour storm event prior to the implementation of any stormwater quantity control measures; or
- c. The stormwater conveyance system enters a mapped floodplain or other flood-prone area, adopted by ordinance, of any locality.

D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down-gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a stormwater management facility or a stormwater conveyance system that conveys the runoff without causing down-gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

E. For purposes of computing predevelopment runoff, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the VSMP authority that actual site conditions warrant such considerations.

F. Predevelopment and postdevelopment runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices. Guidance provided in the Virginia Stormwater Management Handbook and on the Virginia Stormwater BMP Clearinghouse Website shall be considered appropriate practices.

9VAC25-870-69. Offsite compliance options.

A. Offsite compliance options that a VSMP authority may allow an operator to use to meet required phosphorus nutrient reductions include the following:

1. Offsite controls utilized in accordance with a comprehensive stormwater management plan adopted pursuant to 9VAC25-870-92 for the local watershed within which a project is located;
2. A locality pollutant loading pro rata share program established pursuant to § 15.2-2243 of the Code of Virginia or similar local funding mechanism;
3. The nonpoint nutrient offset program established pursuant to § 62.1-44.15:35 of the Code of Virginia;
4. Any other offsite options approved by an applicable state agency or state board; and
5. When an operator has additional properties available within the same HUC or upstream HUC that the land-disturbing activity directly discharges to or within the same watershed as determined by the VSMP authority, offsite stormwater management facilities on those properties may be utilized to meet the required phosphorus nutrient reductions from the land-disturbing activity.

B. Notwithstanding subsection A of this section, and pursuant to § 62.1-44.15:35 of the Code of Virginia, operators shall be allowed to utilize offsite options identified in subsection A of this section under any of the following conditions:

1. Less than five acres of land will be disturbed;
2. The post-construction phosphorus control requirement is less than 10 pounds per year; or
3. At least 75% of the required phosphorus nutrient reductions are achieved on-site. If at least 75% of the required phosphorus nutrient reductions cannot be met on-site, and the operator can demonstrate to the satisfaction of the VSMP authority that (i) alternative site designs have been considered that may accommodate on-site best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on-site, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of off-site compliance options.

C. Notwithstanding subsections A and B of this section, offsite options shall not be allowed:

1. Unless the selected offsite option achieves the necessary nutrient reductions prior to the commencement of the operator's land-disturbing activity. In the case of a phased

project, the operator may acquire or achieve offsite nutrient reductions prior to the commencement of each phase of land-disturbing activity in an amount sufficient for each phase.

2. In contravention of local water quality-based limitations at the point of discharge that are (i) consistent with the determinations made pursuant to subsection B of § 62.1-44.19:7 of the Code of Virginia, (ii) contained in a municipal separate storm sewer system (MS4) program plan accepted by the department, or (iii) as otherwise may be established or approved by the ~~board~~ department.

D. In order to meet the requirements of 9VAC25-870-66, offsite options described in subdivisions 1 and 2 of subsection A of this section may be utilized.

9VAC25-870-100. Applicability.

This part establishes the ~~board's~~ department's procedures for the authorization of a VSMP, the ~~board's~~ department's procedures for the administration of a VSMP by a locality's VSMP authority or by other VSMP authorities where the procedures may be applicable, ~~and board~~ and department oversight authorities for a VSMP.

9VAC25-870-102. Authority.

A. If an authorized entity pursuant to § 62.1-44.15:27 of the Code of Virginia has adopted a VSMP in accordance with the Virginia Stormwater Management Act and the ~~board~~ department has deemed such program adoption consistent with the Virginia Stormwater Management Act and these regulations in accordance with § 62.1-44.15:27 of the Code of Virginia, the ~~board~~ department may authorize the entity to administer a VSMP. Pursuant to § 62.1-44.15:28 of the Code of Virginia, the board is required to establish standards and procedures for such an authorization.

B. In the case of a land-disturbing activity located on property controlled by a regional industrial facility authority established pursuant to Chapter 64 (§ 15.2-6400 et seq.) of Title 15.2 of the Code of Virginia, if a participating local member of such an authority also administers a VSMP, such locality shall be authorized to administer the VSMP on authority property in accordance with an agreement entered into with all relevant localities and the existing VSMP for the property.

9VAC25-870-114. Inspections.

A. The VSMP authority shall inspect the land-disturbing activity during construction for:

1. Compliance with the approved erosion and sediment control plan;
2. Compliance with the approved stormwater management plan;
3. Development, updating, and implementation of a pollution prevention plan; and

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4. Development and implementation of any additional control measures necessary to address a TMDL.

B. The VSMP authority shall establish an inspection program that ensures that stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Inspection programs shall:

1. Be approved by the ~~board~~ department;
2. Ensure that each stormwater management facility is inspected by the VSMP authority, or its designee, not to include the owner, except as provided in subsections C and D of this section, at least once every five years; and
3. Be documented by records.

C. The VSMP authority may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the ~~board~~ department.

D. If a recorded instrument is not required pursuant to 9VAC25-870-112, a VSMP authority shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the VSMP authority.

9VAC25-870-116. Enforcement.

A. A locality's VSMP authority shall incorporate components from subdivisions 1 and 2 of this subsection.

1. Informal and formal administrative enforcement procedures may include:
 - a. Verbal warnings and inspection reports;
 - b. Notices of corrective action;
 - c. Consent special orders and civil charges in accordance with subdivision 6 of § 62.1-44.15:25 and § 62.1-44.15:48 D 2 of the Code of Virginia;
 - d. Notices to comply in accordance with § 62.1-44.15:37 of the Code of Virginia;
 - e. Special orders in accordance with subdivision 6 of § 62.1-44.15:25 of the Code of Virginia;

f. Emergency special orders in accordance with subdivision 6 of § 62.1-44.15:25 of the Code of Virginia; and

g. Public notice and comment periods for proposed settlements and consent special orders pursuant to 9VAC25-870-660.

2. Civil and criminal judicial enforcement procedures may include:

- a. Schedule of civil penalties in accordance with § 62.1-44.15:48 of the Code of Virginia;
- b. Criminal penalties in accordance with § 62.1-44.15:48 B and C of the Code of Virginia; and
- c. Injunctions in accordance with §§ 62.1-44.15:25, 62.1-44.15:42, and 62.1-44.15:48 D 1 of the Code of Virginia.

B. A locality's VSMP authority shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the Stormwater Management Act and attendant regulations and local ordinances.

C. Pursuant to § 62.1-44.15:48 A of the Code of Virginia, the locality's VSMP authority has the discretion to impose a maximum penalty of \$32,500 per violation per day in accordance with § 62.1-44.15:48 A of the Code of Virginia. Such penalty may reflect the degree of harm caused by the violation and take into account the economic benefit to the violator from noncompliance. Violations include, but are not limited to:

1. No state permit registration;
2. No SWPPP;
3. Incomplete SWPPP;
4. SWPPP not available for review;
5. No approved erosion and sediment control plan;
6. Failure to install stormwater BMPs or erosion and sediment controls;
7. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
8. Operational deficiencies;
9. Failure to conduct required inspections;
10. Incomplete, improper, or missed inspections.

D. Pursuant to subdivision 2 of § 62.1-44.15:25 of the Code of Virginia, authorization to administer a VSMP program shall not remove from the ~~board~~ department the authority to enforce the provisions of the Act and attendant regulations.

E. The department may terminate state permit coverage during its term and require application for an individual state permit or deny a state permit renewal application for failure to comply with state permit conditions or on its own initiative in accordance with the Act and this chapter.

F. Pursuant to § 62.1-44.15:48 A of the Code of Virginia, civil penalties recovered by a locality's VSMP authority shall be paid into the treasury of the locality in which the violation occurred and are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

G. The VSMP authority may use additional guidance concerning suggested penalty amounts provided by the department.

9VAC25-870-118. Hearings.

Any permit applicant, permittee, or person subject to state permit requirements under the Stormwater Management Act aggrieved by any action of the department ~~or board~~ taken without a formal hearing may demand in writing a formal hearing pursuant to § 62.1-44.15:44 of the Code of Virginia and shall ensure that all hearings held under this chapter shall be conducted in a manner consistent with § 62.1-44.26 of the Code of Virginia or as otherwise provided by law. A locality holding hearings under this chapter shall do so in a manner consistent with local hearing procedures. The provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall not apply to decisions rendered by localities. Appeals of decisions rendered by localities shall be conducted in accordance with local appeal procedures and shall include an opportunity for judicial review in the circuit court of the locality in which the land disturbance occurs or is proposed to occur. Unless otherwise provided by law, the circuit court shall conduct such review in accordance with the standards established in § 2.2-4027 of the Code of Virginia, and the decisions of the circuit court shall be subject to review by the Court of Appeals, as in other cases under this chapter.

9VAC25-870-142. Authority and applicability.

This part specifies the criteria that the department will utilize in reviewing a VSMP authority's administration of a VSMP pursuant to § 62.1-44.15:38 of the Code of Virginia following the ~~board's~~ department's approval of such program in accordance with the Act and this chapter.

9VAC25-870-144. Virginia stormwater management program review.

A. The department shall review each ~~board-approved~~ department-approved VSMP at least once every five years on a review schedule approved by the ~~board~~ department. The department may review a VSMP on a more frequent basis if deemed necessary by the ~~board~~ department and shall notify the VSMP authority if such review is scheduled.

B. The review of a ~~board-approved~~ department-approved VSMP shall consist of the following:

1. Consultation with the VSMP administrator or designee;

2. A review of the local ordinance(s) and other applicable documents;

3. A review of a subset of the plans approved by the VSMP authority for consistency of application including exceptions granted and calculations or other documentation that demonstrates that required nutrient reductions are achieved using appropriate on-site and off-site compliance options;

4. A review of the funding and staffing plan developed in accordance with 9VAC25-870-148;

5. An inspection of regulated activities; and

6. A review of enforcement actions and an accounting of amounts recovered through enforcement actions where applicable.

C. The department shall coordinate the once per five year review with its other program reviews for the same entity to avoid redundancy.

~~D. The department shall provide results and compliance recommendations to the board in the form of a corrective action plan and schedule if deficiencies are found within 120 days of the completion of a review otherwise the board may find the program compliant.~~

~~E. D.~~ The ~~board~~ department shall determine if the VSMP and ordinances where applicable are consistent with the Act and state stormwater management regulations and notify the VSMP authority of its findings. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern the review activities and proceedings of the ~~board~~ department and the judicial review thereof.

~~F. E.~~ If the ~~board~~ department determines that the deficiencies noted in the review will cause the VSMP to be out of compliance with the Act and attendant regulations, the ~~board~~ department shall notify the VSMP authority concerning the deficiencies and provide a reasonable period of time in accordance with § 62.1-44.15:38 of the Code of Virginia for corrective action to be taken. If the VSMP authority agrees to the corrective action approved by the ~~board~~ department, the VSMP will be considered to be conditionally compliant with the Act and attendant regulations until a subsequent finding of compliance is issued by the ~~board~~ department. If the VSMP authority fails to implement the necessary compliance actions identified by the ~~board~~ department within the specified time, the ~~board~~ department may take action pursuant to § 62.1-44.15:38 of the Code of Virginia.

Part III C

~~State Water Control Board~~ Authorization Procedures for Virginia Stormwater Management Programs

9VAC25-870-146. Authority and applicability.

Subdivision A 1 of § 62.1-44.15:28 of the Code of Virginia requires that the board establish standards and procedures for administering a VSMP. In accordance with that requirement,

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and with the further authority conferred upon the ~~board~~ department by the Virginia Stormwater Management Act, this part specifies the procedures the ~~board~~ department will utilize in authorizing a VSMP authority to administer a VSMP.

9VAC25-870-150. Authorization procedures for Virginia stormwater management programs.

A. A locality adopting a VSMP in accordance with § 62.1-44.15:27 of the Code of Virginia must submit to the ~~board~~ department an application package that, at a minimum, contains the following:

1. The draft VSMP ordinance(s) as required in 9VAC25-870-148;
2. A funding and staffing plan;
3. The policies and procedures including, but not limited to:
 - a. Agreements with soil and water conservation districts, adjacent localities, or other public or private entities for the administration, plan review, inspection, and enforcement components of the program; and
 - b. Contracts with third-party professionals who hold certificates of competence in the appropriate subject areas, as provided in subsection A of § 62.1-44.15:30 of the Code of Virginia, to carry out any or all of the responsibilities that Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia requires of a VSMP authority, including plan review and inspection but not including enforcement; and
4. Such ordinances, plans, policies, and procedures must account for any town lying within the county as part of the locality's VSMP program unless such towns choose to adopt their own program.

B. Upon receipt of an application package, the ~~board~~ department or its designee shall have 30 calendar days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria set out in subsection A of this section, the ~~board~~ department or its designee must identify to the VSMP authority applicant in writing the reasons the application package is deemed deficient.

C. Upon receipt of a complete application package, the ~~board~~ department or its designee shall have 120 calendar days for the review of the application package, unless an extension of time, not to exceed 12 months unless otherwise specified by the ~~board~~ department in accordance with § 62.1-44.15:27 of the Code of Virginia, is requested by the department, provided the VSMP authority applicant has made substantive progress. During the 120-day review period, the ~~board~~ department or its designee shall either approve or disapprove the application, or notify the locality of a time extension for the review, and communicate its decision to the VSMP authority applicant in writing. If the application is not approved, the reasons for not approving the application shall be provided to the VSMP

authority applicant in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Act and this chapter.

D. A VSMP authority applicant in accordance with § 62.1-44.15:27 of the Code of Virginia shall submit a complete application package for the ~~board's~~ department's review pursuant to a schedule set by the ~~board~~ department in accordance with § 62.1-44.15:27 and shall adopt a VSMP consistent with the Act and this chapter within the timeframe established pursuant to § 62.1-44.15:27 or otherwise established by the ~~board~~ department.

E. A locality or other authorized entity not required to adopt a VSMP in accordance with § 62.1-44.15:27 of the Code of Virginia but electing to adopt a VSMP shall notify the department. Such notification shall include a proposed adoption date for a local stormwater management program on or after July 1, 2014, in accordance with a schedule developed by the department.

9VAC25-870-300. Exclusions.

The following discharges do not require state permits:

1. Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or development.
2. Discharges of dredged or fill material into surface waters that are regulated under § 404 of the CWA.
3. The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with state permits until all discharges of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.
4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

5. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including stormwater runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.
6. Return flows from irrigated agriculture.
7. Discharges into a privately owned treatment works, except as the ~~State Water Control Board~~ department may otherwise require.

9VAC25-870-310. Prohibitions.

A. Except in compliance with a state permit issued by the ~~board~~ department pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.

B. Any person in violation of subsection A of this section, who discharges or causes or allows a discharge of stormwater into or upon state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section, shall notify the department of the discharge immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by the state permit.

C. No state permit may be issued:

1. When the conditions of the state permit do not provide for compliance with the applicable requirements of the CWA or the Act, or regulations promulgated under the CWA or the Act;

2. When the state permit applicant is required to obtain a state or other appropriate certification under § 401 of the CWA and that certification has not been obtained or waived;
3. When the regional administrator has objected to issuance of the state permit;
4. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;
5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;
6. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b) of the CWA;
8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:
 - a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the ~~board~~ department determines state permit issuance to be in the public interest; or
 - b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.
9. To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the Act and §§ 301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the department has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:
 - a. There are sufficient remaining pollutant load allocations to allow for the discharge; and
 - b. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The ~~board~~ department may waive the submission of information by the new source or new discharger required by this subdivision if the ~~board~~ department determines that it already has adequate information to evaluate the request. An explanation of the development of limitations to meet

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the criteria of this paragraph is to be included in the fact sheet to the state permit under 9VAC25-870-520.

9VAC25-870-330. Continuation of expiring state permits.

A. The state permit shall expire at the end of its term, except that the conditions of an expired state permit continue in force until the effective date of a new state permit if:

1. The permittee has submitted a timely application as required by this chapter, which is a complete application for a new state permit; and
2. The ~~board~~ department, through no fault of the permittee, does not issue a new state permit with an effective date on or before the expiration date of the previous state permit.

B. State permits continued under this section remain fully effective and enforceable.

C. When the permittee is not in compliance with the conditions of the expiring or expired state permit the ~~board~~ department may choose to do any or all of the following:

1. Initiate enforcement action based upon the state permit which has been continued;
2. Issue a notice of intent to deny the new state permit. If the state permit is denied, the owner or operator would then be required to cease the activities authorized by the continued state permit or be subject to enforcement action for operating without a state permit;
3. Issue a new state permit with appropriate conditions; or
4. Take other actions authorized by this chapter.

9VAC25-870-340. Confidentiality of information.

A. The ~~board, the~~ department, or the VSMP authority may require every state permit applicant or state permittee to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the Act and this chapter. Any personal information shall not be disclosed except to an appropriate official of the ~~board,~~ department, or VSMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). However:

1. Disclosure of records of the department, ~~the board,~~ or the VSMP authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions is prohibited. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the department, ~~the board,~~ or the VSMP authority.

2. Any secret formula, secret processes, or secret methods other than effluent data submitted to the department pursuant to this chapter may be claimed as confidential by the submitter in accordance with 40 CFR 122.7. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae," "secret processes" "secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

3. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

B. Claims of confidentiality for the following information will be denied:

1. The name and address of any state permit applicant or state permittee;
2. State permit applications, state permits, and effluent data.

C. Information required by state permit application forms provided by the department may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

9VAC25-870-350. Guidance documents.

The ~~board~~ department may develop and use guidance, as appropriate, to implement technical and regulatory details of the state permit program. Such guidance is distinguished from regulation by the fact that it is not binding on either the ~~board~~ department or permittees. If a more appropriate methodology than that called for in guidance is available in a given situation, the more appropriate methodology shall be used to the extent it is consistent with applicable regulations and the Stormwater Management Act.

9VAC25-870-360. Application for a state permit.

A. Duty to apply. Any person who discharges or proposes to discharge stormwater into or upon state waters from municipal separate storm sewer systems or land-disturbing activities and who does not have an effective state permit, except persons covered by general permits, excluded from the requirement for a state permit by this chapter, shall submit a complete application in accordance with this section.

B. Who applies. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a state permit.

C. Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the ~~board~~ department. Stormwater discharges from large construction activities and stormwater discharges associated with small construction activities shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90-day or 180-day requirements to avoid delay.

D. Duty to reapply. All state permittees with a currently effective state permit shall submit a new application at least 180 days before the expiration date of the existing state permit unless permission for a later date has been granted by the ~~board~~ department. The ~~board~~ department shall not grant permission for applications to be submitted later than the expiration date of the existing state permit.

E. Completeness. The ~~board~~ department shall not issue a state permit before receiving a complete application for a state permit except for general permits. An application for a state permit is complete when the ~~board~~ department receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a state permit shall be judged independently of the status of any other state permit application or state permit for the same facility or activity.

F. Information requirements. All applicants for state permits shall provide the following information using the application form provided by the department:

1. The activities conducted by the state permit applicant which require it to obtain a state permit;
2. Name, mailing address, and location of the facility for which the application is submitted;
3. Up to four SIC codes which best reflect the principal products or services provided by the facility;
4. The operator's name, address, telephone number, email address, ownership status, and status as federal, state, private, public, or other entity;
5. Whether the facility is located on Indian lands;
6. A listing of all permits or construction approvals received, applied for, or to be applied for under any of the following programs:
 - a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA) (42 USC § 6921);
 - b. UIC program under the Safe Drinking Water Act (SDWA) (42 USC § 300h);

- c. VPDES program under the CWA and the State Water Control Law;
- d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC § 4701 et seq.);
- e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);
- f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC § 4701 et seq.);
- g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC § 14 et seq.);
- h. Dredge or fill permits under § 404 of the CWA;
- i. A state permit under the CWA and the Virginia Stormwater Management Act; and
- j. Other relevant environmental permits, including state permits;

7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, which depicts: the facility and (i) each of its intake and discharge structures; (ii) each of its hazardous waste treatment, storage, or disposal facilities; (iii) each well where fluids from the facility are injected underground; and (iv) those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the state permit applicant in the map area; and

8. A brief description of the nature of the business.

G. Variance requests. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.
 - a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:
 - (1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft state permit; or
 - (2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.
 - b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

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2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided, however, that a § 301(g) variance may only be requested for ammonia, chlorine, color, iron, total phenols (when determined by the administrator to be a pollutant covered by § 301(b)(2)(F) of the CWA) and any other pollutant that the administrator lists under § 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the state permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a § 301(c) or § 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft state permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Administrator establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft state permit on the state permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a state permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft state permit. A copy of the request shall be sent simultaneously to the department.

H. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsection G of this section, the ~~board~~ department may notify a state permit applicant before a draft state permit is issued that the draft state permit will likely contain limitations which are eligible for variances. In the notice the ~~board~~ department may require the state permit applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the state permit application has been submitted. The draft or final state permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions G 2 a (2) or G 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the ~~board~~ department. Extensions shall be no more than six months in duration.

I. Recordkeeping. State permit applicants shall keep records of all data used to complete state permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

9VAC25-870-365. Permit rationale.

In granting a permit pursuant to this chapter, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

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

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

1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with

environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for state permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

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

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

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

3. The written authorization is submitted to the department.

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

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

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

possibility of fine and imprisonment for knowing violations."

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

9VAC25-870-380. Stormwater discharges.

A. State permit requirements.

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

- a. A discharge with respect to which a state permit has been issued prior to February 4, 1987;
- b. A stormwater discharge associated with large construction activity;
- c. A discharge from a large municipal separate storm sewer system;
- d. A discharge from a medium municipal separate storm sewer system; or
- e. A discharge that either the ~~board~~ department or the regional administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to surface waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances that do not require a state permit under subdivision 2 of this subsection or agricultural stormwater runoff that is exempted from the definition of point source.

The ~~board~~ department may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the ~~board~~ department may consider the following factors:

- (1) The location of the discharge with respect to surface waters;
- (2) The size of the discharge;
- (3) The quantity and nature of the pollutants discharged to surface waters; and
- (4) Other relevant factors.

2. The ~~board~~ department may not require a state permit for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of

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flows that are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and that are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, by-product or waste products located on the site of such operations.

3. a. State permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

b. The ~~board~~ department may either issue one system-wide state permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct state permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

c. The operator of a discharge from a municipal separate storm sewer that is part of a large or medium municipal separate storm sewer system must either:

(1) Participate in a state permit application (to be a state permittee or a state co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system that covers all, or a portion of all, discharges from the municipal separate storm sewer system;

(2) Submit a distinct state permit application that only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

(3) A regional authority may be responsible for submitting a state permit application under the following guidelines:

(a) The regional authority together with state permit co-applicants shall have authority over a stormwater management program that is in existence, or shall be in existence at the time Part 1 of the application is due;

(b) The state permit applicant or co-applicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application;

(c) Each of the operators of municipal separate storm sewers within large or medium municipal separate storm sewer systems, that are under the purview of the designated regional authority, shall comply with the application requirements of subsection C of this section.

d. One state permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The ~~board~~ department may issue one system-wide state permit covering all, or a

portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

e. State permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the state permit, including different management programs for different drainage areas that contribute stormwater to the system.

f. State co-permittees need only comply with state permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

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

5. The ~~board~~ department may issue state permits for municipal separate storm sewers that are designated under subdivision A 1 e of this section on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue state permits for individual discharges.

6. Conveyances that discharge stormwater runoff combined with municipal sewage are point sources that must obtain separate VPDES permits in accordance with the procedures of 9VAC25-31 and are not subject to the provisions of this section.

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

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

(1) The discharge is from a small MS4 required to be regulated pursuant to 9VAC25-870-400 B;

(2) The discharge is a stormwater discharge associated with small construction activity as defined in 9VAC25-870-10;

(3) The ~~board~~ department or the EPA regional administrator determines that stormwater controls are needed for the discharge based on wasteload allocations

that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

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

b. Operators of small MS4s designated pursuant to subdivisions 8 a (1), (3), and (4) of this subsection shall seek coverage under a state permit in accordance with 9VAC25-870-400 C through E. Operators of nonmunicipal sources designated pursuant to subdivisions 8 a (2), (3), and (4) of this subsection shall seek coverage under a state permit in accordance with subdivision B 1 of this section.

c. Operators of stormwater discharges designated pursuant to subdivisions 8 a (3) and (4) of this subsection shall apply to the ~~board~~ department for a state permit within 180 days of receipt of notice, unless permission for a later date is granted by the ~~board~~ department.

B. Application requirements for stormwater discharges associated with large and small construction activity.

1. Dischargers of stormwater associated with large and small construction activity are required to apply for an individual state permit or seek coverage under a promulgated stormwater general permit. Facilities that are required to obtain an individual state permit, or any discharge of stormwater that the ~~board~~ department is evaluating for designation under subdivision A 1 e of this section and is not a municipal separate storm sewer, shall submit a state application in accordance with the requirements of 9VAC25-870-360 as modified and supplemented by the provisions of this subsection.

a. The operator of an existing or new stormwater discharge that is associated with a large or small construction activity shall provide a narrative description of:

(1) The location (including a map) and the nature of the construction activity;

(2) The total area of the site and the area of the site that is expected to undergo excavation during the life of the state permit;

(3) Proposed measures, including best management practices, to control pollutants in stormwater discharges during construction, including a brief description of applicable state and VESCP requirements;

(4) Proposed measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable state or local VESCP requirements;

(5) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the state permit application is completed, the

nature of fill material and existing data describing the soil or the quality of the discharge; and

(6) The name of the receiving water.

(7) Location of Chesapeake Bay Preservation Areas.

b. State permit applicants shall provide such other information the ~~board~~ department may reasonably require to determine whether to issue a state permit.

C. Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the ~~board~~ department under subdivision A 1 e of this section may submit a jurisdiction-wide or system-wide state permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a state permit coapplicant to the same application. State permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under subdivision A 1 e of this section shall include;

1. Part 1 of the application shall consist of:

a. The state permit applicants' name, address, telephone number, and email address; ownership status; status as a state or local government entity; and the name, address, telephone number, and email address of a contact person;

b. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in subdivision 2 a of this subsection, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria;

c. Source identification.

(1) A description of the historic use of ordinances, guidance or other controls that limited the discharge of nonstormwater discharges to any publicly owned treatment works serving the same area as the municipal separate storm sewer system.

(2) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000, if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the state permit application. The following information shall be provided:

(a) The location of known municipal storm sewer system outfalls discharging to surface waters;

(b) A description of the land use activities (e.g., divisions indicating undeveloped, residential, commercial, agricultural, and industrial uses) accompanied with estimates of population densities and projected growth for

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a 10-year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(c) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(d) The location and the state permit number of any known discharge to the municipal storm sewer that has been issued a state permit;

(e) The location of major structural controls for stormwater discharge (retention basins, detention basins, major infiltration devices, etc.); and

(f) The identification of publicly owned parks, recreational areas, and other open lands;

d. Discharge characterization.

(1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

(2) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

(3) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

(a) Assessed and reported in § 305(b) of the CWA reports submitted by the state, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of the State Water Control Law and the CWA goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(b) Listed under § 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

(c) Listed in State Nonpoint Source Assessments required by § 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

(d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under § 314(a) of the CWA (include the

following: a description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

(e) Areas of concern of the Great Lakes identified by the International Joint Commission;

(f) Designated estuaries under the National Estuary Program under § 320 of the CWA;

(g) Recognized by the state permit applicant as highly valued or sensitive waters;

(h) Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

(i) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

(4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the state permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24-hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of nonstormwater discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136, the state permit applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(a) A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

(b) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall

be selected in each cell; major outfalls may be used as field screening points;

(c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

(d) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(e) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

(f) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

(g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in subdivisions 1 d (4) (a) through (f) of this subsection, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the state permit applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the state permit applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

(5) Information and a proposed program to meet the requirements of subdivision 2 c of this subsection. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under subdivision 2 c (1) of this subsection, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, and a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns

(see subdivision 1 d (3) of this subsection) to the extent practicable;

e. Management programs.

(1) A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to, procedures to control pollution resulting from construction activities, floodplain management controls, wetland protection measures, best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under state law as well as local requirements.

(2) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented; and

f. Fiscal resources. A description of the financial resources currently available to the municipality to complete Part 2 of the state permit application. A description of the municipality's budget for existing stormwater programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for stormwater programs.

2. Part 2 of the application shall consist of:

a. A demonstration that the state permit applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts that authorizes or enables the state permit applicant at a minimum to:

(1) Control through ordinance, state permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by stormwater discharges associated with industrial activity and the quality of stormwater discharged from sites of industrial activity;

(2) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

(3) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than stormwater;

(4) Control through interagency agreements among state permit coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(5) Require compliance with conditions in ordinances, state permits, contracts or orders; and

(6) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and

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noncompliance with state permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer;

b. The location of any major outfall that discharges to surface waters that was not reported under subdivision 1 c (2) (a) of this subsection. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) that best reflects the principal products or services provided by each facility that may discharge, to the municipal separate storm sewer, stormwater associated with industrial activity;

c. When quantitative data for a pollutant are required under subdivision 2 c (1) (c) of this subsection, the state permit applicant must collect a sample of effluent in accordance with 9VAC25-870-390 and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the state permit applicant may use any suitable method but must provide a description of the method. The state permit applicant must provide information characterizing the quality and quantity of discharges covered in the state permit application, including:

(1) Quantitative data from representative outfalls designated by the board department (based on information received in Part 1 of the application, the board department shall designate between five and 10 outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls) covered in the application, the board department shall designate all outfalls developed as follows:

(a) For each outfall or field screening point designated under this subsection, samples shall be collected of stormwater discharges from three storm events occurring at least one month apart in accordance with the requirements at 9VAC25-870-390 (the board department may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

(b) A narrative description shall be provided of the date and duration of the storm event or events sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(c) For samples collected and described under subdivisions 2 c (1) (a) and (1) (b) of this subsection, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of 40 CFR Part 122 Appendix D, and for the following pollutants:

Total suspended solids (TSS)

Total dissolved solids (TDS)

Chemical oxygen demand (COD)

Biochemical oxygen demand (BOD₅)

Oil and grease

Fecal coliform

Fecal streptococcus

pH

Total Kjeldahl nitrogen

Nitrate plus nitrite

Dissolved phosphorus

Total ammonia plus organic nitrogen

Total phosphorus

(d) Additional limited quantitative data required by the board department for determining state permit conditions (the board department may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to ensure representativeness);

(2) Estimates of the annual pollutant load of the cumulative discharges to surface waters from all identified municipal outfalls and the event mean concentration of the cumulative discharges to surface waters from all identified municipal outfalls during a storm event (as described under 9VAC25-870-390) for BOD₅, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods;

(3) A proposed schedule to provide estimates for each major outfall identified in either subdivision 2 b or 1 c (2) (a) of this subsection of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under subdivision 2 c (1) of this subsection; and

(4) A proposed monitoring program for representative data collection for the term of the state permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment;

d. A proposed management program that covers the duration of the state permit. It shall include a comprehensive planning process that involves public participation and, where necessary, intergovernmental coordination to reduce the discharge of pollutants to the maximum extent practicable using management practices,

control techniques and system, design and engineering methods, and such other provisions that are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each state permit coapplicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the ~~board~~ department when developing state permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(1) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the state permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(b) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in subdivision 2 d (4) of this subsection;

(c) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(d) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from stormwater is feasible;

(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be

coordinated with the program developed under subdivision 2 d (3) of this subsection); and

(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer that will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities;

(2) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate state permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(a) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of nonstormwater discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to surface waters: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration to separate storm sewers, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from firefighting only where such discharges or flows are identified as significant sources of pollutants to surface waters);

(b) A description of procedures to conduct on-going field screening activities during the life of the state permit, including areas or locations that will be evaluated by such field screens;

(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of nonstormwater (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (Methylene Blue Active Substances—MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

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(d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

(3) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to § 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA, 42 USC § 11023), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

(b) Describe a monitoring program for stormwater discharges associated with the industrial facilities identified in subdivision 2 d (3) of this subsection, to be implemented during the term of the state permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing separate VPDES permit for a facility; oil and grease, COD, pH, BOD₅, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under 9VAC25-870-390 F and G; and

(4) A description of a program to implement and maintain structural and nonstructural best management practices to reduce pollutants in stormwater runoff from construction sites to the municipal storm sewer system, which shall include:

(a) A description of procedures for site planning that incorporate consideration of potential water quality impacts;

(b) A description of requirements for nonstructural and structural best management practices;

(c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures that consider the nature of the construction activity,

topography, and the characteristics of soils and receiving water quality; and

(d) A description of appropriate educational and training measures for construction site operators;

e. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal stormwater quality management program. The assessment shall also identify known impacts of stormwater controls on groundwater;

f. For each fiscal year to be covered by the state permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under subdivisions 2 c and d of this subsection. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds;

g. Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and

h. Where requirements under subdivisions 1 d (5), 2 b, 2 c (2), and 2 d of this subsection are not practicable or are not applicable, the ~~board~~ department may exclude any operator of a discharge from a municipal separate storm sewer that is designated under subdivision A 1 e of this section, or that is located in the counties listed in 40 CFR Part 122 Appendix H or Appendix I (except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties) from such requirements. The ~~board~~ department shall not exclude the operator of a discharge from a municipal separate storm sewer identified in 40 CFR Part 122 Appendix F, G, H or I from any of the state permit application requirements under this subdivision except where authorized under this subsection.

D. Petitions.

1. Any operator of a municipal separate storm sewer system may petition the appropriate authority or the ~~State Water Control Board~~ department to require a separate state permit for any discharge into the municipal separate storm sewer system.

2. Any person may petition the ~~board~~ department to require a state permit for a discharge which is composed entirely of stormwater which contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

3. Any person may petition the ~~board~~ department for the designation of a large, medium or small municipal separate storm sewer system as defined by this chapter.

4. The ~~board~~ department shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4, in which case the ~~board~~ department shall make a final determination on the petition within 180 days after its receipt.

9VAC25-870-390. Effluent sampling procedures.

State permit applicants for discharges from large and small municipal storm sewers or municipal storm sewers designated under 9VAC25-870-380 A 1 e shall provide the following information to the department, using application forms provided by the department.

A. Information on stormwater discharges that is to be provided as specified in 9VAC25-870-380. When quantitative data for a pollutant are required, the state permit applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the state permit applicant may use any suitable method but must provide a description of the method. When an a state permit applicant has two or more outfalls with substantially identical effluents, the ~~board~~ department may allow the state permit applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in subsections E and F of this section that a state permit applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than stormwater discharges, the ~~board~~ department may waive composite sampling for any outfall for which the state permit applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged.

B. For stormwater discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all state permit applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a stormwater discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in

each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes. However, a minimum of one grab sample may be taken for stormwater discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For stormwater discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9VAC25-870-380 C 1. For all stormwater state permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9VAC25-870-380 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The ~~board~~ department may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-case basis. A state permit applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated stormwater runoff from the facility.)

C. Every state permit applicant must report quantitative data for every outfall for the following pollutants:

- Biochemical oxygen demand (BOD₅)
- Chemical oxygen demand
- Total organic carbon
- Total suspended solids
- Ammonia (as N)
- Temperature (both winter and summer)
- pH

D. The ~~board~~ department may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subsection C of this section if the state permit applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a state permit can be obtained with less stringent requirements.

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E. Each state permit applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

1. The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D for the state permit applicant's industrial category or categories unless the state permit applicant qualifies as a small business. Table II of 40 CFR Part 122 Appendix D lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure that uses gas chromatography/mass spectrometry. A determination that a state permit applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the state permit applicant's inclusion in that category for any other purposes; and
2. The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals, cyanide, and total phenols).

F. 1. Each state permit applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the state permit applicant must report quantitative data. For every pollutant discharged that is not so limited in an effluent limitations guideline, the state permit applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

2. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subsection E of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the state permit applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the state permit applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the state permit applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. A state permit applicant qualifying as a small business is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic pollutants).

G. Each state permit applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the state permit applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

H. Each state permit applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or
2. Knows or has reason to believe that TCDD is or may be present in an effluent.

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

A. Objectives of the stormwater regulations for small MS4s.

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

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

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

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

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

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

- a. Your small MS4 is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or
- b. You are designated by the board department, including where the designation is pursuant to subdivisions C 3 a and b of this section or is based upon a petition under 9VAC25-870-380 D.

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

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

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

- a. Your system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the board department; and
- b. If you discharge any pollutants that have been identified as a cause of impairment of any water body to which you discharge, stormwater controls are not needed based on wasteload allocations that are part of an approved "total maximum daily load" (TMDL) that addresses the pollutants of concern.

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

- a. The board department has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4;
- b. For all such waters, the board department has determined that stormwater controls are not needed based on wasteload allocations that are part of an approved TMDL that addresses the pollutants of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;

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

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

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

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

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

- a. If the board department has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you must submit a registration statement that includes the information on your best management practices and measurable goals required by subdivision D 4 of this section. You may file your own registration statement, or you and other municipalities or governmental entities may jointly submit a registration statement. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, you must submit a registration statement that describes which minimum measures you will implement and identify the entities that will implement the other minimum measures within the area served by your MS4. The general permit will explain any other steps necessary to obtain permit authorization.

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

- (2) If you are seeking authorization to discharge under an individual state permit and wish to implement a program that is different from the program under subsection D of this section, you will need to comply with the state permit application requirements of 9VAC25-870-380 C. You must submit both parts of the application requirements in 9VAC25-870-380 C 1 and 2 by March 10, 2003. You do

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not need to submit the information required by 9VAC25-870-380 C 1 b and C 2 regarding your legal authority, unless you intend for the state permit writer to take such information into account when developing your other state permit conditions.

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

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

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

3. If you operate a regulated small MS4:

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

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

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

1. Your MS4 state permit will require at a minimum that you develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water

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

2. Minimum control measures.

a. Public education and outreach on stormwater impacts.

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

(2) NOTE: You may use stormwater educational materials provided by the state, your tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program should inform individuals and households about the steps they can take to reduce stormwater pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. The ~~board~~ department recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. The ~~board~~ department recommends that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include: distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school-age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. In addition, the ~~board~~ department recommends that some of the

materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. You are encouraged to tailor your outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

b. Public involvement/participation.

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

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

c. Illicit discharge detection and elimination.

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

(2) You must:

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

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

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

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

(3) You need to address the following categories of nonstormwater discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising

groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)), uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water. (Discharges or flows from fire-fighting activities are excluded from the effective prohibition against nonstormwater and need only be addressed where they are identified as significant sources of pollutants to surface waters.)

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

d. Construction site stormwater runoff control.

(1) You must develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Reduction of stormwater discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the ~~board~~ department waives requirements for stormwater discharges associated with small construction activity in accordance with the definition in 9VAC25-870-10, you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

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

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

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

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

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

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

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

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

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

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

(2) You must:

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

(b) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development

and redevelopment projects to the extent allowable under state, tribal or local law; and

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

(3) NOTE: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. The board department recommends that the BMPs chosen be appropriate for the local community, minimize water quality impacts, and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, the board department encourages you to participate in locally based watershed planning efforts that attempt to involve a diverse group of stakeholders, including interested citizens. When developing a program that is consistent with this measure's intent, the board department recommends that you adopt a planning process that identifies the municipality's program goals (e.g., minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (e.g., adopt a combination of structural and/or nonstructural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing your program, you should consider assessing existing ordinances, policies, programs and studies that address stormwater runoff quality. In addition to assessing these existing documents and programs, you should provide opportunities to the public to participate in the development of the program. Nonstructural BMPs are preventative actions that involve management and source controls such as: (i) policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; (ii) policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; (iii) education programs for developers and the public about project designs that minimize water quality impacts; and (iv) measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. The board department recommends that you ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and

maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Stormwater technologies are constantly being improved, and the board department recommends that your requirements be responsive to these changes, developments or improvements in control technologies.

f. Pollution prevention/good housekeeping for municipal operations.

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

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

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

4. a. In your state permit application (either a registration statement for coverage under a general permit or an

individual permit application), you must identify and submit to the board department the following information:

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

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

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

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

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

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

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

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

7. Evaluation and assessment.

a. You must evaluate program compliance, the appropriateness of your identified best management

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practices, and progress towards achieving your identified measurable goals. The board department may determine monitoring requirements for you in accordance with monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.

b. You must keep records required by the state permit for at least three years. You must submit your records to the department only when specifically asked to do so. You must make your records, including a description of your stormwater management program, available to the public at reasonable times during regular business hours (see 9VAC25-870-340 for confidentiality provision). You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.

c. Unless you are relying on another entity to satisfy your state permit obligations under subdivision E 1 of this section, you must submit annual reports to the department for your first state permit term. For subsequent state permit terms, you must submit reports in years two and four unless the department requires more frequent reports. As of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance with this subsection shall be submitted electronically by the owner, operator, or the duly authorized representative of the small MS4 to the department in compliance with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit. Your report must include:

- (1) The status of compliance with state permit conditions, an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control measures;
- (2) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;
- (3) A summary of the stormwater activities you plan to undertake during the next reporting cycle;
- (4) A change in any identified best management practices or measurable goals for any of the minimum control measures; and
- (5) Notice that you are relying on another governmental entity to satisfy some of your state permit obligations (if applicable).

E. As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

1. You may rely on another entity to satisfy your state permit obligations to implement a minimum control measure if:

- a. The other entity, in fact, implements the control measure;
- b. The particular control measure, or component thereof, is at least as stringent as the corresponding state permit requirement; and
- c. The other entity agrees to implement the control measure on your behalf. In the reports you must submit under subdivision D 7 c of this section, you must also specify that you rely on another entity to satisfy some of your state permit obligations. If you are relying on another governmental entity regulated under the state permit program to satisfy all of your state permit obligations, including your obligation to file periodic reports required by subdivision D 7 c of this section, you must note that fact in your registration statement, but you are not required to file the periodic reports. You remain responsible for compliance with your state permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, the board department encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your state permit.

2. In some cases, the board department may recognize, either in your individual permit or in a general permit, that another governmental entity is responsible under a state permit for implementing one or more of the minimum control measures for your small MS4. Where the board department does so, you are not required to include such minimum control measure(s) in your stormwater management program. Your state permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

F. As an operator of a regulated small MS4, what happens if I don't comply with the application or state permit requirements in subsections C through E of this section?

State permits are enforceable under the Clean Water Act and the Virginia Stormwater Management Act. Violators may be subject to the enforcement actions and penalties described in Clean Water Act §§ 309(b), (c), and (g) and 505 or under §§ 62.1-44.15:39 through 62.1-44.15:48 of the Code of Virginia. Compliance with a state permit issued pursuant to § 402 of the Clean Water Act is deemed compliance, for purposes of §§ 309 and 505, with §§ 301, 302, 306, 307, and 403, except any standard imposed under § 307 for toxic pollutants injurious to human health. If you are covered as a state co-permittee under an individual permit or under a general permit by means of a joint registration statement, you remain subject to the enforcement actions and penalties for the

failure to comply with the terms of the state permit in your jurisdiction except as set forth in subdivision E 2 of this section.

G. Will the small MS4 stormwater program regulations at subsections B through F of this section change in the future?

EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES MS4 stormwater program. The board will reevaluate the regulations based on data from the EPA NPDES MS4 stormwater program, from research on receiving water impacts from stormwater, and the effectiveness of best management practices (BMPs), as well as other relevant information sources.

9VAC25-870-410. General permits.

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

1. The general permit shall be written to cover one or more categories or subcategories of discharges, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:
 - a. Designated planning areas under §§ 208 and 303 of CWA;
 - b. Sewer districts or sewer authorities;
 - c. City, county, or state political boundaries;
 - d. State highway systems;
 - e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;
 - f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or
 - g. Any other appropriate division or combination of boundaries.
2. The general permit may be written to regulate one or more categories within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are stormwater point sources.
3. Where sources within a specific category of dischargers are subject to water quality-based limits imposed pursuant to 9VAC25-870-460, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.
4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers covered by the permit.
5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

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

2. Authorization to discharge.

a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers seeking coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A discharger who fails to submit a notice of intent in accordance with the terms of the state permit is not authorized to discharge, under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of this subsection, contains a provision that a notice of intent is not required or the ~~board~~ department notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this chapter. As of the start date in Table 1 of 9VAC25-31-1020, all notices of intent submitted in compliance with this subdivision shall be submitted electronically by the discharger (or treatment works treating domestic sewage) to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, dischargers (or treatment works treating domestic sewage) may be required to report electronically if specified by a particular permit.

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream or streams, and other required data elements as identified in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030. All notices of intent shall be signed in accordance with 9VAC25-870-370.

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

d. General permits shall specify whether a discharger that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the state permit, is authorized to discharge in accordance with the state permit either

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upon receipt of the notice of intent by the department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the ~~board~~ department. Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Stormwater discharges associated with small construction activity may, at the discretion of the ~~board~~ department, be authorized to discharge under a general permit without submitting a notice of intent where the ~~board~~ department finds that a notice of intent requirement would be inappropriate. In making such a finding, the ~~board~~ department shall consider the (i) type of discharge, (ii) expected nature of the discharge, (iii) potential for toxic and conventional pollutants in the discharges, (iv) expected volume of the discharges, (v) other means of identifying discharges covered by the state permit, and (vi) estimated number of discharges to be covered by the state permit. The ~~board~~ department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The ~~board~~ department may notify a discharger that it is covered by a general permit, even if the discharger has not submitted a notice of intent to be covered. A discharger so notified may request an individual permit under subdivision 3 c of this subsection.

3. Requiring an individual permit.

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

- (1) The discharger is not in compliance with the conditions of the general permit;
- (2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
- (3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;
- (4) A water quality management plan, established by the ~~State Water Control Board~~ department pursuant to 9VAC25-720, containing requirements applicable to such point sources is approved;
- (5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
- (6) The discharge(s) is a significant contributor of pollutants. In making this determination, the ~~board~~ department may consider the following factors:

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

(b) The size of the discharge;

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

(d) Other relevant factors;

b. State permits required on a case-by-case basis.

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

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

(3) Prior to a case-by-case determination that an individual permit is required for a stormwater discharge under this subsection, the ~~board~~ department may require the discharger to submit a state permit application or other information regarding the discharge under the Act and § 308 of the CWA. In requiring such information, the ~~board~~ department shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a state permit under 9VAC25-870-380 A 1 within 60 days of notice or under 9VAC25-870-380 A 8 within 180 days of notice, unless permission for a later date is granted by the ~~board~~ department. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft state permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 9VAC25-870-360 with reasons supporting the request. The request shall be processed under the applicable parts of this chapter. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual permit is issued to an owner or operator otherwise subject to a general permit, the applicability of the general permit to the individual permit

state permittee is automatically terminated on the effective date of the individual permit.

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

9VAC25-870-420. New sources and new discharges.

A. Criteria for new source determination.

1. Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in this chapter and

- a. It is constructed at a site at which no other source is located;
- b. It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- c. Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the ~~board~~ department shall consider such factors as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source.

2. A source meeting the requirements of subdivisions 1 a, b, or c of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.

3. Construction on a site at which an existing source is located results in a state permit modification subject to 9VAC25-870-630 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivisions 1 b or c of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

4. Construction of a new source has commenced if the owner or operator has:

- a. Begun, or caused to begin as part of a continuous on-site construction program:
 - (1) Any placement, assembly, or installation of facilities or equipment; or
 - (2) Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options

to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under the paragraph.

B. Effect of compliance with new source performance standards. The provisions of this subsection do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this subdivision.

1. Except as provided in subdivision 2 of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under § 301(b)(2) of the CWA for the soonest ending of the following periods:

- a. Ten years from the date that construction is completed;
- b. Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or
- c. The period of depreciation or amortization of the facility for the purposes of § 167 or § 169 (or both) of the Internal Revenue Code of 1954 (26 USC 167 and 26 USC 169, respectively).

2. The protection from more stringent standards of performance afforded by subdivision 1 of this subsection does not apply to:

- a. Additional or more stringent state permit conditions that are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under the Act and § 307(a) of the CWA; or
- b. Additional state permit conditions controlling toxic pollutants or hazardous substances that are not controlled by new source performance standards. This includes state permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

3. When a separate VPDES or state permit issued to a source with a protection period under subdivision 1 of this subsection will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of § 301 of the CWA and any other then applicable requirements of the CWA and the Act immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with

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requirements promulgated less than three years before the expiration of the protection period.

4. The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall start-up all pollution control equipment required to meet the conditions of its state permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all state permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a state permit containing a compliance schedule under 9VAC25-870-490 A 2.

5. After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

9VAC25-870-430. Conditions applicable to all state permits.

The following conditions apply to all state permits. Additional conditions applicable to state permits are in 9VAC25-870-440. All conditions applicable to state permits shall be incorporated into the state permits either expressly or by reference. If incorporated by reference, a specific citation to this regulation must be given in the state permit.

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

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

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

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

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

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

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

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

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

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

1. Enter upon the state permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the state permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the state permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the state permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring state permit compliance or as otherwise authorized by the CWA and the Act, any substances or parameters at any location.

J. Monitoring and records.

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

2. The state permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the state permit, and records of all data used to complete the application for the state permit, for a period of at least three years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the state permittee, or as requested by the ~~board~~ department.

3. Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individual or individuals who performed the sampling or measurements;
- c. The date or dates analyses were performed;
- d. The individual or individuals who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or alternative EPA approved methods, unless other test procedures have been specified in the state permit. Analyses performed according to test procedures approved under 40 CFR Part 136 shall be performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

K. All applications, reports, or information submitted to the VSMP authority and department shall be signed and certified as required by 9VAC25-870-370.

L. Reporting requirements.

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

- a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 9VAC25-870-420 A; or
- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in the state permit.

2. The state permittee shall give advance notice to the department of any planned changes in the permitted facility

or activity that may result in noncompliance with state permit requirements.

3. State permits are not transferable to any person except in accordance with 9VAC25-870-620.

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

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

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

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

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

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

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

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- b. Breakdown of processing or accessory equipment;
- c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as sewer lines or wastewater pump stations); and
- d. Flooding or other acts of nature.

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

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

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

(2) As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this subdivision 7 shall be submitted electronically by the permittee to the department in compliance with this subdivision 7 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this subdivision 7 by a particular permit.

(3) The director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this subdivision 7.

b. The following shall be reported within 24 hours under this subdivision:

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

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

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

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

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

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

b. As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this subdivision 8 shall be submitted electronically by the permittee to the department in compliance with this subdivision 8 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit.

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

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

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

M. Bypass.

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

2. Notice.

a. Anticipated bypass. If the state permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

b. Unanticipated bypass. The state permittee shall submit notice of an unanticipated bypass as required in subdivision L 7 of this section. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

3. Prohibition of bypass.

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

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

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

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

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

N. Upset.

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

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

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

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

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

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

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

9VAC25-870-440. Additional conditions applicable to municipal separate storm sewer state permits.

In addition to those conditions set forth in 9VAC25-870-430, the operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the board department under 9VAC25-870-380 A 1 e must submit an annual report by a date specified in the state permit for such system. As of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance with this section shall be submitted electronically by the owner, operator, or the duly authorized representative of the MS4 to the department in compliance with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit. The report shall include:

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1. The status of implementing the components of the stormwater management program that are established as state permit conditions;
2. Proposed changes to the stormwater management programs that are established as state permit conditions. Such proposed changes shall be consistent with 9VAC25-870-380 C 2 d;
3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the state permit application;
4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;
5. Annual expenditures and budget for year following each annual report;
6. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and
7. Identification of water quality improvements or degradation.

9VAC25-870-450. Establishing state permit conditions.

A. In addition to conditions required in all state permits, the ~~board~~ department shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Stormwater Management Act, the State Water Control Law, the CWA, and attendant regulations. These shall include conditions under 9VAC25-870-480 (duration of state permits), 9VAC25-870-490 (schedules of compliance), 9VAC25-870-460 (monitoring), electronic reporting requirements of 40 CFR Part 3, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

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

2. New or reissued state permits, and to the extent allowed under Part X of this chapter modified or revoked and reissued state permits, shall incorporate each of the applicable requirements referenced in 9VAC25-870-460 and 9VAC25-870-470.

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

9VAC25-870-460. Establishing limitations, standards, and other state permit conditions.

In addition to the conditions established under 9VAC25-870-450 A, each state permit shall include conditions meeting the following requirements when applicable.

A. 1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under § 301 of the CWA, on new source performance standards promulgated under § 306 of CWA, on case-by-case effluent limitations determined under § 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 9VAC25-870-420 B (protection period).

2. The ~~board~~ department may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a state permit to forego sampling of a pollutant found at 40 CFR Subchapter N if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the state permit and is not available during the term of the first state permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued state permit or modification of a reissued state permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier state permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the state permit as an express state permit condition and the reasons supporting the grant must be documented in the state permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

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

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

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

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

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

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

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

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

(1) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the ~~board~~

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

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

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

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

(b) The fact sheet required by 9VAC25-870-520 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

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

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

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

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

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

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

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

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

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

6. Ensure consistency with the requirements of a Water Quality Management plan established by the State Water Control Board pursuant to 9VAC25-720 and approved by EPA under § 208(b) of the CWA;

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

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

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

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

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

- a. Limitations on those pollutants; or
- b. Limitations on other pollutants that, in the judgment of the ~~board~~ department, will provide treatment of the pollutants under subdivision 1 of this subsection to the levels required by the Stormwater Management Act, the State Water Control Law, and 40 CFR Part 125, Subpart A.

E. A notification level that exceeds the notification level of 9VAC25-870-440 A 1 a, b, or c, upon a petition from the state permittee or on the ~~board's~~ department's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the state permittee.

F. Twenty-four-hour reporting. Pollutants for which the state permittee must report violations of maximum daily discharge limitations under 9VAC25-870-430 L 7 b (3) (24-hour reporting) shall be listed in the state permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

G. Durations for state permits, as set forth in 9VAC25-870-480.

H. Monitoring requirements.

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

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

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 9VAC25-870-430, subdivisions 5 through 8 of this subsection, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Reporting shall be no less frequent than specified in the above regulation;

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

- a. The mass (or other measurement specified in the state permit) for each pollutant limited in the state permit;
- b. The volume of effluent discharged from each outfall;
- c. Other measurements as appropriate including pollutants; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; or as determined to be necessary on a case-by-case basis pursuant to the Stormwater Management Act, the State Water Control Law, and § 405(d)(4) of the CWA;
- d. According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the state permit for pollutants with no approved methods; and
- e. With analyses performed according to test procedures approved under 40 CFR Part 136 being performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in

no case less than once a year. All results shall be electronically reported in compliance with 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation;

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

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

- a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a stormwater discharge and evaluate whether measures to reduce pollutant loading identified in a stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the state permit or whether additional control measures are needed;
- b. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the state permit, and identifying any incidents of noncompliance;
- c. Such report and certification be signed in accordance with 9VAC25-870-370; and

8. State permits which do not require the submittal of monitoring result reports at least annually shall require that the state permittee report all instances of noncompliance not reported under 9VAC25-870-430 L 1, 4, 5, 6, and 7 at least annually.

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

- 1. Authorized under § 402(p) of the CWA for the control of stormwater discharges;
- 2. Numeric effluent limitations are infeasible; or
- 3. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Stormwater Management Act, the State Water Control Law, and the CWA.

J. Reissued state permits.

1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA, a state permit may not be renewed, reissued, or modified on the basis of effluent

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

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

- a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance that justify the application of a less stringent effluent limitation;
- b. (1) Information is available that was not available at the time of state permit issuance (other than revised regulations, guidance, or test methods) and that would have justified the application of a less stringent effluent limitation at the time of state permit issuance; or
(2) The ~~board~~ department determines that technical mistakes or mistaken interpretations of the Act were made in issuing the state permit under § 402(a)(1)(B) of the CWA;
- c. A less stringent effluent limitation is necessary because of events over which the state permittee has no control and for which there is no reasonably available remedy;
- d. The state permittee has received a state permit modification under the Stormwater Management Act, the State Water Control Law, and § 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the CWA; or
- e. The state permittee has installed the treatment facilities required to meet the effluent limitations in the previous state permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified state permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of state permit renewal, reissuance, or modification).

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

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Act or the CWA or for reasons otherwise unrelated to water quality.

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

K. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with 9VAC25-870-570.

L. Qualifying state, tribal, or local programs.

1. For stormwater discharges associated with small construction activity identified in 9VAC25-870-10, the ~~board~~ department may include state permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. Where a qualifying state, tribal, or local program does not include one or more of the elements in this subdivision, then the ~~board~~ department must include those elements as conditions in the state permit. A qualifying state, tribal, or local erosion and sediment control program is one that includes:

- a. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;
- b. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
- c. Requirements for construction site operators to develop and implement a stormwater pollution prevention plan. A stormwater pollution prevention plan includes site descriptions; descriptions of appropriate control measures; copies of approved state, tribal or local requirements; maintenance procedures; inspection procedures; and identification of nonstormwater discharges; and
- d. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

2. For stormwater discharges from construction activity that does not meet the definition of a small construction activity, the ~~board~~ department may include state permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. A qualifying state, tribal or local erosion and sediment control program is one that includes the elements listed in

subdivision 1 of this subsection and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the state permit writer.

9VAC25-870-480. Duration of state permits.

A. State permits shall be effective for a fixed term not to exceed five years.

B. Except as provided in 9VAC25-870-330, the term of a state permit shall not be extended by modification beyond the maximum duration specified in this section.

C. The ~~board~~ department may issue any state permit for a duration that is less than the full allowable term under this section.

D. A state permit may be issued to expire on or after the statutory deadline set forth in §§ 301(b)(2) (A), (C), and (E) of the CWA, if the state permit includes effluent limitations to meet the requirements of §§ 301(b)(2) (A), (C), (D), (E) and (F) of the CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved.

9VAC25-870-490. Schedules of compliance.

A. The state permit may, when appropriate, specify a schedule of compliance leading to compliance with the Act, the CWA and regulations.

1. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

2. The first state permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

3. Schedules of compliance may be established in state permits for existing sources that are reissued or modified to contain new or more restrictive water quality-based effluent limitations. The schedule may allow a reasonable period of time, not to exceed the term of the state permit, for the discharger to attain compliance with the water quality-based limitations.

4. Except as provided in subdivision B 1 b of this section, if a state permit establishes a schedule of compliance that exceeds one year from the date of state permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

- a. The time between interim dates shall not exceed one year.
- b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the state permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

5. The state permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the state permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if subdivision 4 b of this subsection is applicable.

B. A state permit applicant or state permittee may cease conducting regulated activities (by termination of direct discharge for sources) rather than continuing to operate and meet state permit requirements as follows:

1. If the state permittee decides to cease conducting regulated activities at a given time within the term of a state permit that has already been issued:
 - a. The state permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or
 - b. The state permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the state permit;
2. If the decision to cease conducting regulated activities is made before issuance of a state permit whose term will include the termination date, the state permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline;
3. If the state permittee is undecided whether to cease conducting regulated activities, the board department may issue or modify a state permit to contain two schedules as follows:
 - a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;
 - b. One schedule shall lead to timely compliance with applicable requirements no later than the statutory deadline;
 - c. The second schedule shall lead to cessation of regulated activities by a date that will ensure timely compliance with applicable requirements no later than the statutory deadline; and

d. Each state permit containing two schedules shall include a requirement that after the state permittee has made a final decision under subdivision 3 a of this subsection it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities; and

4. The state permit applicant's or state permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the board department, such as a resolution of the board of directors of a corporation.

9VAC25-870-500. Draft state permits.

A. Once an application for an individual state permit is complete, the board department shall tentatively decide whether to prepare a draft individual state permit or to deny the application.

B. If the board department tentatively decides to deny the individual state permit application, the owner shall be advised of that decision and of the changes necessary to obtain approval. The owner may withdraw the application prior to board department action. If the application is not withdrawn or modified to obtain the tentative approval to issue, the board department shall provide public notice and opportunity for a public hearing prior to board department action on the application.

C. If the board department tentatively decides to issue a general permit, a draft general permit shall be prepared under subsection D of this section.

D. If the board department decides to prepare a draft state permit, the draft state permit shall contain the following information:

1. All conditions under 9VAC25-870-430 and 9VAC25-870-450;
2. All compliance schedules under 9VAC25-870-490;
3. All monitoring requirements under 9VAC25-870-460; and
4. Effluent limitations, standards, prohibitions and conditions under 9VAC25-870-430, 9VAC25-870-440, and 9VAC25-870-460, and all variances that are to be included.

9VAC25-870-520. Fact sheet.

A. A fact sheet shall be prepared for every draft individual state permit for a major facility or activity, for every general permit, for every draft state permit that incorporates a variance or requires an explanation under subsection B 8 of this section, and for every draft state permit that the board department finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts

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and the significant factual, legal, methodological and policy questions considered in preparing the draft state permit. The board department shall send this fact sheet to the state permit applicant and, on request, to any other person.

B. The fact sheet shall include, when applicable:

1. A brief description of the type of facility or activity that is the subject of the draft state permit;
2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;
3. A brief summary of the basis for the draft state permit conditions including references to applicable statutory or regulatory provisions;
4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;
5. A description of the procedures for reaching a final decision on the draft state permit including:
 - a. The beginning and ending dates of the comment period for the draft state permit and the address where comments will be received;
 - b. Procedures for requesting a public hearing and the nature of that hearing; and
 - c. Any other procedures by which the public may participate in the final decision;
6. Name, telephone number, and email address of a person to contact for additional information;
7. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;
8. When the draft state permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:
 - a. Limitations to control toxic pollutants;
 - b. Limitations on indicator pollutants;
 - c. Technology-based limitations set on a case-by-case basis;
 - d. Limitations to meet the criteria for state permit issuance under 9VAC25-870-310; or
 - e. Waivers from monitoring requirements granted under 9VAC25-870-460 A; and
9. When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

9VAC25-870-530. Public notice of draft state permit actions and public comment period.

A. Scope.

1. The board department shall give public notice that the following actions have occurred:
 - a. A draft state permit has been prepared under 9VAC25-870-500 D;
 - b. A public hearing has been scheduled under 9VAC25-870-550; or
 - c. A new source determination has been made under 9VAC25-870-420.

2. No public notice is required when a request for an individual state permit modification, revocation and reissuance, or termination is denied under 9VAC25-870-610 B. Written notice of that denial shall be given to the requester and to the state permittee. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

3. Public notices may describe more than one draft state permit or draft state permit actions.

B. Timing.

1. Public notice of the preparation of a draft state permit required under subsection A of this section shall allow at least 30 days for public comment.
2. Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft state permit and the two notices may be combined.)

C. Methods. Public notice of activities described in subdivision A 1 of this section shall be given by the following methods:

1. By mailing, either by electronic or postal delivery, a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subdivision may waive his rights to receive notice for any classes and categories of permits):
 - a. The state permit applicant (except for general permits when there is no state permit applicant);
 - b. Any other agency that the board department knows has issued or is required to issue a VPDES permit;
 - c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes);
 - d. Any state agency responsible for plan development under § 208(b)(2), 208(b)(4) or § 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and

Wildlife Service and the National Marine Fisheries Service;

e. Persons on a mailing list developed by:

- (1) Including those who request in writing to be on the list;
- (2) Soliciting persons for area lists from participants in past state permit proceedings in that area; and
- (3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press, and in such publications as EPA regional and state funded newsletters, environmental bulletins, or state law journals. (The ~~board~~ department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The ~~board~~ department may delete from the list the name of any person who fails to respond to such a request.);

f. (1) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(2) Each state agency having any authority under state law with respect to the construction or operation of such facility;

2. By publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge. The cost of public notice shall be paid by the owner; and

3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

- a. Name and address of the office processing the state permit action for which notice is being given;
- b. Name and address of the state permittee or state permit applicant and, if different, of the facility or activity regulated by the state permit, except in the case of draft general permits;
- c. A brief description of the business conducted at the facility or activity described in the individual state permit application or the draft state permit, for general permits when there is no application;
- d. Name, address, telephone number, and email address of a person from whom interested persons may obtain further information, including copies of the draft state permit, statement of basis or fact sheet, and the application;
- e. A brief description of the procedures for submitting comments and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled) and other procedures by which the public may

participate in the final individual or general state permit decision;

f. For an individual state permit, a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

g. Any additional information considered necessary or proper.

2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public hearing under 9VAC25-870-550 shall contain the following information:

- a. Reference to the date of previous public notices relating to the draft state permit;
- b. Date, time, and place of the public hearing;
- c. A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and
- d. A concise statement of the issues raised by the persons requesting the public hearing.

E. In addition to the general public notice described in subdivision D 1 of this section, all persons identified in subdivisions C 1 a through 1 d of this section shall be mailed, either by electronic or postal delivery, a copy of the fact sheet or statement of basis, the individual state permit application (if any) and the draft state permit (if any).

9VAC25-870-540. Public comments and requests for public hearings.

During the public comment period provided under 9VAC25-870-530, any interested person may submit written comments on the draft state permit and may request a public hearing, if no public hearing has already been scheduled. A request for a public hearing shall be in writing and shall meet the requirements of ~~§ 62.1-44.15:02 B of the Code of Virginia~~ 9VAC25-870-550 and 9VAC25-870-555. All comments shall be considered in making the final decision and shall be answered as provided in 9VAC25-870-560.

9VAC25-870-550. Public hearings.

A. 1. Procedures for public hearings and permits before the ~~board~~ department are those set forth in ~~§ 62.1-44.15:02 of the Code of Virginia~~ 9VAC25-870-555.

2. Public notice of the public hearing shall be given as specified in 9VAC25-870-530.

3. Any public hearing convened pursuant to this section shall be held in the geographical area of the proposed discharge, or in another appropriate area. Related groups of individual state permit applications may be considered at any such public hearing.

B. Any person may submit oral or written statements and data concerning the draft individual state permit. Reasonable limits

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may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.

C. A recording or written transcript of the hearing shall be made available to the public.

9VAC25-870-555. Criteria for requesting and granting a public hearing in a permit action.

A. During the public comment period on a permit action in those instances where a public hearing is not mandatory under state or federal law or regulation, interested persons may request a public hearing to contest the action or terms and conditions of the permit.

B. Requests for a public hearing shall contain the following information:

1. The name and postal mailing or email address of the requester;
2. The names and addresses of all persons for whom the requester is acting as a representative;
3. The reason for the request for a public hearing;
4. A brief, informal statement setting forth the factual nature and extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and
5. Where possible, specific references to the terms and the conditions of the permit in question, together with suggested revisions and alterations to those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the basic laws of the State Water Control Board.

C. Upon completion of the public comment period on a permit action, the director shall review all timely requests for public hearing filed during the comment period on the permit action and, within 30 calendar days following the expiration of the time period for the submission of requests, shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director finds the following:

1. That there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing;
2. That the requesters raise substantial disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and
3. That the action requested by the interested party is not on its face inconsistent with or in violation of the basic laws of the State Water Control Board for a water permit action, federal law, or any regulation promulgated thereunder.

D. The director shall notify by email or mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing.

E. If the request for a public hearing is granted, the director shall:

1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the notice of the decision to grant the public hearing; and
2. Cause, or require the applicant to publish, notice of a public hearing to be published once, in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located at least 30 days before the hearing date.

F. The public comment period shall remain open for 15 days after the close of the public hearing if required by § 62.1-44.15:01 of the Code of Virginia.

G. The director may, at his discretion, convene a public hearing in a permit action.

9VAC25-870-556. Controversial permits.

Before rendering a final decision on a controversial permit, the department shall publish a summary of public comments received during the applicable public comment period and public hearing. After such publication, the department shall publish responses to the public comment summary and hold a public hearing to provide an opportunity for individuals who previously commented, either at a public hearing or in writing during the applicable public comment period, to respond to the department's public comment summary and response. No new information will be accepted at that time. In making its decision, the department shall consider (i) the verbal and written comments received during the comment period and the public hearing made part of the record, (ii) any commentary of the board, and (iii) the agency files.

9VAC25-870-557. Controversial permits reporting.

At each regular meeting of the board, the department shall provide an overview and update regarding any controversial permits pending before the department that are relevant. Immediately after such presentation by the department, the board shall have an opportunity to respond to the department's presentation and provide commentary regarding such pending permits.

9VAC25-870-560. Response to comments.

A. At the time that a final individual or general state permit is issued, the ~~board~~ department shall issue a response to comments. This response shall:

1. Specify which provisions, if any, of the draft individual or general state permit have been changed in the final individual or general state permit decision, and the reasons for the change; and

2. Briefly describe and respond to all significant comments on the draft state permit raised during the public comment period, or during any public hearing.

B. The response to comments shall be available to the public.

9VAC25-870-570. Conditions requested by the Corps of Engineers and other government agencies.

A. If during the comment period for a draft state permit, the district engineer advises the department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of an individual or general state permit, the individual or general state permit shall be denied and the individual state permit applicant so notified. If the district engineer advises the department that imposing specified conditions upon the individual or general state permit is necessary to avoid any substantial impairment of anchorage or navigation, then the board department shall include the specified conditions in the individual or general state permit. Review or appeal of denial of an individual or general state permit or of conditions specified by the district engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the individual or general state permit for the duration of that stay.

B. If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the department in writing that the imposition of specified conditions upon the individual or general state permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the board department may include the specified conditions in the individual or general state permit to the extent they are determined necessary to carry out the provisions of this regulation, the Act and of the CWA.

C. In appropriate cases the board department may consult with one or more of the agencies referred to in this section before issuing a draft state permit and may reflect their views in the statement of basis, the fact sheet, or the draft state permit.

9VAC25-870-580. Decision on variances.

A. The board department may grant or deny requests for variances requested pursuant to 9VAC25-870-360 G 4, subject to EPA objection. Decisions on these variances shall be made according to the criteria of 40 CFR Part 125, Subpart H.

B. The board department may deny, or forward to the regional administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

1. A variance based on the economic capability of the individual state permit applicant submitted pursuant to 9VAC25-870-360 G 2; or

2. A variance based on water quality related effluent limitations submitted pursuant to 9VAC25-870-360 G 3.

C. If the EPA approves the variance, the board department may prepare a draft individual state permit incorporating the variance. Any public notice of a draft individual state permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

D. The board department may deny or forward to the administrator with a written concurrence a completed request for:

1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline was based, made according to the criteria and standards of 40 CFR Part 125, Subpart D; or

2. A variance based upon certain water quality factors submitted pursuant to 9VAC25-870-360 G 2.

E. If the administrator approves the variance, the board department may prepare a draft individual state permit incorporating the variance. Any public notice of a draft individual state permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

9VAC25-870-590. Appeals of variances.

When the board department issues an individual state permit on which EPA has made a variance decision, separate appeals of the individual state permit and of the EPA variance decision are possible.

9VAC25-870-610. Modification, revocation and reissuance, or termination of state permits.

A. State permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the state permittee) or upon the board department's initiative. When the department receives any information (for example, inspects the facility, receives information submitted by the state permittee as required in the state permit, receives a request for modification or revocation and reissuance, or conducts a review of the state permit file) it may determine whether one or more of the causes listed in this section for modification or revocation and reissuance, or both, exist. However, state permits may only be modified, revoked and reissued, or terminated for the reasons specified in 9VAC25-870-630 or 9VAC25-870-650. All requests shall be in writing and shall contain facts or reasons supporting the request. If cause does not exist under these sections, the board department shall not modify, revoke and reissue or terminate the state permit. If a state permit modification satisfies the criteria for

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minor modifications, the state permit may be modified without a draft state permit or public review. Otherwise, a draft state permit must be prepared and other procedures in Part IX (9VAC25-870-500 et seq.) followed.

B. If the board department decides the request is not justified, it shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or public hearings.

C. 1. If the board department tentatively decides to modify or revoke and reissue a state permit, it shall prepare a draft state permit incorporating the proposed changes. The board department may request additional information and, in the case of a modified state permit, may require the submission of an updated application. In the case of revoked and reissued state permits, the board department shall require the submission of a new application.

2. In a state permit modification under this section, only those conditions to be modified shall be reopened when a new draft state permit is prepared. All other aspects of the existing state permit shall remain in effect for the duration of the unmodified state permit. When a state permit is revoked and reissued under this section, the entire state permit is reopened just as if the state permit had expired and was being reissued and the state permit is reissued for a new term. During any revocation and reissuance proceeding the state permittee shall comply with all conditions of the existing state permit until a new final state permit is reissued.

3. Minor modifications as defined in 9VAC25-870-640 are not subject to the requirements of this section.

D. If the board department tentatively decides to terminate a state permit under 9VAC25-870-650, where the state permittee objects, it shall do so in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

9VAC25-870-620. Transfer of state permits.

A. Except as provided in subsection B of this section, a state permit may be transferred by the state permittee to a new owner or operator only if the state permit has been modified or revoked and reissued, or a minor modification made, to identify the new state permittee and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the CWA.

B. Automatic transfers. As an alternative to transfers under subsection A of this section, any state permit may be automatically transferred to a new state permittee if:

1. The current state permittee notifies the department at least 30 days in advance of the proposed transfer date in subdivision 2 of this subsection;
2. The notice includes a written agreement between the existing and new state permittees containing a specific date

for transfer of state permit responsibility, coverage, and liability between them; and

3. The board department does not notify the existing state permittee and the proposed new state permittee of its intent to modify or revoke and reissue the state permit. A modification under this subdivision may also be a minor modification. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subdivision 2 of this subsection.

9VAC25-870-630. Modification or revocation and reissuance of state permits.

A. Causes for modification. The following are causes for modification but not revocation and reissuance of state permits except when the state permittee requests or agrees.

1. There are material and substantial alterations or additions to the permitted facility or activity that occurred after state permit issuance that justify the application of state permit conditions that are different or absent in the existing state permit.

2. The department has received new information. State permits may be modified during their terms for this cause only if the information was not available at the time of state permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different state permit conditions at the time of issuance. For general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger state permits this cause shall include any significant information derived from effluent testing required on the state permit application after issuance of the state permit.

3. The standards or regulations on which the state permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the state permit was issued. State permits may be modified during their terms for this cause only as follows:

a. For promulgation of amended standards or regulations, when:

- (1) The state permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards;
- (2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the state permit condition was based, or has approved a state action with regard to a water quality standard on which the state permit condition was based; and
- (3) A state permittee requests modification in accordance with this chapter within 90 days after Federal Register notice of the action on which the request is based;

b. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or

effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the state permit condition was based and a request is filed by the state permittee in accordance with this chapter within 90 days of judicial remand; or

c. For changes based upon modified state certifications of state permits.

4. The board department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the state permittee has little or no control and for which there is no reasonably available remedy. However, in no case may a compliance schedule be modified to extend beyond an applicable CWA statutory deadline.

5. When the state permittee has filed a request for a variance pursuant to 9VAC25-870-360 G within the time specified in this chapter.

6. When required to incorporate an applicable CWA § 307(a) toxic effluent standard or prohibition.

7. When required by the reopener conditions in a state permit that are established under 9VAC25-870-460 B.

8. Upon failure to notify another state whose waters may be affected by a discharge.

9. When the level of discharge of any pollutant that is not limited in the state permit exceeds the level that can be achieved by the technology-based treatment requirements appropriate to the state permittee.

10. To establish a notification level as provided in 9VAC25-870-460 E.

11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining state permit conditions.

12. When the discharger has installed the treatment technology considered by the state permit writer in setting effluent limitations imposed under the Act and § 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified state permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

13. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in 9VAC25-870-400 D 2 when:

a. The state permit does not include such measures based upon the determination that another entity was responsible for implementation of the requirements; and

b. The other entity fails to implement measures that satisfy the requirements.

B. Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a state permit:

1. Cause exists for termination under 9VAC25-870-650, and the board department determines that modification or revocation and reissuance is appropriate; or

2. The department has received notification of a proposed transfer of the state permit. A state permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new state permittee.

9VAC25-870-640. Minor modifications of individual state permits.

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

1. Correct typographical errors;

2. Require more frequent monitoring or reporting by the state permittee;

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

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

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

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

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

Regulations

Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

9VAC25-870-650. Termination of state permits.

A. The following are causes for terminating a state permit during its term, or for denying an individual state permit, or coverage under a general permit renewal application, after notice and opportunity for a hearing by the board department.

1. The state permittee has violated any regulation or order of the board or department, any order of the VSMP authority, any provision of the Virginia Stormwater Management Act or this chapter, or any order of a court, where such violation results in the unreasonable degradation of properties, water quality, stream channels, and other natural resources, or the violation is representative of a pattern of serious or repeated violations that in the opinion of the board department, demonstrates the state permittee's disregard for or inability to comply with applicable laws, regulations, state permit conditions, orders, rules, or requirements;
2. Noncompliance by the state permittee with any condition of the state permit;
3. The state permittee's failure to disclose fully all relevant material facts, or the state permittee's misrepresentation of any relevant material facts in applying for a state permit, or in any other report or document required under the Act or this chapter;
4. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by state permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge controlled by the state permit;
6. The activity for which the state permit was issued causes unreasonable degradation of properties, water quality, stream channels, and other natural resources; or
7. There exists a material change in the basis on which the state permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or land-disturbing activity controlled by the state permit necessary to prevent unreasonable degradation of properties, water quality, stream channels, and other natural resources.

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

during that period, the board department shall follow the applicable procedures for termination under 9VAC25-870-610 D. Expedited state permit termination procedures are not available to state permittees that are subject to pending state or federal enforcement actions including citizen suits brought under state or federal law. If requesting expedited state permit termination procedures, a state permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law.

C. Permittees that wish to terminate their state permit must submit a notice of termination (NOT) to the department. If requesting expedited permit termination procedures, a permittee must certify in the NOT that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. As of the start date in Table 1 of 9VAC25-31-1020, all NOTs submitted in compliance with this subsection shall be submitted electronically by the permittee to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, the permittee may be required to report electronically if specified by a particular permit.

9VAC25-870-660. Enforcement.

A. The board department may enforce the provisions of this chapter by:

1. Issuing directives in accordance with the Act;
2. Issuing special orders in accordance with the Act;
3. Issuing emergency special orders in accordance with the Act;
4. Seeking injunction, mandamus or other appropriate remedy as authorized by the Act;
5. Seeking civil penalties under the Act; or
6. Seeking remedies under the Act, the CWA or under other laws including the common law.

B. The board department encourages citizen participation in all its activities, including enforcement. In particular:

1. The board department will investigate citizen complaints and provide written response to all signed, written complaints from citizens concerning matters within the board's department's purview;
2. The board department will not oppose intervention in any civil enforcement action when such intervention is authorized by statute or Supreme Court rule; and
3. At least 30 days prior to the final settlement of any civil enforcement action or the issuance of any consent special

order, the ~~board~~ department will publish public notice of such settlement or order in a newspaper of general circulation in the county, city or town in which the discharge is located, and in The Virginia Register of Regulations. This notice will identify the owner, specify the enforcement action to be taken and specify where a copy of the settlement or order can be obtained. A consent special order is a special order issued without a public hearing and with the written consent of the affected owner. For the purpose of this chapter, an emergency special order is not a consent special order. The ~~board~~ department shall consider all comments received during the comment period before taking final action.

C. When a state permit is amended solely to reflect a new owner, and the previous owner had been issued a consent special order that, at the time of state permit amendment was still in full force and effect, a consent special order issued to the new owner does not have to go to public notice provided that:

1. The state permit amendment does not have to go to public notice; and
2. The terms of the new consent order are the same as issued to the previous owner.

D. Notwithstanding subdivision B 3 of this subsection, a special order may be issued by agreement ~~at a board meeting~~ without further notice when a hearing has been scheduled to issue a special order to the affected owner, whether or not the hearing is actually held.

9VAC25-870-670. Delegation of authority. (Repealed.)

~~The director, or his designee, may perform any act of the board provided under the Act and this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~

9VAC25-870-680. Transition.

Upon the effective date of this chapter the following will occur:

1. All applications received after the effective date of this chapter will be processed in accordance with these procedures.
2. State permits issued by the Soil and Water Conservation Board allowing the discharge of stormwater into surface waters from municipal separate storm sewer systems or land-disturbing activities that have not expired or been revoked or terminated before or on the program transfer date to the board department shall continue to remain in effect until their specified expiration dates.

9VAC25-870-700. Purpose.

Sections 62.1-44.15:28 and 62.1-44.15:31 of the Code of Virginia authorize the establishment of a statewide fee schedule, including administrative charges for state agencies,

for stormwater management for land-disturbing activities and for municipal separate storm sewer systems. This part establishes the fee assessment and the collection and distribution systems for those fees. The fees shall be established for individual permits or coverage under the General Permit for Discharges of Stormwater from Construction Activities (state permits for stormwater management for land-disturbing activities) to cover all costs associated with the implementation of a VSMP by a VSMP authority that has been approved by the ~~board and by the~~ department. Such fee attributes include the costs associated with plan review, registration statement review, permit issuance, state-coverage verification, inspections, reporting, database management, and compliance activities associated with the land-disturbing activities as well as for program oversight costs. Fees shall also be established for state permit maintenance, modification, and transfer.

Fees collected pursuant to this part shall be in addition to any general fund appropriations made to the department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the department and the VSMP authority to fully carry out their responsibilities under the Act, this chapter, local ordinances, or standards and specifications where applicable.

When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in 9VAC25-870-820 as available to the department for program oversight responsibilities pursuant to § 62.1-44.15:28 A 5 a of the Code of Virginia. Accordingly, should a VSMP authority demonstrate to the board department its ability to fully and successfully implement a VSMP without a full implementation of the fees set out in this part, the board department may authorize the administrative establishment of a lower fee for that program provided that such reduction shall not reduce the amount of fees due to the department for its program oversight and shall not affect the fee schedules set forth herein.

A VSMP authority may establish greater fees than those base fees specified by this part should it be demonstrated to the board department that such greater fees are necessary to properly administer the VSMP. Any fee increases established by the VSMP authority beyond those base fees established in this part shall not be subject to the fee distribution formula set out in 9VAC25-870-780. Nothing in this part shall prohibit a locality from establishing other local fees authorized by the Code of Virginia related to stormwater management within their jurisdictions.

A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under the Act, this chapter, ordinances, or annual standards and specifications.

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As part of its program oversight, the department shall periodically assess the revenue generated by both the VSMP authorities and the department to ensure that the fees have been appropriately set and the fees may be adjusted through periodic regulatory actions should significant deviations become apparent.

9VAC25-870-740. Exemptions.

A. No state permit application fees will be assessed to:

1. State permittees who request minor modifications to state permits as defined in 9VAC25-870-10 or other minor amendments at the discretion of the VSMP authority.
2. State permittees whose state permits are modified or amended at the request of the VSMP authority or department ~~by the board~~. This does not include errors in the registration statement identified by the VSMP authority; or department; ~~or board~~ or errors related to the acreage of the site.

B. State permit modifications at the request of the state permittee resulting in changes to stormwater management plans that require additional review by the VSMP authority shall not be exempt pursuant to this section and shall be subject to fees specified under 9VAC25-870-825.

9VAC25-870-780. Deposit and use of fees.

A. All fees collected by the department ~~or board~~ pursuant to this chapter shall be deposited into the Virginia Stormwater Management Fund and shall be used and accounted for as specified in § 62.1-44.15:29 of the Code of Virginia. Fees collected by the department ~~or board~~ shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

B. All fees collected by a VSMP authority pursuant to this chapter shall be subject to accounting review and shall be used solely to carry out the VSMP authority's responsibilities pursuant to the Act, Part II and Part III A of this chapter, local ordinances, or annual standards and specifications.

Pursuant to subdivision A 5 a of § 62.1-44.15:28 of the Code of Virginia, whenever the ~~board~~ department has authorized the administration of a VSMP by a VSMP authority, 28% of the total revenue generated by the statewide stormwater management fees collected in accordance with 9VAC25-870-820 shall be remitted on a schedule determined by the department to the State Treasurer for deposit in the Virginia Stormwater Management Fund unless otherwise collected electronically. If the VSMP authority waives or reduces any fee due in accordance with 9VAC25-870-820, the VSMP authority shall remit the 28% portion that would be due to the Virginia Stormwater Management Fund if such fee were charged in full. Any fee increases established by the VSMP authority beyond the base fees established in this part shall not be subject to the fee distribution formula.

9VAC25-870-820. Fees for an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities.

The following fees apply, until June 30, 2014, to coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the department prior to a VSMP authority being approved by the ~~board~~ department in the area where the applicable land-disturbing activity is located, or where the department has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency.

General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development equal to or greater than five acres)	\$750
General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)	\$450
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre) (Fee valid until July 1, 2014)	\$200
Individual Permit for Discharges of Stormwater from Construction Activities	\$15,000

The following total fees to be paid by an applicant apply to (i) any operator seeking coverage under a July 1, 2014, General Permit for Discharges of Stormwater from Construction Activities or (ii) on or after July 1, 2014, to any operator seeking coverage under a General Permit for Discharges of Stormwater from Construction Activities, a state or federal agency that does not file annual standards and specifications, or an individual permit issued by the ~~board~~ department. On and after approval by the ~~board~~ department of a VSMP authority for coverage under the General Permit for Discharges of Stormwater from Construction Activities, no more than 50% of the total fee to be paid by an applicant set out in this part shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted for review in accordance with 9VAC25-870-108. The remaining total fee balance to be paid by an applicant shall be due prior to the issuance of coverage under the General Permit for Discharges of Stormwater from Construction Activities.

When a site or sites are purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees ("total fee to be paid by

applicant" column) in accordance with the disturbed acreage of their site or sites according to the following table.

Fee type	Total fee to be paid by applicant (includes both VSMP authority and department portions where applicable)	Department portion of "total fee to be paid by applicant" (based on 28% of total fee paid*)
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	\$290	\$0
General / Stormwater Management - Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres)	\$209	\$0
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)	\$290	\$81

General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)	\$2,700	\$756
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$3,400	\$952
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$4,500	\$1,260
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100	\$1,708
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	\$9,600	\$2,688

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Individual Permit for Discharges of Stormwater from Construction Activities (This will be administered by the department)	\$15,000	\$15,000
* If the project is completely administered by the department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the department.		

The following fees apply, on or after July 1, 2014, to coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the ~~board~~ department for a state or federal agency that has annual standards and specifications approved by the ~~board~~ department.

General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development equal to or greater than five acres)	\$750
General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)	\$450

9VAC25-870-825. Fees for the modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities.

The following fees apply to modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities issued by the ~~board~~ department. If the state permit modifications result in changes to stormwater management plans that require additional review by the VSMP authority, such reviews shall be subject to the fees set out in this section. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the state permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial state permit fee paid and the state permit fee that would have applied for the total disturbed acreage in 9VAC25-870-820. No modification or transfer fee shall be required until such ~~board-approved~~ department-approved programs exist. These fees shall only be effective when assessed by a VSMP authority, including the department when acting in that capacity, that has been approved by the ~~board~~ department. No modification fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency that is administering a project in accordance with

approved annual standards and specifications but shall apply to all other state or federal agency projects.

General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)	\$20
General / Stormwater Management – Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VSMP authority)	\$20
General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)	\$0
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one and less than five acres)	\$200
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$250
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$300
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$450

General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	\$700
Individual Permit for Discharges of Stormwater from Construction Activities	\$5,000

9VAC25-870-830. State permit maintenance fees.

The following annual permit maintenance fees apply to each state permit identified below, including expired state permits that have been administratively continued. With respect to the General Permit for Discharges of Stormwater from Construction Activities, these fees shall apply until the state permit coverage is terminated, and shall only be effective when assessed by a VSMP authority including the department when acting in that capacity that has been approved by the ~~board~~ department. No maintenance fee shall be required for a General Permit for Discharges of Stormwater from Construction Activities until such ~~board~~ department approved programs exist. No maintenance fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency that is administering a project in accordance with approved annual standards and specifications but shall apply to all other state or federal agency projects. All regulated MS4s who are issued joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out below:

Municipal Stormwater / MS4 Individual (Large and Medium)	\$8,800
Municipal Stormwater / MS4 Individual (Small)	\$6,000
Municipal Stormwater / MS4 General Permit (Small)	\$3,000
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$50
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)	\$50

General / Stormwater Management – Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VSMP authority)	\$50
General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)	\$0
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance equal to or greater than one acre and less than five acres)	\$400
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$500
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$650
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater 100 acres)	\$1,400
Individual Permit for Discharges from Construction Activities	\$3,000

VA.R. Doc. No. R22-7174; Filed June 29, 2022, 4:49 p.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Extension of Emergency Regulation

Title of Regulation: **12VAC5-90. Regulations for Disease Reporting and Control (amending 12VAC5-90-80, 12VAC5-90-90).**

Statutory Authority: § 32.1-35 of the Code of Virginia.

The Governor has approved the request of the State Board of Health to extend the expiration date of the emergency regulation for 12VAC5-90 for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation is continued in effect through January 18, 2023. The proposed regulation was published in [38:12 V.A.R. 1329-1340 January 31, 2022](#). This extension is required for the State Board of Health to continue to ensure vital disease surveillance and control information is reported to the Virginia Department of Health related to COVID-19 in compliance with the federal CARES Act requirements for disease reporting related to COVID-19. The board intends to pursue a final regulation to complete the process of making these requirements permanent. The emergency regulation was published in [37:9 V.A.R. 954-961 December 21, 2020](#).

Effective Date Extended Through: January 18, 2023.

Agency Contact: Kristin Collins, Policy Analyst, Office of Epidemiology, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7298, or email kristin.collins@vdh.virginia.gov.

VA.R. Doc. No. R21-6359; Filed June 30, 2022, 5:12 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Final Regulation

REGISTRAR'S NOTICE: The Board for Barbers and Cosmetology is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-140).**

18VAC41-50. Tattooing Regulations (amending 18VAC41-50-130).

18VAC41-60. Body-Piercing Regulations (amending 18VAC41-60-90).

18VAC41-70. Esthetics Regulations (amending 18VAC41-70-120).

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: September 1, 2022.

Agency Contact: Stephen Kirschner, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.virginia.gov.

Summary:

The amendments reduce application, renewal, and reinstatement fees for all licenses that come due on or before August 31, 2024, in order to comply with § 54.1-113 of the Code of Virginia.

18VAC41-20-140. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE September 1, 2020 , 2022, through August 31, 2022 2024	AMOUNT DUE September 1, 2022 2024, and after	WHEN DUE
Individuals:			
Application	\$95 \$90	\$105	With application
License by Endorsement	\$95 \$90	\$105	With application
Renewal:			
Barber	\$95 \$90	\$105	With renewal card prior to expiration date
Master Barber	\$95 \$90	\$105	With renewal card prior to expiration date

Regulations

Cosmetologist	\$95 <u>\$90</u>	\$105	With renewal card prior to expiration date
Nail Technician	\$95 <u>\$90</u>	\$105	With renewal card prior to expiration date
Wax Technician	\$95 <u>\$90</u>	\$105	With renewal card prior to expiration date
Reinstatement	\$190 <u>\$180</u> * *includes \$95 <u>\$90</u> renewal fee and \$95 <u>\$90</u> reinstatement fee	\$210* *includes \$105 renewal fee and \$105 reinstatement fee	With reinstatement application
Instructors:			
Application	\$115 <u>\$110</u>	\$125	With application
License by Endorsement	\$115 <u>\$110</u>	\$125	With application
Renewal	\$115 <u>\$110</u>	\$150	With renewal card prior to expiration date
Reinstatement	\$230 <u>\$220</u> * *includes \$115 <u>\$110</u> renewal fee and \$115 <u>\$110</u> reinstatement fee	\$300* *includes \$150 renewal fee and \$150 reinstatement fee	With reinstatement application
Facilities:			
Application	\$170 <u>\$165</u>	\$190	With application
Renewal	\$170 <u>\$165</u>	\$190	With renewal card prior to expiration date

Reinstatement	\$340 <u>\$330</u> * *includes \$170 <u>\$165</u> renewal fee and \$170 <u>\$165</u> reinstatement fee	\$380* *includes \$190 renewal fee and \$190 reinstatement fee	With reinstatement application
Schools:			
Application	\$190 <u>\$185</u>	\$220	With application
Add Program	\$100	\$100	With application
Renewal	\$190 <u>\$185</u>	\$220	With renewal card prior to expiration date
Reinstatement	\$380 <u>\$370</u> * *includes \$190 <u>\$185</u> renewal fee and \$190 <u>\$185</u> reinstatement fee	\$440* *includes \$220 renewal fee and \$220 reinstatement fee	With reinstatement application

18VAC41-50-130. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE September 1, 2020 <u>2022</u> , through August 31, 2022 <u>2024</u>	AMOUNT DUE September 1, 2022 <u>2024</u> , and after	WHEN DUE
Individuals:			
Application	\$95 <u>\$90</u>	\$105	With application
License by Endorsement	\$95 <u>\$90</u>	\$105	With application
Renewal	\$95 <u>\$90</u>	\$105	With renewal card prior to expiration date

Regulations

Reinstatement	\$190 * <u>\$180</u> * *includes \$95 <u>\$90</u> renewal fee and \$95 <u>\$90</u> reinstatement fee	\$210* *includes \$105 renewal fee and \$105 reinstatement fee	With reinstatement application
Instructors:			
Application	\$115 <u>\$110</u>	\$125	With application
License by Endorsement	\$115 <u>\$110</u>	\$125	With application
Renewal	\$115 <u>\$110</u>	\$150	With renewal card prior to expiration date
Reinstatement	\$230 * <u>\$220</u> * *includes \$115 <u>\$110</u> renewal fee and \$115 <u>\$110</u> reinstatement fee	\$300* *includes \$150 renewal fee and \$150 reinstatement fee	With reinstatement application
Parlors or salons:			
Application	\$170 <u>\$165</u>	\$190	With application
Renewal	\$170 <u>\$165</u>	\$190	With renewal card prior to expiration date
Reinstatement	\$340 * <u>\$330</u> * *includes \$170 <u>\$165</u> renewal fee and \$170 <u>\$165</u> reinstatement fee	\$380* *includes \$190 renewal fee and \$190 reinstatement fee	With reinstatement application
Schools:			
Application	\$190 <u>\$185</u>	\$220	With application

Renewal	\$190 <u>\$185</u>	\$220	With renewal card prior to expiration date
Reinstatement	\$380 * <u>\$370</u> * *includes \$190 <u>\$185</u> renewal fee and \$190 <u>\$185</u> reinstatement fee	\$440* *includes \$220 renewal fee and \$220 reinstatement fee	With reinstatement application

18VAC41-60-90. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE September 1, 2020 <u>2022</u> , through August 31, 2022 <u>2024</u>	AMOUNT DUE September 1, 2022 <u>2024</u> , and after	WHEN DUE
Individuals:			
Application	\$95 <u>\$90</u>	\$105	With application
License by Endorsement	\$95 <u>\$90</u>	\$105	With application
Renewal:	\$95 <u>\$90</u>	\$105	With renewal card prior to expiration date
Reinstatement	\$190 * <u>\$180</u> * *includes \$95 <u>\$90</u> renewal fee and \$95 <u>\$90</u> reinstatement fee	\$210* *includes \$105 renewal fee and \$105 reinstatement fee	With reinstatement application
Salons:			
Application	\$170 <u>\$165</u>	\$190	With application
Renewal	\$170 <u>\$165</u>	\$190	With renewal card prior to expiration date

Reinstatement	\$340 <u>\$330</u> * *includes \$170 <u>\$165</u> renewal fee and \$170 <u>\$165</u> reinstatement fee	\$380* *includes \$190 renewal fee and \$190 reinstatement fee	With reinstatement application
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18VAC41-70-120. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE September 1, 2020 <u>2022</u> , through and August 31, 2022 <u>2024</u>	AMOUNT DUE September 1, 2022 <u>2024</u> , and after	WHEN DUE
Individuals:			
Application	\$95 <u>\$90</u>	\$105	With application
License by Endorsement	\$95 <u>\$90</u>	\$105	With application
Renewal	\$95 <u>\$90</u>	\$105	With renewal card prior to expiration date
Reinstatement	\$190 <u>\$180</u> * *includes \$95 <u>\$90</u> renewal fee and \$95 <u>\$90</u> reinstatement fee	\$210* *includes \$105 renewal fee and \$105 reinstatement fee	With reinstatement application
Instructors:			
Application	\$115 <u>\$110</u>	\$125	With application
License by Endorsement	\$115 <u>\$110</u>	\$125	With application

Renewal	\$115 <u>\$110</u>	\$150	With renewal card prior to expiration date
Reinstatement	\$230 <u>\$220</u> * *includes \$115 <u>\$110</u> renewal fee and \$115 <u>\$110</u> reinstatement fee	\$300* *includes \$150 renewal fee and \$150 reinstatement fee	With reinstatement application

Spas:

Application	\$170 <u>\$165</u>	\$190	With application
Renewal	\$170 <u>\$165</u>	\$190	With renewal card prior to expiration date
Reinstatement	\$340 <u>\$330</u> * *includes \$170 <u>\$165</u> renewal fee and \$170 <u>\$165</u> reinstatement fee	\$380* *includes \$190 renewal fee and \$190 reinstatement fee	With reinstatement application

Schools:

Application	\$190 <u>\$185</u>	\$220	With application
Renewal	\$190 <u>\$185</u>	\$220	With renewal card prior to expiration date
Reinstatement	\$380 <u>\$370</u> * *includes \$190 <u>\$185</u> renewal fee and \$190 <u>\$185</u> reinstatement fee	\$440* *includes \$220 renewal fee and \$220 reinstatement fee	With reinstatement application

V.A.R. Doc. No. R22-7313; Filed July 12, 2022, 2:35 p.m.

Regulations

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Notice of Extension of Emergency Regulation

Titles of Regulations: **18VAC65-20. Regulations Governing the Practice of Funeral Services (amending 18VAC65-20-130, 18VAC65-20-140, 18VAC65-20-151, 18VAC65-20-154, 18VAC65-20-235, 18VAC65-20-350, 18VAC65-20-500, 18VAC65-20-630; adding 18VAC65-20-231, 18VAC65-20-232).**

18VAC65-30. Regulations for Preneed Funeral Planning (amending 18VAC65-30-10, 18VAC65-30-50, 18VAC65-30-220).

18VAC65-40. Regulations for the Funeral Service Internship Program (amending 18VAC65-40-10, 18VAC65-40-40, 18VAC65-40-90, 18VAC65-40-110, 18VAC65-40-130, 18VAC65-40-180, 18VAC65-40-220, 18VAC65-40-250, 18VAC65-40-280, 18VAC65-40-320, 18VAC65-40-340, 18VAC65-40-640; adding 18VAC65-40-185).

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

The Governor has approved the request of the Board of Funeral Directors and Embalmers to extend the expiration date of the emergency regulation for 18VAC65-20, 18VAC65-30, and 18VAC65-40 for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation is continued in effect through January 3, 2023. The proposed regulation was published in [38:10 VA.R. 849-858 January 3, 2022](#). This extension is required for the Board of Funeral Directors and Embalmers to ensure the regulatory requirements for issuing funeral director only and embalmer only licenses mandated by Chapter 943 of the 2020 Acts of Assembly do not expire. The board adopted the final regulations at its April 15, 2022, meeting. The emergency regulation was published in [37:12 VA.R. 1298-1307 February 1, 2021](#).

Effective Date Extended Through: January 3, 2023.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4479, FAX (804) 527-4471, or email fanbd@dhp.virginia.gov.

VA.R. Doc. No. R21-6539; Filed June 30, 2022, 5:12 p.m.

BOARD OF PHARMACY

Notice of Extension of Emergency Regulation

Titles of Regulations: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-150).**

18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (adding 18VAC110-21-46).

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

The Governor has approved the request of the Board of Pharmacy to extend the expiration date of the emergency regulation for 18VAC110-20 and 18VAC110-21 for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation is continued in effect through January 1, 2023. This extension is required for the Board of Pharmacy to continue to ensure the regulatory requirements for pharmacists initiating treatment mandated by Chapter 731 of the 2020 Acts of Assembly are in effect. Proposed regulations were published in [38:10 VA.R. 868-871 January 3, 2022](#). The board voted to adopt final regulations at its June 6, 2022, meeting. The emergency regulation was published in [37:12 VA.R. 1316-1317 February 1, 2022](#).

Effective Date Extended Through: January 1, 2023.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R21-6488; Filed June 30, 2022, 5:12 p.m.

Notice of Extension of Emergency Regulation

Titles of Regulations: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-111).**

18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (amending 18VAC110-21-10, 18VAC110-21-20, 18VAC110-21-40, 18VAC110-21-140, 18VAC110-21-150, 18VAC110-21-170, 18VAC110-21-180; adding 18VAC110-21-135, 18VAC110-21-141; repealing 18VAC110-21-160).

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

The Governor has approved the request of the Board of Pharmacy to extend the expiration date of the emergency regulation for 18VAC110-20 and 18VAC110-21 for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation is continued in effect through January 1, 2023. This extension is required for the Board of Pharmacy to ensure that the regulatory requirements for pharmacy technician trainee registration and accreditation of pharmacy technician training programs mandated by Chapters 102 and 237 of the 2020 Acts of Assembly are in effect. Proposed regulations were published in [38:10 VA.R. 871-876 January 3, 2022](#). The board voted to adopt the final regulations at its June 6, 2022, meeting. The emergency regulation was published in [37:12 VA.R. 1311-1316 February 1, 2021](#).

Effective Date Extended Through: January 1, 2023.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R20-6513; Filed June 30, 2022, 5:12 p.m.

BOARD OF PSYCHOLOGY

Notice of Extension of Emergency Regulation

Title of Regulation: 18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-10, 18VAC125-20-150, 18VAC125-20-160).

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

The Governor has approved the request of the Board of Psychology to extend the expiration date of the emergency regulation for 18VAC125-20 for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation is continued in effect through January 1, 2023. The proposed regulation was published in [38:10 VA.R. 882-889 January 3, 2022](#). This extension is required for the Board of Psychology to ensure the regulatory requirements for implementation of the Psychology Interjurisdictional Compact mandated by Chapter 1162 of the 2020 Acts of Assembly continue in effect. The board voted to adopt the final regulations at its June 28, 2022, meeting. The emergency regulation was published in [37:12 VA.R. 1335-1337 February 1, 2021](#).

Effective Date Extended Through: January 1, 2023.

Agency Contact: Jaime Hoyle, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R21-6421; Filed June 30, 2022, 5:12 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER TWENTY (2022)

Declaration of a State of Emergency Due to Severe Flooding in Buchanan County

Importance of the Issue

The Virginia Emergency Operations Center has been monitoring heavy rainfall and severe flash flooding events that moved through the Commonwealth on July 12-13, 2022. The rainfall experienced so far presents substantial resource and operational challenges. The impacts of this weather system have already caused flash flooding, electrical outages, and significant impacts to roadways.

The Commonwealth is assisting with ongoing response and recovery operations. Providing response assets and supplies will be necessary to assist our local partners, and the Virginia Emergency Support Team will continue to support this incident.

The anticipated effects of this situation constitute a disaster as described in § 44-146.16 of the Code of Virginia (Code). Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the Code, as Governor and Director of Emergency Management and Commander-in-Chief of the Commonwealth's armed forces, I proclaim a state of emergency. Accordingly, I direct state and local governments to render appropriate assistance to respond to this event, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible. Emergency services shall be conducted in accordance with § 44-146.13 et seq. of the Code.

Directive:

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

1. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state plans.
2. Activation of the Virginia Emergency Operations Center and the Virginia Emergency Support Team, as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to state, local, and tribal governments and to facilitate emergency services assignments to other agencies.
3. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.

4. Activation of § 59.1-525 et seq. of the Code related to price gouging.

5. Authorization of a maximum of \$1,000,000 in state sum sufficient funds for state and local government mission assignments and state response and recovery operations authorized and coordinated through the Virginia Department of Emergency Management allowable by The Stafford Act, 42 USC § 5121 et seq. Included in this authorization is \$500,000.00 for the Department of Military Affairs.

6. Activation of the Virginia National Guard to State Active Duty.

Effective Date of this Executive Order

This Executive Order shall be effective July 13, 2022, and shall remain in full force and in effect until August 12, 2022, unless sooner amended or rescinded by further executive order. Termination of this Executive Order is not intended to terminate any federal type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 13th day of July 2022.

/s/ Glenn Youngkin, Governor

GUIDANCE DOCUMENTS

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.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: [Adult Protective Services Division Manual, Chapter 7, Guardianship and Conservatorship.](#)

Public Comment Deadline: August 31, 2022.

Effective Date: September 1, 2022.

Agency Contact: Elizabeth Patacca, Administrative Staff Assistant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Henrico, VA 23229, telephone (804) 726-6625, or email elizabeth.patacca@dars.virginia.gov.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

BOARD OF DENTISTRY

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

BOARD OF HEALTH PROFESSIONS

BOARD OF MEDICINE

BOARD OF NURSING

BOARD OF LONG-TERM CARE ADMINISTRATORS

BOARD OF OPTOMETRY

BOARD OF PHARMACY

BOARD OF PSYCHOLOGY

BOARD OF SOCIAL WORK

BOARD OF VETERINARY MEDICINE

DEPARTMENT OF HEALTH PROFESSIONS

BOARD OF PHYSICAL THERAPY

Title of Document: [Virginia Freedom of Information Act Requests.](#)

Public Comment Deadline: August 31, 2022.

Effective Date: September 1, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

Title of Document: [Approved Health Education Certifying Agencies.](#)

Public Comment Deadline: August 31, 2022.

Effective Date: September 1, 2022.

Agency Contact: Stephen Kirschner, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, or email barbercosmo@dpor.virginia.gov.

BOARD OF COUNSELING

Title of Document: [Impact of Criminal Convictions, Impairment, and Past History on Licensure, Certification or Registration](#) by the Virginia Board of Counseling.

Public Comment Deadline: August 31, 2022.

Effective Date: September 1, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Titles of Documents: [Continuing Competency Hours for Dually-Licensed Administrators.](#)

[Disposition of Cases Involving Practicing on an Expired License.](#)

Public Comment Deadline: August 31, 2022.

Effective Date: September 1, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

Guidance Documents

STATE BOARD OF SOCIAL SERVICES

Title of Document: [Child and Family Services Manual, Chapter C, Child Protective Services.](#)

Public Comment Deadline: August 31, 2022.

Effective Date: September 1, 2022.

Agency Contact: Nikki Clarke Callaghan, Legislation, Regulations and Guidance Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7943, or email nikki.clarke@dss.virginia.gov.

STATE WATER CONTROL BOARD

Titles of Documents: [Stormwater Management and Erosion and Sediment Control Design Guide.](#)

[Streamlined Plan Review for Construction Stormwater Plans and Erosion and Sediment Control Plans Submitted by a Professional Engineer and Reviewed by a Dual Combined Administrator for Erosion and Sediment Control and Stormwater Management.](#)

Public Comment Deadline: August 31, 2022.

Effective Date: September 1, 2022.

Agency Contact: Andrew Hammond, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4101, or email swmguidance@deq.virginia.gov.

GENERAL NOTICES

STATE AIR POLLUTION CONTROL BOARD

Revision to the State Implementation Plan to Allow Areas to Attain and Maintain the 2010 National Ambient Air Quality Standard for Sulfur Dioxide

Notice of action: The Department of Environmental Quality (DEQ) is seeking comments and announcing a public comment period on a proposed plan to ensure necessary authorities are contained in the state implementation plan (SIP) to allow areas to attain and maintain the 2010 national ambient air quality standard (NAAQS) for sulfur dioxide (SO₂). The Commonwealth intends to submit the plan as a revision to the Virginia SIP in accordance with the federal Clean Air Act. The SIP is the plan developed by Virginia in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the NAAQS promulgated by the U.S. Environmental Protection Agency.

Purpose of notice: DEQ is seeking comments on whether the plan demonstrates the Commonwealth's compliance with federal Clean Air Act requirements related to the Good Neighbor provisions under § 110(a)(2)(D)(I), ensuring that Virginia's SO₂ emissions do not cause or contribute to downwind nonattainment or interfere with maintenance of the 2010 SO₂ NAAQS.

Public comment period: August 1, 2022, through August 31, 2022.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed at the end of this notice. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Description of proposal: The proposed revision consists of a demonstration of compliance with the requirements under § 110(a)(2)(D)(I) of the federal Clean Air Act for the 2010 SO₂ NAAQS.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ no later than the last day of the comment period. A cover page with the recipient's full mailing address must be part of each fax. DEQ

prefers that comments be provided in writing, along with any supporting documents or exhibits. Comments must be submitted to Doris A. McLeod, Air Quality Planner, Department of Environmental Quality, 22nd Floor, 1111 East Main Street, P.O. Box 1105, Richmond, Virginia 23219, telephone (804) 659-1990, FAX (804) 698-4178, email doris.mcleod@deq.virginia.gov. All materials received are part of the public record.

To review the proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices web page at <https://www.deq.virginia.gov/permits-regulations/public-notices/air>. The documents may also be obtained by contacting the DEQ representative listed in this notice. The public may schedule an appointment to review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1. Main Street Office, 1111 East Main Street, 22nd Floor, Richmond, VA, 23219, telephone (804) 698-4000
2. Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 518-2000
3. Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, 24210, telephone (276) 676-4800
4. Blue Ridge Regional Office, 901 Russell Drive, Salem, VA, 24153, telephone (540) 562-6700
5. Valley Regional Office, 4411 Early Road, Harrisonburg, VA, P.O. Box 3000, 22801 telephone (540) 574-7800
6. Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, 23060, telephone (804) 527-5020 and
7. Northern Regional Office, 13901 Crown Court, Woodbridge, VA, 22193, telephone (703) 583-3800.

Contact Information: Doris McLeod, Air Quality Planner, Department of Environmental Quality, 1111 East Main Street, P.O. Box 1105, Richmond, VA 23219, telephone (804) 659-1990, FAX (804) 698-4178.

DEPARTMENT OF ENVIRONMENTAL QUALITY Proposed Enforcement Action for Brunswick Properties LLC

The Department of Environmental Quality (DEQ) proposes to issue a consent special order to Brunswick Properties LLC for alleged violation of the State Water Control Law at the I-85 Business Park located on Boydton Plank Road in Brunswick County, Virginia. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov/permit-regulations/public-notices/enforcement-orders. The staff contact will accept comments by email or postal mail from August 1, 2022, through September 1, 2022.

General Notices

Contact Information: Matt Richardson, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 659-2696, or email matthew.richardson@deq.virginia.gov.

Notice of Enforcement Action for Concept Developments Inc.

The Department of Environmental Quality (DEQ) proposes to issue a consent special order to Concept Developments Inc. for alleged violation of the State Water Control Law at the VP163 Site located at Lots 10 and 13 Quality Way in Prince George County, Virginia (Latitude 37.2086, Longitude -77.2914). A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The staff contact will accept comments by email or postal mail from August 1, 2022, to August 30, 2022.

Contact Information: Jeff Reynolds, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 720-4754, or email jefferson.reynolds@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - 2022 Non-Institutional Provider Reimbursement Changes

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rate; Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from the contact listed at the end of the notice.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Meredith Lee and such comments are available for review at the same address. Comments may also be submitted, in writing, on the Virginia Regulatory Town Hall public comment forum at <https://townhall.virginia.gov/L/generalnotice.cfm>.

Methods and Standards for Establishing Payment Rate; Other Types of Care (12VAC30-80)

1. In accordance with Item 304 DD(7)(b) of Chapter 1289 of the 2022 Acts of Assembly, Special Session I, the state plan is being revised to implement supplemental physician payments for practice plans employed by or under contract with Chesapeake Regional Hospital to the maximum allowed by the Centers for Medicare and Medicaid Services (CMS). The department shall increase payments to Medicaid managed care organizations for the purpose of providing higher rates to physicians employed by or under contract with Chesapeake Regional Hospital based on the maximum allowed by CMS. The department shall revise its contracts with managed care organizations to incorporate these managed care directed payments, subject to approval by CMS.

The expected increase in annual aggregate expenditures is \$0 in state general funds and \$2,781,421 in federal funds in federal fiscal year 2022.

2. In accordance with Item 304 DDDD of Chapter 1289 of the 2022 Acts of Assembly, Special Session I, the state plan is being revised to increase the rates for agency-directed and consumer-directed personal care services under the Early Periodic Screening, and Diagnosis and Treatment (EPSDT) benefit by 7.5% to reflect additional increases in the state minimum wage while maintaining the existing differential between consumer-directed and agency-directed rest-of-state rates as well as the northern Virginia and rest-of-state rates. A corresponding rate increase of 7.5% will be provided for these services and for companion and respite services provided under home and community-based waivers, however, the increase is not included in a state plan amendment but via waiver documentation.

The expected increase in annual aggregate expenditures is \$4,755 in state general funds and \$6,102 in federal funds in federal fiscal year 2022.

3. In accordance with Item 304 IIII(1) of Chapter 1289 of the 2022 Acts of Assembly, Special Session I, the state plan is being revised to increase reimbursement rates for dental services by 30%.

The expected increase in annual aggregate expenditures is \$6,285,669 in state general funds, \$506,734 in special funds, and \$11,352,111 in federal funds in federal fiscal year 2022.

4. In accordance with Item 304 JJJJ of Chapter 1289 of the 2022 Acts of Assembly, Special Session I, the state plan is being revised to increase reimbursement rates for physician primary care services, excluding those provided in emergency departments, to 80% of the federal fiscal year 2021 Medicare equivalent as calculated by the department and consistent with the appropriation available for this purpose.

The expected increase in annual aggregate expenditures is \$29,252 in state general funds, \$6,162 in special funds, and \$86,459 in federal funds in federal fiscal year 2022.

5. In accordance with Item 304 KKKK of Chapter 1289 of the 2022 Acts of Assembly, Special Session I, the state plan is being revised to update the rates for private duty and skilled nursing under the EPSDT benefit. A corresponding rate increase will be provided for these services and for group homes, sponsored residential, supported living, independent living supports, in-home supports, community engagement, community coaching, therapeutic consultation, group day support, group supported employment, workplace assistance, community guide, developmental disability case management and benefits planning provided under home and community-based waivers, using the most recent rebasing estimates, based on a DMAS review of the model assumptions as appropriate and consistent with efficiency, economy, quality, and sufficiency of care and reported no later than July 1, 2022. Rates shall be increased according to tiered payments contained in the rebasing model, where appropriate for the type of service provided. These increases are not included in the state plan amendment but via waiver documentation.

The expected increase in annual aggregate expenditures is \$671,439 in state general funds, \$1,548 in special funds, and \$875,462 in federal funds in federal fiscal year 2022.

6. In accordance with Item 304 LLLL of Chapter 1289 of the 2022 Acts of Assembly, Special Session I, the state plan is being revised to increase reimbursement rates for obstetrics and gynecology covered services by 15%.

The expected increase in annual aggregate expenditures is \$8,661 in state general funds, \$1,227 in special funds, and \$19,907 in federal funds in federal fiscal year 2022.

7. In accordance with Item 304 MMMM of Chapter 1289 of the 2022 Acts of Assembly, Special Session I, the state plan is being revised to increase reimbursement rates for children's covered vision services by 30%.

The expected increase in annual aggregate expenditures is \$2,732 in state general funds, \$133 in special funds, and \$4,952 in federal funds in federal fiscal year 2022.

8. In accordance with Item 304 QQQQ of Chapter 1289 of the 2022 Acts of Assembly, Special Session I, the state plan is being revised to increase Medicaid rates for peer recovery and family support services in private and public community-based recovery services settings from \$6.50 to \$13.00 per 15 minutes for individuals and from \$2.70 to \$5.40 per 15 minutes for groups.

The expected increase in annual aggregate expenditures is \$2,363 in state general funds, \$269 in special funds, and \$4,849 in federal funds in federal fiscal year 2022.

9. In accordance with Item 304 RRRR of Chapter 1289 of the 2022 Acts of Assembly, Special Session I, the state plan is being revised to increase rates by 12.5%, relative to the rates in effect prior to July 1, 2021, for consumer-directed facilitation services, mental health and early intervention case

management services, and community behavioral health and habilitation services.

The expected increase in annual aggregate expenditures is \$347,659 in state general funds, \$15,569 in special funds, and \$500,533 in federal funds in federal fiscal year 2022.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

BOARD OF PHARMACY

Notice for Scheduling Chemicals in Schedule I Pursuant to § 54.1-3443 of the Code of Virginia

Pursuant to § 54.1-3443 D of the Code of Virginia, the Board of Pharmacy is giving notice of a public hearing to consider placement of chemical substances in Schedule I of the Drug Control Act. The virtual public hearing will be conducted at 9:05 a.m. on September 6, 2022. Instructions will be included in the agenda for the board meeting, which is also on September 6, 2022. Public comment may be submitted electronically or in writing prior to September 6 to the contact listed at the end of this notice.

Pursuant to § 54.1-3443 D of the Code of Virginia, the Virginia Department of Forensic Science (DFS) has identified five compounds for recommended inclusion into Schedule I of the Drug Control Act.

1. The following compound is classified as a synthetic opioid. Compounds of this type have been placed in Schedule I (subdivision 1 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

N,N-diethyl-2-[5-nitro-2-(4-propoxybenzyl)-1H-benzimidazol-1-yl]ethanamine (other name: Protonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Based on its chemical structure, the following compound is expected to have hallucinogenic properties. Compounds of this type have been placed in Schedule I (subdivision 3 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

1-(1,3-benzodioxol-5-yl)-2-(cyclohexylamino)butan-1-one (other names: Cybutylone, N-cyclohexyl Butylone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Based on its chemical structure, the following compound is expected to have depressant properties. Compounds of this type have been placed in Schedule I (subdivision 4 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

General Notices

8-bromo-6-(2-chlorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine (other names: Clobromazolam, Phenazolam), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. The following compounds are classified as cannabimimetic agents. Compounds of this type have been placed in Schedule I (subdivision 6 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

a. 5-bromo-N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1H-indazole-3-carboxamide (other name: ADB-5Br-INACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-5-bromo-1-butylindazole-3-carboxamide (other name: ADB-5'Br-BUTINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

Contact Information: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472.

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.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Regulations: **12VAC30-10. State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions.**

12VAC30-20. Administration of Medical Assistance Services.

12VAC30-30. Groups Covered and Agencies Responsible for Eligibility Determination.

12VAC30-40. Eligibility Conditions and Requirements.

Publication: 38:24 VA.R. 2544; July 18, 2022.

Correction to Regulation Tracking Reference Record:

Page 2544, column 1, after "VA.R. Doc. No. R19-5692; Filed" replace "January 1, 0001, 12:00 a.m." with "June 27, 2022, 12:52 p.m."

VA.R. Doc. No. R19-5692; Filed July 14, 2022, 8:59 a.m.

* * *

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services.**

Publication: 38:24 VA.R. 2544; July 18, 2022.

Correction to Regulation Tracking Reference Record:

Page 2544, column 2, after "VA.R. Doc. No. R19-5693; Filed" replace "January 1, 0001, 12:00 a.m." with "June 27, 2022, 12:51 p.m."

VA.R. Doc. No. R19-5693; Filed July 14, 2022, 8:59 a.m.

Errata
