VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for $263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Easton, MD and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

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.

PUBLICATION SCHEDULE AND DEADLINES

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

March 2024 through March 2025

Volume: Issue	Material Submitted By Noon*	Will Be Published On
40:15	February 21, 2024	March 11, 2024
40:16	March 6, 2024	March 25, 2024
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41:14	February 5, 2025	February 24, 2025
41:15	February 19, 2025	March 10, 2025
41:16	March 5, 2025	March 24, 2025

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Professional Soil Scientists, Wetland Professionals, and Geologists conducted a periodic review and a small business impact review of **18VAC145-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated February 6, 2024, to support this decision.

The board's public participation guidelines mirror the Department of Planning and Budget (DPB) model public participation guidelines. The guidelines having the status of a regulation are necessary to promote public involvement in the development, amendment, or repeal of regulations. Further, the regulation is clearly written and understandable.

On January 19, 2024, the board voted to retain this regulation without amendment. The regulation continues to mirror the model public participation guidelines from DPB.

There is a continued need for this regulation because the regulation promotes public involvement in the development, amendment, or repeal of the regulations of the board. The board did not receive any comments or complaints during the public comment period. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with any other federal or state laws or regulations. The regulation was last evaluated in 2019 and does not rely on technology, economic conditions, or any other factors due to the nature of public participation. This regulation outlines the Virginia Regulatory Town Hall as the mechanism for notification, registration, and meeting procedures for public participation. The board determined the regulation has no impact on small businesses.

Contact Information: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, or email soilscientist@dpor.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Professional Soil Scientists, Wetland Professionals, and Geologists conducted a periodic review and a small business impact review of **18VAC145-20, Professional Soil Scientists Regulations**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated February 2, 2024, to support this decision.

The regulation contains the requirements for (i) obtaining a license; (ii) renewal and reinstatement of licenses; (iii) standards of professional conduct; (iv) ensuring competence and integrity of all licensees; and (v) administering the regulatory program in accordance with Chapters 2 (§ 54.1-200 et seq.) and 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia. The regulation is clearly written and understandable.

On January 19, 2024, the board voted to retain the regulation without amendment. In accordance with the Governor's Executive Directive Number One (2022), the board is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

Section 54.1-201 of the Code of Virginia mandates the board promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are licensed. The board is also tasked with ensuring that the board's regulants meet standards of practice set forth in the regulation.

Based on the comments received during the public comment period, there does not appear to be a reason to repeal the regulation. There also does not appear to be a reason to amend the regulation at this time. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

The most recent periodic review of the regulation occurred in 2019. Currently, the board is conducting a comprehensive review of the regulation.

Contact Information: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, or email soilscientist@dpor.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Professional Soil Scientists, Wetland Professionals, and Geologists conducted a periodic review and a small business impact review of **18VAC145-30, Regulations Governing Certified Professional Wetland Delineators**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated February 2, 2024, to support this decision.

The regulation contains the requirements for (i) obtaining a certificate, renewal, and reinstatement of certificates; (ii) standards of professional conduct; (iii) ensuring competence and integrity of all certificate holders; and (iv) administering

the regulatory program in accordance with Chapters 2 (§ 54.1-201 et seq.) and 22 (§ 5.1-2200 et seq.) of Title 54.1 of the Code of Virginia. The regulation is clearly written and understandable.

On January 19, 2024, the board voted to retain the regulation without amendment. In accordance with the Governor's Executive Directive Number One (2022), the board is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

Section 54.1-201 of the Code of Virginia mandates the board promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are certified. The board is also tasked with ensuring that the board's regulants meet standards of practice set forth in the regulation.

Based on the comment received during the public comment period, there does not appear to be a reason to repeal the regulation. There also does not appear to be a reason to amend the regulation at this time. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

The most recent periodic review of the regulation occurred in 2019. Currently, the board is conducting a comprehensive review of the regulation.

Contact Information: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, or email soilscientist@dpor.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Professional Soil Scientists, Wetland Professionals, and Geologists conducted a periodic review and a small business impact review of **18VAC145-40, Regulations for the Geology Certification Program**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated February 2, 2024, to support this decision.

The regulation contains the requirements for (i) obtaining a certificate, renewal, and reinstatement of certificates; (ii) standards of professional conduct; (iii) ensuring competence and integrity of all certificate holders; and (iv) administering the regulatory program in accordance with Chapters 2 (§ 54.1-200 et seq.) and 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

On January 19, 2024, the board voted to retain the regulation without amendment. In accordance with the Governor's Executive Directive Number One (2022), the board is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

Section 54.1-200 of the Code of the Virginia mandates the board promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are certified. The board is also tasked with ensuring that the board's regulants meet standards of practice set forth in the regulation.

Based on the comments received during the public comment period, there does not appear to be a reason to repeal the regulation. There also does not appear to be a reason to amend the regulation at this time. The regulation is clearly written and easily understandable and does not overlap, duplicate, or conflict with federal or state law or regulation.

The most recent periodic review of the regulation occurred in 2019. Currently, the board is conducting a comprehensive review of the regulation.

Contact Information: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, or email soilscientist@dpor.virginia.gov.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-260, Water Quality Standards**. The purpose of the proposed action is to respond to a petition for rulemaking requesting the board to amend the water quality standards (WQS) to incorporate site-specific selenium criteria for the protection of freshwater aquatic life in four streams that are tributaries to Knox Creek in Buchanan County, Virginia. The specific streams are Race Fork and tributaries, Pounding Mill Creek and tributaries, Right Fork of Lester Fork and tributaries, and Abners Fork and tributaries. The intent of this rulemaking is to establish site-specific selenium aquatic life criteria that protect designated and beneficial uses of state waters by adopting regulations that are technically correct and reasonable. These site-specific criteria will be implemented in water quality programs to protect and maintain the WQS, including the Virginia Pollutant Discharge Elimination System Permit Program and the Clean Water Act § 305(b) Water Quality Assessment Report and § 303(d) Listing of Impaired Waters.

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

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

Public Comment Deadline: March 27, 2024.

Agency Contact: David Whitehurst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 774-9180, or email david.whitehurst@deq.virginia.gov.

VA.R. Doc. No. R24-10; Filed January 26, 2024, 12:46 p.m.

REGULATIONS

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

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

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

Title of Regulation: **2VAC5-610. Rules Governing the Solicitation of Contributions.**

Agency Contact: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3983, FAX (804) 371-7479, or email michael.menefee@vdacs.virginia.gov.

FORMS (2VAC5-610)

~~Remittance Form - Virginia Exemption Application for a Charitable or Civic Organization, Form 100, OCRP-100 (rev. 11/2013)~~

~~Remittance Form - Charitable Organization, Form 102, OCRP-102 (rev. 6/2015)~~

~~Request for Extension of Time to File Annual Registration Renewal, OCRP-102-X (eff. 10/2013)~~

~~Remittance Form - Professional Fundraising Counsel, Form 103, OCRP-103 (rev. 6/2015)~~

~~Remittance Form - Professional Solicitor, Form 104, OCRP-104 (rev. 6/2015)~~

~~Professional Solicitor's Bond, OCRP-105 (rev. 10/2012)~~

~~Solicitation Notice, Form 120, OCRP-120 (rev. 8/2013)~~

~~Consent to Solicit, Form 121, OCRP-121 (rev. 11/2012)~~

~~Remittance Form - Professional Solicitor's Final Accounting Report Late Fees, Form 130, OCRP-130 (rev. 11/2013)~~

Remittance Form - Virginia Exemption Application for a Charitable or Civic Organization, Form 100, OCRP-100 (rev. 6/2023)

Remittance Form - Charitable Organization, Form 102, OCRP-102 (rev. 10/2023)

Request for Extension of Time to File Annual Registration Renewal, OCRP-102-X (rev. 1/2023)

Remittance Form - Professional Fundraising Counsel, Form 103, OCRP-103 (rev. 10/2020)

Remittance Form - Professional Solicitor, Form 104, OCRP-104 (rev. 10/2020)

Professional Solicitor's Bond, OCRP-105 (rev. 10/2020)

Solicitation Notice, Form 120, OCRP-120 (rev. 5/2023)

Consent to Solicit, Form 121, OCRP-121 (rev. 1/2024)

Remittance Form - Professional Solicitor's Final Accounting Report Late Fees, Form 130, OCRP-130 (rev. 5/2023)

Schedule A - Accounting for All Ticket Sales, Including Solicitation for Donated Tickets, Form 131, OCRP-131 (rev. 11/2012)

Commitment for Receipt of Donated Tickets, Form 132, OCRP-132 (rev. 11/2012)

VA.R. Doc. No. R24-7798; Filed February 2, 2024, 4:11 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **9VAC5-10. General Definitions (amending 9VAC5-10-20).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: March 27, 2024.

Effective Date: April 11, 2024.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1973, or email karen.sabasteanski@deq.virginia.gov.

Basis: Section 10.1-1308 of the Code of Virginia authorizes the State Air Pollution Control Board to promulgate regulations

abating, controlling, and prohibiting air pollution in order to protect public health and welfare.

Purpose: The purpose of the general definitions chapter is not to impose any regulatory requirements in and of itself but to provide a basis for and support to other provisions for regulations for the control and abatement of air pollution, which are in place in order to protect public health and welfare. The proposed amendment is being made to ensure that the definition of volatile organic compound (VOC), which is crucial to most of the regulations, is up-to-date and scientifically accurate, as well as consistent with the overall Environmental Protection Agency requirements under which the regulations operate. It may also encourage the use of a less-reactive substance and thereby reduce the production of ground-level ozone.

Rationale for Using Fast-Track Rulemaking Process: This amendment is not expected to affect a significant number of sources or have any significant impact, other than a positive one, on air quality overall; therefore the amendment qualifies as noncontroversial. Additionally, removal of this substance at the federal level was accompanied by detailed scientific review and public comment. Therefore, no additional information on the reactivity of this substance or the appropriateness of its removal is anticipated.

Substance: The general definitions impose no regulatory requirements in and of themselves but provide support to other provisions of regulations for the control and abatement of air pollution. The list of substances not considered to be VOCs in Virginia has been revised to add trans-1,1,1,4,4,4-hexafluorobut-2-ene (also known as HFO-1336mzz(E)).

Issues: The general public health and welfare will benefit from the revision as it may encourage the use of the delisted substance in place of products containing more reactive and thereby more polluting substances. This substance is considered to be negligibly reactive in the formation of ground level (tropospheric) ozone, will not deplete upper level (stratospheric) ozone, and is not considered to be a hazardous (toxic) air pollutant. Therefore, this substance does not have a negative effect on human health or the environment. Excluding this substance as a VOC will make it easier and less expensive for industry to use it. Companies that use this substance in place of more reactive substances may also benefit by reducing their VOC emissions and concomitant reductions in permitting and other regulatory requirements. The amendment will allow the department to focus VOC reduction strategies on substances that have a negative impact on human health and the environment. There are no disadvantages to the public or the agency or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. The State Air Pollution Control Board (board) proposes to revise the definition of volatile organic compound (VOC) to specifically exclude trans-1,1,1,4,4,4-hexafluorobut-2-ene (also known as HFO-1336mzz(E)), which is used in a variety of applications in foam expansion or blowing agents.

Background. The federal Clean Air Act (Act) requires the U.S. Environmental Protection Agency (EPA) to prescribe national ambient air quality standards to protect public health. The Act also mandates that each state adopt and submit to EPA a state implementation plan which provides for the implementation, maintenance, and enforcement of the standards. Ozone, one of the pollutants for which there is a federal standard, is in part created by emissions of VOCs. Therefore, in order to control ozone, VOCs are addressed in Virginia's state plan and regulations.

VOC is defined in the regulation as "any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compounds which have been determined to have negligible photochemical reactivity other than the following:" The regulation then includes a long list of organic compounds that are excluded from those considered to be VOCs.

The Chemours Company submitted a petition to the EPA on November 30, 2016, requesting that HFO-1336mzz(E) be exempted from the federal regulatory definition of VOC. If it can be demonstrated that a particular VOC is "negligibly reactive" that is, if it can be shown that a VOC is not as reactive and therefore does not have a significant effect on ground-level (tropospheric) or upper-level (stratospheric) ozone then EPA may remove that substance from the definition of VOC. The petition was based on the argument that HFO-1336mzz(E) has low reactivity, and may be used in a variety of applications in foam expansion or blowing agents where it has significant performance and energy-saving advantages. Chemours specifically developed HFO-1336mzz(E) to support reductions in emissions of greenhouse gases.[2]

After scientific review and public comment, EPA took final action on February 8, 2023, to respond to the petition by exempting HFO-1336mzz(E) from the federal regulatory definition of VOC. This action was based on consideration of the compound's low contribution to tropospheric ozone and the low likelihood of risk to human health or the environment, including stratospheric ozone depletion, toxicity, and climate change. This delisting became effective on April 10, 2023.

Estimated Benefits and Costs. Long-term ozone exposure is associated with increased respiratory illnesses, metabolic disorders, nervous system issues, reproductive issues (including reduced male and female fertility and poor birth outcomes), cancer and increased cardiovascular mortality. In

the short term, inhaling high levels of ozone can cause shortness of breath, wheezing and coughing; asthma attacks; increased risk of respiratory infections; increased susceptibility to pulmonary inflammation; and increased need for people with lung diseases, like asthma or chronic obstructive pulmonary disease, to receive medical treatment and to go to the hospital.[3]

The proposed amendment may result in improved public health since the revision may encourage the use of HFO-1336mzz(E) in place of products that are more reactive and thereby produce more ozone. Excluding this substance as a VOC would make it easier and less expensive for industry to use it. Companies that use this substance in place of more reactive substances may also benefit by reducing their VOC emissions and concomitant reductions in permitting and other regulatory requirements. Facilities may take advantage of the low volatility of this substance to reduce its VOC emissions and thereby be able to expand production without triggering new source review permitting.

Businesses and Other Entities Affected. Businesses that could use HFO-1336mzz(E) would be particularly affected. These include those that could use HFO-1336mzz(E) in foam blowing, refrigeration, as well as applications in solvents and aerosol propellants, and other minor uses, including industrial gas manufacturing, semiconductor machinery manufacturing, all other miscellaneous chemical product and preparation manufacturing, polystyrene foam product manufacturing, urethane and other foam product (except polystyrene) manufacturing, air conditioning and warm air heating equipment and commercial and industrial refrigeration, equipment manufacturing, motor vehicle parts manufacturing, ship building and repairing, boat building, and all other miscellaneous manufacturing.[4] Pursuant to a survey conducted by the Department of Environmental Quality (DEQ), there are no known producers of HFO-1336mzz(E) or other products for which this substance could replace in Virginia. Though no facilities in the Commonwealth are known at this time to be manufacturing or utilizing this substance, DEQ estimates that there are approximately 45 permitted facilities that meet the above criteria and may potentially use this substance. According to the agency, 19 of these facilities are small businesses.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. If in the future some firms choose to use HFO-1336mzz(E) instead of another product due to the substance being declared not a VOC, then producers of the other products may lose revenue. As mentioned above, DEQ's survey indicated that there are no known manufacturers of these products in the Commonwealth. Thus, an adverse impact is not indicated.

Small Businesses[6] Affected.[7] The proposed amendment does not appear to adversely affect small businesses.

Localities[8] Affected.[9] The proposed amendment may particularly affect Arlington County, Fairfax County, Loudoun County, Prince William County, City of Alexandria, City of Fairfax, City of Falls Church, City of Manassas, and City of Manassas Park as those localities collectively are considered a nonattainment area and have lower ozone emitting thresholds than the rest of Virginia.[10] Thus, firms in those localities may have greater incentive to switch to using HFO-1336mzz(E). The proposed amendment does not appear to directly affect costs for local governments.

Projected Impact on Employment. As mentioned, the proposed amendment may enable some facilities to take advantage of the low volatility of HFO-1336mzz(E) to reduce its VOC emissions and thereby be able to expand production without triggering new source review permitting. If this occurs, there may be a moderate increase in employment to facilitate the increase in production.

Effects on the Use and Value of Private Property. As discussed, the proposed amendment may enable some facilities to take advantage of the low volatility of HFO-1336mzz(E) to reduce its VOC emissions and thereby be able to expand production without triggering new source review permitting. This could increase the value of these firms. The proposal is not likely to substantively affect the costs related to the development of real estate.

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[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]Source: Department of Environmental Quality

[3]Source: https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone#how

[4]Source: Department of Environmental Quality

[5]Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

[7]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the

proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[8]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[9]Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

[10]Source: DEQ

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendment adds trans-1,1,1,4,4,4-hexafluorobut-2-ene (also known as HFO-1336mzz(E)) to the list of compounds excluded from the definition of volatile organic compound (VOC) on the basis that this substance makes a negligible contribution to tropospheric ozone formation to conform state regulation to the same revision made by the U.S. Environmental Protection Agency in federal regulation.

9VAC5-10-20. Terms defined.

"Actual emissions rate" means the actual rate of emissions of a pollutant from an emissions unit. In general actual emissions shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the most recent two-year period or some other two-year period which is representative of normal source operation. If the board determines that no two-year period is representative of normal source operation, the board shall allow the use of an alternative period of time upon a determination by the board that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or his authorized representative.

"Affected facility" means, with reference to a stationary source, any part, equipment, facility, installation, apparatus, process or operation to which an emission standard is applicable or any other facility so designated. The term "affected facility" includes any affected source as defined in 40 CFR 63.2.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

"Air quality" means the specific measurement in the ambient air of a particular air pollutant at any given time.

"Air quality control region" means any area designated as such in 9VAC5-20-200.

"Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method, but which has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Ambient air quality standard" means any primary or secondary standard designated as such in 9VAC5-30 (Ambient Air Quality Standards).

"Board" means the State Air Pollution Control Board or its designated representative. When used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "board" means the Department of Environmental Quality.

"Certified mail" means electronically certified or postal certified mail, except that this definition shall only apply to the mailing of plan approvals, permits, or certificates issued under the provisions of these regulations and only where the recipient has notified the department of the recipient's consent to receive plan approvals, permits, or certificates by electronic mail. Any provision of these regulations requiring the use of certified mail to transmit special orders or administrative orders pursuant to enforcement proceedings shall mean postal certified mail.

"Class I area" means any prevention of significant deterioration area (i) in which virtually any deterioration of existing air quality is considered significant and (ii) designated as such in 9VAC5-20-205.

"Class II area" means any prevention of significant deterioration area (i) in which any deterioration of existing air quality beyond that normally accompanying well-controlled growth is considered significant and (ii) designated as such in 9VAC5-20-205.

"Class III area" means any prevention of significant deterioration area (i) in which deterioration of existing air quality to the levels of the ambient air quality standards is permitted and (ii) designated as such in 9VAC5-20-205.

"Continuous monitoring system" means the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent continuous record of emissions or process parameters.

"Control program" means a plan formulated by the owner of a stationary source to establish pollution abatement goals, including a compliance schedule to achieve such goals. The plan may be submitted voluntarily, or upon request or by order of the board, to ensure compliance by the owner with standards, policies and regulations adopted by the board. The plan shall include system and equipment information and operating performance projections as required by the board for evaluating the probability of achievement. A control program shall contain the following increments of progress:

1. The date by which contracts for emission control system or process modifications are to be awarded, or the date by which orders are to be issued for the purchase of component parts to accomplish emission control or process modification.

2. The date by which the on-site construction or installation of emission control equipment or process change is to be initiated.

3. The date by which the on-site construction or installation of emission control equipment or process modification is to be completed.

4. The date by which final compliance is to be achieved.

"Criteria pollutant" means any pollutant for which an ambient air quality standard is established under 9VAC5-30 (Ambient Air Quality Standards).

"Day" means a 24-hour period beginning at midnight.

"Delayed compliance order" means any order of the board issued after an appropriate hearing to an owner which postpones the date by which a stationary source is required to comply with any requirement contained in the applicable implementation plan.

"Department" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"Director" or "executive director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Dispersion technique"

1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

a. Using that portion of a stack which exceeds good engineering practice stack height;

b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

2. Subdivision 1 of this definition does not include:

a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

b. The merging of exhaust gas streams where:

(1) The owner demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emissions limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emissions limitation or, in the event that no emissions limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the owner that merging was not significantly motivated by such intent, the board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

c. Smoke management in agricultural or silvicultural prescribed burning programs;

d. Episodic restrictions on residential woodburning and open burning; or

e. Techniques under subdivision 1 c of this definition which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

"Emissions limitation" means any requirement established by the board which limits the quantity, rate, or concentration of continuous emissions of air pollutants, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures to assure continuous emission reduction.

"Emission standard" means any provision of 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources) that prescribes an emissions limitation, or other requirements that control air pollution emissions.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any air pollutant.

"Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the satisfaction of the board to have a consistent and quantitative relationship to the reference method under specified conditions.

"EPA" means the U.S. Environmental Protection Agency or an authorized representative.

"Excess emissions" means emissions of air pollutant in excess of an emission standard.

"Excessive concentration" is defined for the purpose of determining good engineering practice (GEP) stack height under subdivision 3 of the GEP definition and means:

1. For sources seeking credit for stack height exceeding that established under subdivision 2 of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the provisions of Article 8 (9VAC5-80-1605 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subdivision 2 of the GEP definition, either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subdivision 1 of this definition, except that the emission rate specified by any applicable implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the board; and

3. For sources seeking credit after January 12, 1979, for a stack height determined under subdivision 2 of the GEP definition where the board requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subdivision 2 of the GEP definition, a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

"Existing source" means any stationary source other than a new source or modified source.

"Facility" means something that is built, installed or established to serve a particular purpose and includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means Chapter 85 (§ 7401 et seq.) of Title 42 of the United States Code.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

1. Emission standards, alternative emission standards, alternative emissions limitations, and equivalent emissions limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an implementation plan.

5. Limitations and conditions that are part of a § 111(d) or 111(d)/129 plan.

6. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.

7. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

8. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

9. Individual consent agreements issued pursuant to the legal authority of EPA.

"Good engineering practice" or "GEP," with reference to the height of the stack, means the greater of:

1. 65 meters, measured from the ground-level elevation at the base of the stack;

2. a. For stacks in existence on January 12, 1979, and for which the owner had obtained all applicable permits or approvals required under 9VAC5-80 (Permits for Stationary Sources),

Hg = 2.5H,

provided the owner produces evidence that this equation was actually relied on in establishing an emissions limitation;

b. For all other stacks,

Hg = H + 1.5L,

where:

Hg = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s) provided that the board may require the use of a field study or fluid model to verify GEP stack height for the source; or

3. The height demonstrated by a fluid model or a field study approved by the board, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

"Hazardous air pollutant" means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Initial emission test" means the test required by any regulation, permit issued pursuant to 9VAC5-80 (Permits for Stationary Sources), control program, compliance schedule or other enforceable mechanism for determining compliance with new or more stringent emission standards or permit limitations or other emissions limitations requiring the installation or modification of air pollution control equipment or implementation of a control method. Initial emission tests shall be conducted in accordance with 9VAC5-40-30.

"Initial performance test" means the test required by (i) 40 CFR Part 60 for determining compliance with standards of performance, or (ii) a permit issued pursuant to 9VAC5-80 (Permits for Stationary Sources) for determining initial compliance with permit limitations. Initial performance tests shall be conducted in accordance with 9VAC5-50-30 and 9VAC5-60-30.

"Isokinetic sampling" means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

"Locality" means a city, town, county or other public body created by or pursuant to state law.

"Mail" means electronic or postal delivery.

"Maintenance area" means any geographic region of the United States previously designated as a nonattainment area and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan and designated as such in 9VAC5-20-203.

"Malfunction" means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Monitoring device" means the total equipment used to measure and record (if applicable) process parameters.

"Nearby" as used in the definition of good engineering practice (GEP) is defined for a specific structure or terrain feature and:

1. For purposes of applying the formulae provided in subdivision 2 of the GEP definition means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile); and

2. For conducting demonstrations under subdivision 3 of the GEP definition means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed two miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40% of the GEP stack height determined by the formulae provided in subdivision 2 b of the GEP definition or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

"Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in 40 CFR Part 60.

"Nonattainment area" means any area which is shown by air quality monitoring data or, where such data are not available, which is calculated by air quality modeling (or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant including, but not limited to, areas designated as such in 9VAC5-20-204.

"One hour" means any period of 60 consecutive minutes.

"One-hour period" means any period of 60 consecutive minutes commencing on the hour.

"Organic compound" means any chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic disulfide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

"Owner" means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a source.

"Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

"Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"PM_{10} emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"Performance test" means a test for determining emissions from new or modified sources.

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

"Pollutant" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable.

"Prevention of significant deterioration area" means any area not designated as a nonattainment area in 9VAC5-20-204 for a particular pollutant and designated as such in 9VAC5-20-205.

"Proportional sampling" means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 2.2-4007.02 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in 9VAC5-30 (Ambient Air Quality Standards): The applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16.

2. For emission standards in 9VAC5-40 (Existing Stationary Sources) and 9VAC5-50 (New and Modified Stationary Sources): Appendix M of 40 CFR Part 51 or Appendix A of 40 CFR Part 60.

3. For emission standards in 9VAC5-60 (Hazardous Air Pollutant Sources): Appendix B of 40 CFR Part 61 or Appendix A of 40 CFR Part 63.

"Regional director" means the regional director of an administrative region of the Department of Environmental Quality or a designated representative.

"Regulation of the board" means any regulation adopted by the State Air Pollution Control Board under any provision of the Code of Virginia.

"Regulations for the Control and Abatement of Air Pollution" means 9VAC5-10 (General Definitions) through 9VAC5-80 (Permits for Stationary Sources).

"Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials publication, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)" (see 9VAC5-20-21).

"Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

"Section 111(d) plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with § 111(d)(1) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with § 111(d)(2) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.

"Section 111(d)/129 plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with §§ 111(d)(1) and 129(b)(2) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with §§ 111(d)(2) and 129(b)(3) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.

"Shutdown" means the cessation of operation of an affected facility for any purpose.

"Source" means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

"Stack" means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct, but not including flares.

"Stack in existence" means that the owner had:

1. Begun, or caused to begin, a continuous program of physical on-site construction of the stack; or

2. Entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner, to undertake a program of construction of the stack to be completed in a reasonable time.

"Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm of Hg (29.92 inches of Hg).

"Standard of performance" means any provision of 9VAC5-50 (New and Modified Stationary Sources) which prescribes an emissions limitation or other requirements that control air pollution emissions.

"Startup" means the setting in operation of an affected facility for any purpose.

"State enforceable" means all limitations and conditions which are enforceable by the board or department, including, but not limited to, those requirements developed pursuant to 9VAC5-170-160; requirements within any applicable regulation, order, consent agreement or variance; and any permit requirements established pursuant to 9VAC5-80 (Permits for Stationary Sources).

"State Implementation Plan" means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental Protection Agency, under § 110 of the federal Clean Air Act, and which implements the requirements of § 110.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21).

"These regulations" means 9VAC5-10 (General Definitions) through 9VAC5-80 (Permits for Stationary Sources).

"Total suspended particulate" or "TSP" means particulate matter as measured by the reference method described in Appendix B of 40 CFR Part 50.

"True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute (API) publication, "Evaporative Loss from Floating-Roof Tanks" (see 9VAC5-20-21). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates

of true vapor pressure may be used in special cases such as these.

"Urban area" means any area consisting of a core city with a population of 50,000 or more plus any surrounding localities with a population density of 80 persons per square mile and designated as such in 9VAC5-20-201.

"Vapor pressure," except where specific test methods are specified, means true vapor pressure, whether measured directly, or determined from Reid vapor pressure by use of the applicable nomograph in American Petroleum Institute publication, "Evaporative Loss from Floating-Roof Tanks" (see 9VAC5-20-21).

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Volatile organic compound" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

1. This includes any such organic compounds which have been determined to have negligible photochemical reactivity other than the following:

a. Methane;

b. Ethane;

c. Methylene chloride (dichloromethane);

d. 1,1,1-trichloroethane (methyl chloroform);

e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);

f. Trichlorofluoromethane (CFC-11);

g. Dichlorodifluoromethane (CFC-12);

h. Chlorodifluoromethane (H CFC-22);

i. Trifluoromethane (H FC-23);

j. 1,2-dichloro 1,1,2,2,-tetrafluoroethane (CFC-114);

k. Chloropentafluoroethane (CFC-115);

l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);

m. 1,1,1,2-tetrafluoroethane (HFC-134a);

n. 1,1-dichloro 1-fluoroethane (HCFC-141b);

o. 1-chloro 1,1-difluoroethane (HCFC-142b);

p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);

q. Pentafluoroethane (HFC-125);

r. 1,1,2,2-tetrafluoroethane (HFC-134);

s. 1,1,1-trifluoroethane (HFC-143a);

t. 1,1-difluoroethane (HFC-152a);

u. Parachlorobenzotrifluoride (PCBTF);

v. Cyclic, branched, or linear completely methylated siloxanes;

w. Acetone;

x. Perchloroethylene (tetrachloroethylene);

y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);

z. 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);

aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);

bb. Difluoromethane (HFC-32);

cc. Ethylfluoride (HFC-161);

dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);

ee. 1,1,2,2,3-pentafluoropropane (HFC-245ca);

ff. 1,1,2,3,3-pentafluoropropane (HFC-245ea);

gg. 1,1,1,2,3-pentafluoropropane (HFC-245eb);

hh. 1,1,1,3,3-pentafluoropropane (HFC-245fa);

ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);

jj. 1,1,1,3,3-pentafluorobutane (HFC-365mfc);

kk. Chlorofluoromethane (HCFC-31);

ll. 1 chloro-1-fluoroethane (HCFC-151a);

mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);

nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100);

oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-hepta-fluoropropane ($(CF_3)_2CFCF_2OCH_3$);

pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE-7200);

qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-hepta-fluoropropane ($(CF_3)_2CFCF_2OC_2H_5$);

rr. Methyl acetate;

ss. 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$) (HFE-7000);

tt. 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500);

uu. 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);

vv. methyl formate ($HCOOCH_3$);

ww. 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);

xx. propylene carbonate;

yy. dimethyl carbonate;

zz. trans-1,3,3,3-tetrafluoropropene;

aaa. HCF_2OCF_2H (HFE-134);

bbb. $HCF_2OCF_2OCF_2H$ (HFE-236cal2);

ccc. $HCF_2OCF_2CF_2OCF_2H$ (HFE-338pcc13);

ddd. $HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180));

eee. trans 1-chloro-3,3,3-trifluoroprop-1-ene;

fff. 2,3,3,3-tetrafluoropropene;

ggg. 2-amino-2-methyl-1-propanol;

hhh. t-butyl acetate;

iii. 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane; ~~and~~

jjj. trans-1,1,1,4,4,4-hexafluorobut-2-ene; and

kkk. Perfluorocarbon compounds that fall into these classes:

(1) Cyclic, branched, or linear, completely fluorinated alkanes;

(2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

2. For purposes of determining compliance with emissions standards, volatile organic compounds shall be measured by the appropriate reference method in accordance with the provisions of 9VAC5-40-30 or 9VAC5-50-30, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as a volatile organic compound if the amount of such compounds is accurately quantified, and such exclusion is approved by the board.

3. As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the board may require an owner to provide monitoring or testing methods and results demonstrating, to the satisfaction of the board, the amount of negligibly reactive compounds in the emissions of the source.

4. Exclusion of the compounds listed in subdivision 1 of this definition in effect exempts such compounds from the provisions of emission standards for volatile organic compounds. The compounds are exempted on the basis of being so inactive that they will not contribute significantly to the formation of ozone in the troposphere. However, this exemption does not extend to other properties of the exempted compounds which, at some future date, may require regulation and limitation of their use in accordance with requirements of the federal Clean Air Act.

5. Reserved.

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

VA.R. Doc. No. R24-7623; Filed January 24, 2024, 3:55 p.m.

Fast-Track Regulation

Title of Regulation: **9VAC5-40. Existing Stationary Sources (repealing 9VAC5-40-1340 through 9VAC5-40-1510, 9VAC5-40-3560 through 9VAC5-40-3700).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: March 27, 2024.

Effective Date: April 11, 2024.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1973, or email karen.sabasteanski@deq.virginia.gov.

Basis: Section 10.1-1308 of the Code of Virginia authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare.

Purpose: Given that there are no longer any facilities subject to the provisions, there is no longer a need for the repealed provisions to remain on the books. Removing outdated regulations is important in order to maintain clarity and effectiveness of the regulations overall. This benefits public welfare in general in that it will contribute to a more efficient and effective functioning of government. Even if there were still affected sources in the state, the U.S. Environmental Protection Agency's regulations have become much more protective of public health and welfare since state regulations were originally promulgated in 1972. Any new petroleum refining or large appliance coating facilities locating in Virginia will now be subject to federal New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants for Source Categories, and a suite of other permitting requirements implemented since 1972.

Rationale for Using Fast-Track Rulemaking Process: In order to determine the ongoing applicability of the regulation, a review of the Comprehensive Environmental Data System (CEDS) was made. CEDS is Virginia's air regulatory registration database. Facilities must register in this database all units to which a regulation of the board applies. This review revealed that two facility types covered by 9VAC5-40 no longer operate in the state: petroleum refinery operations and large appliance coating application systems. This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because it repeals regulations for facilities that no longer exist.

Substance: The provisions of the regulation are no longer needed and are being repealed.

Issues: There are no direct impacts on public health as there are no longer any petroleum refineries or large appliance coating application systems emitting pollutants in the Commonwealth. There is a general benefit to the overall welfare of the public in that removing outdated regulations maintains clarity and effectiveness of the regulation overall, which in turn

contributes to the efficient and effective functioning of government. The repeal allows the department to focus pollution reduction strategies on facilities that have a negative impact on human health and the environment. There are no disadvantages to the public or the agency or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. Following a periodic review,[2] the Air Pollution Control Board (board) proposes to repeal air quality regulatory requirements for petroleum refinery operations and large appliance coating application systems because there are no longer any affected facilities that are subject to these requirements.

Background. The regulatory requirements proposed for repeal apply primarily to certain emissions from two types of facilities. These are (i) particulate matter, sulfur dioxide, volatile organic compounds, and hydrogen sulfide from petroleum refineries and (ii) volatile organic compounds from large appliance coating application systems.

During the periodic review of these regulations, the Department of Environmental Quality (DEQ) determined that there are no longer any facilities in Virginia that are subject to these air quality standards. Furthermore, these requirements apply specifically to existing facilities. If, in the future, a petroleum refinery or a large appliance coating application systems facility starts up in Virginia, their emissions will be subject to the new source standards and regulations which are not being affected in this action. In other words, since there is no existing facility, and any new facility will be subject to requirements other than those being repealed in this action, there is and there will be no use for these regulatory requirements in practice.

Estimated Benefits and Costs. Since there is no current facility that these requirements apply to and any future facility will be subject to new source air quality requirements that are different and apart, no economic impact is expected from the proposed repeal of this essentially unneeded regulatory text other than shortening the length of Virginia Administrative Code.

Businesses and Other Entities Affected. DEQ reports that the last petroleum refinery closed in 2010. In addition, DEQ has no record that any business with large appliance coating application systems ever operated in Virginia.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[3] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the proposal would repeal regulatory text that has no application currently or in the future. Thus, no adverse impact is indicated.

Small Businesses[4] Affected.[5] The proposed repeal does not adversely affect small businesses.

Localities[6] Affected.[7] The proposed repeal does not introduce costs for local governments nor disproportionately affect any locality.

Projected Impact on Employment. The proposed changes do not affect employment.

Effects on the Use and Value of Private Property. No impact on the use and value of private property nor real estate development costs is expected.

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[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2127

[3]Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

[5]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[6]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[7]Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

As a result of periodic review and in accordance with Executive Directive One (2022) and Executive Order 19 (2022), the amendments repeal emission standards for petroleum refinery operations and for large appliance coating application systems. According to the Department of Environmental Quality's Comprehensive Environmental Data System database, no facilities located within the Commonwealth continue to be subject to these provisions, so the provisions are repealed as unnecessary.

Article 11

Emission Standards for Petroleum Refinery Operations (Rule 4-11) (Repealed)

9VAC5-40-1340. ~~Applicability and designation of affected facility.~~ (Repealed.)

~~A. The affected facilities in petroleum refineries to which the provisions of this article apply are: each petroleum catalytic cracking unit, each petroleum refinery component, each vacuum producing system, each wastewater separator, and each process unit turnaround.~~

~~B. The provisions of this article apply throughout the Commonwealth of Virginia.~~

9VAC5-40-1350. ~~Definitions.~~ (Repealed.)

~~A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.~~

~~B. As used in this article, all terms not defined here shall have the meanings given them in 9VAC5 Chapter 10 (9VAC5-10-10 et seq.), unless otherwise required by context.~~

~~C. Terms defined.~~

~~"Condensate" means a hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature or pressure or both and remains liquid at standard conditions.~~

~~"Crude oil" means a naturally occurring mixture which consists of any combination of hydrocarbons, sulfur, nitrogen or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.~~

~~"Firebox" means the chamber or compartment of a boiler or furnace in which materials are burned, but does not mean the combustion chamber of an incinerator.~~

~~"Gasoline" means any petroleum distillate having a Reid vapor pressure of four pounds per square inch or greater.~~

~~"Hot well" means the reservoir of a condensing unit receiving the warm condensate from the condenser.~~

~~"Petroleum liquids" means crude oil, condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery.~~

~~"Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants or other products through distillation of petroleum or through redistillation, cracking, rearrangement or reforming of unfinished petroleum derivatives.~~

~~"Petroleum refinery component" means any petroleum refinery component that could potentially leak volatile organic compounds to the atmosphere. Such components include, but are not limited to, pump seals, compressor seals, seal oil degassing vents, pipeline valves, flanges and other connections, pressure relief devices process drains and open ended pipes.~~

~~"Refinery fuel gas" means any gas which is generated by a petroleum refinery process unit and which is combusted, including any gaseous mixture of natural gas and fuel gas.~~

~~"Turnaround" means the procedure of shutting a refinery unit down after a run to do necessary maintenance and repair work and putting the unit back on stream.~~

~~"Vacuum producing system" means any reciprocating, rotary or centrifugal blower or compressor, or any jet ejector or device that takes suction from a pressure below atmospheric and discharges against atmospheric pressure.~~

~~"Wastewater separator" means any single or multiple compartment equipment which is designed to physically separate and remove any volatile organic compound floating on or entrained or contained in water entering such equipment from such water prior to outfall, drainage or recovery of such water.~~

9VAC5-40-1360. ~~Standard for particulate matter.~~ (Repealed.)

~~No owner or other person shall cause or permit to be discharged into the atmosphere from any petroleum catalytic cracking unit any particulate emissions in excess of 0.05% of the rate of catalyst recirculation within the unit.~~

9VAC5-40-1370. ~~Standard for sulfur dioxide.~~ (Repealed.)

~~No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any sulfur dioxide emissions in excess of an in-stack concentration of 2,000 ppm by volume.~~

9VAC5-40-1380. ~~Standard for hydrogen sulfide.~~ (Repealed.)

~~No owner or other person shall cause or permit to be discharged into the atmosphere from any refinery process gas stream any hydrogen sulfide emissions in excess of a concentration of 15 grains per 100 cubic feet of gas without burning or removing H_2S in excess of this concentration, provided that sulfur dioxide emissions in the burning operation meet the requirements of 9VAC5-40-1370.~~

9VAC5-40-1390. ~~Standard for volatile organic compounds.~~ (Repealed.)

~~A. Vacuum producing systems.~~

~~1. No owner or other person shall use or permit the use of a vacuum producing system unless such system is equipped with a vapor control system that will remove, destroy or prevent the discharge into the atmosphere of at least 95% by weight of volatile organic compound emissions.~~

~~2. Achievement of the emission standard in subdivision A 1 of this section by use of methods in 9VAC5-40-1400 A will be acceptable to the board.~~

~~B. Wastewater separators.~~

~~1. No owner or other person shall use or permit the use of any wastewater separator unless such separator is equipped with a vapor control system that will remove, destroy or prevent the discharge into the atmosphere of at least 95% by weight of volatile organic compound emissions.~~

~~2. Achievement of the emission standard in subdivision B 1 of this section by use of methods in 9VAC5-40-1400 B will be acceptable to the board.~~

~~C. Process unit turnarounds.~~

~~1. No owner or other person shall conduct or permit the conduct of a process unit turnaround unless such unit is equipped with a vapor control system that will remove, destroy or prevent the discharge into the atmosphere of at least 95% by weight of volatile organic compound emissions.~~

~~2. Achievement of the emission standard in subdivision C 1 of this section by use of methods in 9VAC5-40-1400 C will be acceptable to the board.~~

~~D. The provisions of this section apply only to sources of volatile organic compounds in volatile organic compound emissions control areas designated in 9VAC5-20-206.~~

~~E. The provisions of this section do not apply to sources using petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions. (Kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of this section when used or stored at ambient temperatures).~~

9VAC5-40-1400. ~~Control technology guidelines.~~ (Repealed.)

~~A. Vacuum producing system. The control system should either vent noncondensable vapors to a firebox, incinerator or compress the vapors and add them to the refinery fuel gas. The associated hot wells should be covered and equipped with a vapor control system that incinerates the vapors.~~

~~B. Wastewater separators. The control system should consist of one of the following:~~

~~1. A solid cover with all openings sealed and totally enclosing the liquid contents of that compartment;~~

~~2. A floating pontoon or double-deck type cover, equipped with closure seals to enclose any space between the cover's edge and compartment wall; or~~

~~3. Any system of equal or greater control efficiency to the system in subsection B 1 or 2 of this section, provided such system is approved by the board.~~

~~C. Process unit turnaround. The units should be depressurized to a flare, fuel gas system or to some other combustion device before being opened for inspection or maintenance. Such units should be depressurized to five psi or below before venting to the atmosphere.~~

9VAC5-40-1410. ~~Standard for visible emissions.~~ (Repealed.)

~~The provisions of Article 1 (9VAC5-40-60 et seq.) of this chapter (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) apply.~~

9VAC5-40-1420. ~~Standard for fugitive dust/emissions.~~ (Repealed.)

~~A. The provisions of Article 1 (9VAC5-40-60 et seq.) of this chapter (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) apply.~~

~~B. For petroleum refineries located in volatile organic compound emission control areas designated in 9VAC5-20-206, the following requirements apply:~~

~~1. When any petroleum refinery component within the refinery complex is found to be leaking, the owner shall make every reasonable effort to repair the leak within 15 days. A leaking component is defined as one which has a volatile organic compound concentration exceeding 10,000 parts per million (ppm) when testing using procedures acceptable to the board.~~

~~2. Compliance with the above emission standard shall be determined based upon monitoring, records and reporting conducted by the owner using procedures acceptable to the board.~~

~~3. Any time a valve is located at the end of a pipe or line containing volatile organic compounds, the end of the line shall be sealed with a second valve, a blind flange, a plug or a cap. This sealing device may be removed only when the line is in use (i.e., when a sample is being taken). This requirement does not apply to safety pressure relief valves.~~

9VAC5-40-1430. ~~Standard for odor.~~ (Repealed.)

~~The provisions of Article 2 (9VAC5-40-130 et seq.) of this chapter (Emission Standards for Odor, Rule 4-2) apply.~~

9VAC5-40-1440. ~~Standard for toxic pollutants.~~ (Repealed.)

~~The provisions of Article 3 (9VAC5-40-160 et seq.) of this chapter (Emission Standards for Toxic Pollutants, Rule 4-3) apply.~~

9VAC5-40-1450. ~~Compliance.~~ (Repealed.)

~~The provisions of 9VAC5-40-20 (Compliance) apply.~~

9VAC5-40-1460. ~~Test methods and procedures.~~ (Repealed.)

~~The provisions of 9VAC5-40-30 (Emission Testing) apply.~~

9VAC5-40-1470. ~~Monitoring.~~ (Repealed.)

~~A. The provisions of 9VAC5-40-40 (Monitoring) apply.~~

~~B. Unless otherwise approved by the board, owners of process units specified in subsection C of this section shall install, calibrate, maintain and operate systems for continuously monitoring and recording specified emissions in accordance with 9VAC5-40-40 and 9VAC5-40-41.~~

~~C. Catalyst regenerators for fluid bed catalytic cracking units of greater than 20,000 barrels per day fresh feed capacity at petroleum refineries shall be monitored for opacity.~~

~~D. The continuous monitoring system shall be spanned at 60, 70 or 80% opacity.~~

9VAC5-40-1480. ~~Notification, records and reporting.~~ (Repealed.)

~~A. The provisions of 9VAC5-40-50 (Notification, Records and Reporting) apply.~~

~~B. For the purpose of reports required under 9VAC5-40-50 C, periods of excess emissions that shall be reported are defined as any one hour period during which there are two or more six-minute periods when the average opacity exceeds 20%.~~

9VAC5-40-1490. ~~Registration.~~ (Repealed.)

~~The provisions of 9VAC5-20-160 (Registration) apply.~~

9VAC5-40-1500. ~~Facility and control equipment maintenance or malfunction.~~ (Repealed.)

~~The provisions of 9VAC5-20-180 (Facility and Control Equipment Maintenance or Malfunction) apply.~~

9VAC5-40-1510. ~~Permits.~~ (Repealed.)

~~A permit may be required prior to beginning any of the activities specified below and the provisions of 9VAC5 Chapter 50 (9VAC5-50-10 et seq.) and 9VAC5 Chapter 80 (9VAC5-80-10 et seq.) may apply. Owners contemplating such action should contact the appropriate regional office for guidance.~~

~~1. Construction of a facility.~~

~~2. Reconstruction (replacement of more than half) of a facility.~~

~~3. Modification (any physical change to equipment) of a facility.~~

~~4. Relocation of a facility.~~

~~5. Reactivation (restart up) of a facility.~~

Article 26

Emission Standards for Large Appliance Coating Application Systems (Rule 4-26) (Repealed)

9VAC5-40-3560. ~~Applicability and designation of affected facility.~~ (Repealed.)

~~A. Except as provided in subsection C of this section, the affected facility to which the provisions of this article apply is each large appliance coating application system.~~

~~B. The provisions of this article apply only to sources of volatile organic compounds in volatile organic compound emissions control areas designated in 9VAC5-20-206.~~

~~C. The provisions of this article do not apply to coating application systems used exclusively for determination of product quality and commercial acceptance provided:~~

~~1. The operation is not an integral part of the production process;~~

~~2. The emissions from all product quality coating application systems do not exceed 400 pounds in any 30 day period; and~~

~~3. The exemption is approved by the board.~~

9VAC5-40-3570. ~~Definitions.~~ (Repealed.)

~~A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.~~

~~B. As used in this article, all terms not defined here shall have the meanings given them in 9VAC5 Chapter 10 (9VAC5-10-10 et seq.), unless otherwise required by context.~~

~~C. Terms defined.~~

~~"Application area" means the area where the coating is applied by spraying, dipping or flow coating techniques.~~

~~"Carbon adsorption system" means a device containing activated carbon as the adsorbent material, an inlet and outlet for exhaust gases, and a system to regenerate the saturated adsorbent. The carbon adsorption system must provide for the proper disposal or reuse of all volatile organic compounds in the adsorbate.~~

~~"Coating applicator" means an apparatus used to apply a surface coating.~~

~~"Coating application system" means any operation or system where a surface coating of one type or function is applied, dried~~

~~or cured and which is subject to the same emission standard. May include any equipment which applies, conveys, dries or cures a surface coating, including, but not limited to, spray booths, flow coaters, flashoff areas, air dryers, drying areas and ovens. It is not necessary for a coating application system to have an oven, flashoff area or drying area to be included in this definition.~~

~~"Flashoff area" means the space between the application area and the oven.~~

~~"Large appliance" means residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners and other similar metal products. Includes doors, cases, lids, panels and interior metal support parts.~~

~~"Oven" means a chamber within which heat is used to bake, cure, polymerize or dry a surface coating or any combination of those.~~

9VAC5-40-3580. ~~Standard for volatile organic compounds.~~ (Repealed.)

~~A. Prime or single coat application.~~

~~1. No owner or other person shall cause or permit the discharge into the atmosphere from a coating application system any volatile organic compound in excess of 2.8 pounds per gallon of coating excluding water, as delivered by the coating applicator.~~

~~2. Achievement of the emission standard in subsection A 1 of this section by use of methods in 9VAC5-40-3590 A will be acceptable to the board.~~

~~B. Topcoat or sound deadener application.~~

~~1. No owner or other person shall cause or permit the discharge into the atmosphere from any coating application system any volatile organic compound in excess of 2.8 pounds per gallon of coating, excluding water, as delivered by the coating applicator.~~

~~2. Achievement of the emission standard in subsection B 1 of this section by use of methods in 9VAC5-40-3590 B will be acceptable to the board.~~

~~C. This section shall not be applicable to the use of quick-drying lacquers for the repair of scratches and nicks that occur during assembly, provided that the volume of coating does not exceed two quarts in any eight-hour period.~~

~~D. No owner or other person shall use any coating application system or equipment unless reasonable precautions are taken to minimize the discharge of emissions from cleaning or purging operations. Reasonable precautions may include the following:~~

~~1. The use of capture or control devices or both;~~

~~2. The use of detergents, high pressure water, or other non-volatile cleaning methods;~~

~~3. The minimization of the quantity of volatile organic compounds used to clean lines of equipment; or~~

~~4. The adjustment of production schedules to minimize coating changes thereby reducing the need for frequent cleaning or purging of a system.~~

9VAC5-40-3590. ~~Control technology guidelines.~~ (Repealed.)

~~A. Prime or single coat application. The control technology should consist of one or more of the following:~~

~~1. Use of electrodeposited waterborne coatings.~~

~~2. Use of other waterborne coatings.~~

~~3. Use of high-solids coatings.~~

~~4. Use of powder coatings.~~

~~5. Carbon adsorption.~~

~~6. Incineration.~~

~~7. Any technology of equal or greater control efficiency when compared to the use of a coating complying with 9VAC5-40-3580 A 1, provided such technology is approved by the board.~~

~~B. Topcoat or sound deadener application. The control technology should consist of one or more of the following:~~

~~1. Use of waterborne coatings.~~

~~2. Use of high-solids coatings.~~

~~3. Use of powder coatings.~~

~~4. Carbon adsorption.~~

~~5. Incineration.~~

~~6. Any technology of equal or greater control efficiency when compared to the use of a coating complying with 9VAC5-40-3580 B 1, provided such technology is approved by the board.~~

9VAC5-40-3600. ~~Standard for visible emissions.~~ (Repealed.)

~~The provisions of Article 1 (9VAC5-40-60 et seq.) of this chapter (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) apply.~~

9VAC5-40-3610. ~~Standard for fugitive dust/emissions.~~ (Repealed.)

~~The provisions of Article 1 (9VAC5-40-60 et seq.) of this chapter (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) apply.~~

9VAC5-40-3620. ~~Standard for odor.~~ (Repealed.)

~~The provisions of Article 2 (9VAC5-40-130 et seq.) of this chapter (Emission Standards for Odor, Rule 4-2) apply.~~

9VAC5-40-3630. ~~Standard for toxic pollutants.~~ (Repealed.)

~~The provisions of Article 3 (9VAC5-40-160 et seq.) of this chapter (Emission Standards for Toxic Pollutants, Rule 4-3) apply.~~

9VAC5-40-3640. ~~Compliance.~~ (Repealed.)

~~A. The provisions of 9VAC5-40-20 (Compliance) apply.~~

~~B. The emission standards in 9VAC5-40-3580 apply coating by coating or to the volume weighted average of coatings where the coatings are used on a single coating application system and the coatings are the same type or perform the same function. Such averaging shall not exceed 24 hours.~~

~~C. Compliance determinations for control technologies not based on compliant coatings (i.e., coating formulation alone) shall be based on the applicable standard in terms of pounds of volatile organic compounds per gallon solids or pounds of volatile organic compounds per gallon solids applied according to the applicable procedure in 9VAC5-20-121. Compliance may also be based on transfer efficiency greater than the board accepted baseline transfer efficiency if demonstrated by methods acceptable to the board according to the applicable procedure in 9VAC5-20-121.~~

9VAC5-40-3650. ~~Test methods and procedures.~~ (Repealed.)

~~The provisions of 9VAC5-40-30 (Emission Testing) apply.~~

9VAC5-40-3660. ~~Monitoring.~~ (Repealed.)

~~The provisions of 9VAC5-40-40 (Monitoring) apply.~~

9VAC5-40-3670. ~~Notification, records and reporting.~~ (Repealed.)

~~The provisions of 9VAC5-40-50 (Notification, Records and Reporting) apply.~~

9VAC5-40-3680. ~~Registration.~~ (Repealed.)

~~The provisions of 9VAC5-20-160 (Registration) apply.~~

9VAC5-40-3690. ~~Facility and control equipment maintenance or malfunction.~~ (Repealed.)

~~The provisions of 9VAC5-20-180 (Facility and Control Equipment Maintenance or Malfunction) apply.~~

9VAC5-40-3700. ~~Permits.~~ (Repealed.)

~~A permit may be required prior to beginning any of the activities specified below and the provisions of 9VAC5 Chapter 50 (9VAC5-50-10 et seq.) and 9VAC5 Chapter 80 (9VAC5-80-10 et seq.) may apply. Owners contemplating such action should contact the appropriate regional office for guidance.~~

~~1. Construction of a facility.~~

~~2. Reconstruction (replacement of more than half) of a facility.~~

~~3. Modification (any physical change to equipment) of a facility.~~

~~4. Relocation of a facility.~~

~~5. Reactivation (restart-up) of a facility.~~

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Fast-Track Regulation

Titles of Regulations: **9VAC5-40. Existing Stationary Sources (amending 9VAC5-40-10, 9VAC5-40-50).**

9VAC5-45. Consumer and Commercial Products (amending 9VAC5-45-10, 9VAC5-45-50, 9VAC5-45-220, 9VAC5-45-320, 9VAC5-45-440, 9VAC5-45-560).

9VAC5-50. New and Modified Stationary Sources (amending 9VAC5-50-10, 9VAC5-50-50).

9VAC5-60. Hazardous Air Pollutant Sources (amending 9VAC5-60-10, 9VAC5-60-50).

9VAC5-80. Permits for Stationary Sources (amending 9VAC5-80-350, 9VAC5-80-1105, 9VAC5-80-2290, 9VAC5-80-2350).

9VAC5-510. Nonmetallic Mineral Processing General Permit (amending 9VAC5-510-230).

9VAC5-530. Electric Generator Voluntary Demand Response General Permit (amending 9VAC5-530-210, 9VAC5-530-290).

9VAC5-540. Emergency Generator General Permit (amending 9VAC5-540-210).

Statutory Authority: § 10.1-1308 of the Code of Virginia (9VAC5-40, 9VAC5-45, 9VAC5-50, 9VAC5-80, 9VAC5-510, 9VAC5-530, 9VAC5-540).

§ 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the Clean Air Act; 40 CFR Parts 51 and 60 (9VAC5-60).

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: March 27, 2024.

Effective Date: April 11, 2024.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1973, or email karen.sabasteanski@deq.virginia.gov.

Basis: Section 10.1-1308 of the Code of Virginia authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare. The Uniform Electronic Transaction Act (§ 59.1-482 et seq. of the Code of Virginia) authorizes a transaction to be conducted by electronic means

between agreeable parties and recognizes the legal enforceability of an electronic signature.

Purpose: Explicitly allowing electronic submissions is administratively and environmentally appropriate. This is consistent with both Department of Environmental Quality (DEQ) and federal guidance and regulations. Although there is no direct environmental benefit from electronic submittal other than conservation of certain physical resources such as paper, electronic submittal is faster and more reliable than other forms of delivery. This will bring accuracy and consistency to necessary reporting requirements and make the implementation and administration of regulatory requirements clearer and easier for both the sender (the regulated entity) and the recipient (DEQ).

Rationale for Using Fast-Track Rulemaking Process: A comment during a periodic review of 9VAC5-40 requested DEQ to allow electronic submittal via email to the regional director after the document has been authenticated in accordance with DEQ's e-signature guidance. In addition, since Virginia has delegated authority over most of the federal regulations under 40 CFR Parts 60 and 63, those delegation documents must also be changed to allow for electronic submission prior to sources initiating such change. This process aligns with DEQ's e-signature guidance and is more efficient for both DEQ and the compliance entities. With respect to 40 CFR Part 60 and 63, Virginia's regulations must be consistent with U.S. Environmental Protection Agency (EPA) regulations in order to meet delegation agreements. EPA has been updating its regulations when possible to allow electronic reporting. This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because it will contribute to the efficient and effective function of government.

Substance: Wherever information is required to be submitted via postal mail, an electronic option is added. An email submittal is considered to have been "postmarked." Several minor corrections are also made.

Issues: There is a general benefit to the overall welfare of the public in that allowing electronic submittals contributes to the efficient and effective functioning of government. There may be a minor direct positive impact to the environment in that fewer physical supplies such as paper will be needed in order to make a submission. There is a general benefit to the department in that allowing electronic submittals contributes to the efficient and effective functioning of government. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. As the result of a 2022 periodic review, the Air Pollution Control Board (board) is proposing to amend eight regulations to allow for the electronic submission of documents.[2]

Background. During the 2022 periodic review of 9VAC5-40, the board received a comment suggesting that the agency should allow for the electronic submission of documents.[3] The board already accepts electronic submissions as allowed by both federal and state policies. The U.S. Environmental Protection Agency issued a policy allowing for the electronic submission of documents in April of 2018 and the Department of Environmental Quality (DEQ) subsequently published its own policy outlining the use of electronic submissions.[4] The Board proposes to update the language, not only in 9VAC5-40, but also in 9VAC5-45, 9VAC5-50, 9VAC5-60, 9VAC5-80, 9VAC5-510, 9VAC5-530, and 9VAC5-540, to align these regulations with both the EPA and DEQ electronic submission policies. Accordingly, most of the proposed amendments involve adding "or submitted electronically" to the existing text. The Board also proposes to make several minor corrections for internal consistency.

Estimated Benefits and Costs. The proposed changes would benefit any entity operating under an air quality permit by allowing them to submit required notices or reports electronically rather than mailing paper copies. DEQ reports that there are approximately 3200 air quality permits and that most permittees need to submit written notifications at one time or another. DEQ has confirmed that these notices and reports are already being received electronically; thus, these benefits already accrue. The proposed changes would not create any new costs.

Businesses and Other Entities Affected. As mentioned previously, the proposed regulation would primarily benefit the approximately 3,200 entities with air quality permits, since they are subject to the reporting requirements contained in one or more of these chapters. These entities include large energy companies as well as smaller manufacturing or industrial entities, many of which would be considered small businesses.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[3] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the proposal would repeal regulatory text that has no application currently or in the future. Thus, no adverse impact is indicated.

Small Businesses[4] Affected.[5] The proposed amendments would not create any new costs for small businesses. The proposed changes marginally benefit small businesses with air quality permits who are subject to reporting requirements under these chapters by allowing them to submit notices or reports electronically, rather than via mail. As mentioned previously, since these changes have already been implemented in practice, any affected small businesses already benefit from these changes.

Localities[6] Affected.[7] The proposed changes would not disproportionately affect any particular localities and would not affect costs for local governments.

Projected Impact on Employment. To the extent that switching to electronic submissions lowers a permitted business' reporting costs, the proposed amendments would increase the value of those businesses. As mentioned previously, the proposed amendments have already been implemented in practice; thus, any affected businesses already benefit from the savings and higher valuations. Real estate development costs are not affected.

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[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]See https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2127.

[3]See pages 10 and 11 of the Periodic Review Report of Findings: https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\Review\2127\PReview_DEQ_2127_v1.pdf.

[4]See DEQ's E-Signature Guidance at https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\440\GDoc_DEQ_7146_v1.pdf.

[5]Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

[7]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[8]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[9]Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendments (i) allow for electronic submittal as an additional option when requirements currently stipulate submitted items be "postmarked"; (ii) allow items to be sent electronically when requirements currently stipulate items be mailed; (iii) add "upon request of the board" to certain filing requirements; and (iv) make technical style-conforming changes.

9VAC5-40-10. Applicability.

A. The provisions of this chapter, unless specified otherwise, shall apply to existing sources for which emission standards are prescribed under this chapter.

B. The provisions of this chapter shall not apply to sources specified below except in cases where the provisions of this chapter (i) specifically provide otherwise or (ii) are more restrictive than the provisions of ~~9VAC5 Chapter 50 (9VAC5-50)~~ 9VAC5-50, ~~9VAC5 Chapter 80 (9VAC5-80)~~ 9VAC5-80, or any permit issued pursuant to ~~9VAC5 Chapter 80 (9VAC5-80)~~ 9VAC5-80. Sources exempted under this subsection shall be subject to the provisions of ~~9VAC5 Chapter 50 (9VAC5-50)~~ 9VAC5-50 or ~~9VACChapter 60 (9VAC5-60)~~ 9VAC5-60, or both, as applicable.

1. Any stationary source (or portion of it), the construction, modification or relocation of which commenced on or after March 17, 1972.

2. Any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

C. If a facility becomes subject to any requirement in the Regulations for the Control and Abatement of Air Pollution because it exceeds an exemption level, the facility shall continue to be subject to all applicable requirements even if future conditions cause the facility to fall below the exemption level.

D. Any owner subject to the provisions of this chapter may provide any report, notification or other document by electronic media if acceptable to both the owner and board. ~~This subsection shall not apply to documents requiring signatures or certification under 9VAC5-20-230.~~

9VAC5-40-50. Notification, records and reporting.

A. Any owner of an existing source subject to the provisions of this chapter shall provide written notifications to the board of the following:

1. The date upon which demonstration of the continuous monitoring system performance begins in accordance with 9VAC5-40-40 C. Notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

2. The date of any emission test the owner wishes the board to consider in determining compliance with a standard. Notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

3. The anticipated date for conducting the opacity observations required by 9VAC5-40-20 G 1. The notification shall also include, if appropriate, a request for the board to provide a visible emissions reader during an emission test. The notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

B. Any owner of an existing source subject to the provisions of 9VAC5-40-40 A shall maintain records of the occurrence and duration of any startup, shutdown or malfunction in the operation of such source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

C. Each owner required to install a continuous monitoring system (CMS) or monitoring device shall submit a written report of excess emissions (as defined in the applicable emission standard) and either a monitoring systems performance report or a summary report form, or both, to the board semiannually, except when (i) more frequent reporting is specifically required by an applicable emission standard or the CMS data are to be used directly for compliance determination, in which case quarterly reports shall be submitted; or (ii) the board, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. The summary report and form shall meet the requirements of 40 CFR 60.7(d). The frequency of reporting requirements may be reduced as provided in 40 CFR 60.7(e). All reports shall be postmarked or submitted electronically by the 30th day following the end of each calendar half (or quarter, as appropriate). Written reports of excess emissions shall include the following information:

1. The magnitude of excess emissions computed in accordance with 9VAC5-40-41 B 6, any conversion factors used, and the date and time of commencement and completion of each period of excess emissions. The process operating time during the reporting period.

2. Specific identification of each period of excess emissions that occurs during startups, shutdowns and malfunctions of the source. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.

3. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

4. When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired or adjusted, such information shall be stated in the report.

D. Any owner of an existing source subject to the provisions of this chapter shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and emission testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this chapter recorded in a permanent form suitable for inspection. The file shall be retained for at least two years (unless a longer period is specified in the applicable standards) following the date of such measurements, maintenance, reports and records.

E. Any data or information required by the Regulations for the Control and Abatement of Air Pollution, any permit or order of the board, or which the owner wishes the board to consider, to determine compliance with an emission standard shall be recorded or maintained in a ~~time-frame~~ timeframe consistent with the averaging period of the standard.

F. The owner of a stationary source shall keep records as may be necessary to determine its emissions. Any owner claiming that a facility is exempt from the provisions of the Regulations for the Control and Abatement of Air Pollution shall keep records as may be necessary to demonstrate to the satisfaction of the board its continued exempt status.

G. The owner of an existing source subject to any emission standard in Article 26 (9VAC5-40-3560 et seq.) through Article 36 (9VAC5-40-5060 et seq.) of ~~9VAC5 Chapter 40~~ 9VAC5-40 shall maintain records in accordance with the applicable procedure in 9VAC5-20-121.

H. Upon request of the board, the owner of an existing source subject to the provisions of this chapter shall provide notifications and report, revise reports, maintain records or report emission test or monitoring result in a manner and form and using procedures acceptable to board.

9VAC5-45-10. Applicability.

A. The provisions of this chapter, unless specified otherwise, shall apply to:

1. Any product for which an emission standard or other requirement is prescribed under this chapter; and

2. Any owner or other person that engages in or permits an operation that is subject to the provisions of this chapter. Such operations may include~~, but are not limited to,~~ the manufacture, packaging, distribution, marketing, application, sale or use, or contracting for the application, sale, or use, of the products specified in subdivision 1 of this subsection.

B. The provisions set forth in subdivisions 1 through 6 of this subsection, unless specified otherwise, shall not apply to any product or operation for which emission standards are prescribed under this chapter.

1. The provisions of 9VAC5-20-160 (Registration).

2. The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction).

3. The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) and Article 1 (9VAC5-50-60 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources).

4. The provisions of Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) and Article 2 (9VAC5-50-130 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources).

5. The provisions of Article 4 (9VAC5-60-200 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) and Article 5 (9VAC5-60-300 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

6. The provisions of Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.), and Article 9 (9VAC5-80-2000 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources).

C. Nothing in this chapter shall be interpreted to exempt a stationary source from any provision of 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), 9VAC5-60 (Hazardous Air Pollutant Sources) or 9VAC5-80 (Permits for Stationary Sources) that may apply.

D. Any owner or other person subject to the provisions of this chapter may provide any report, notification, or other document by electronic media if acceptable to both the owner and board. ~~This subsection shall not apply to documents requiring signatures or certification under 9VAC5-20-230.~~

9VAC5-45-50. Notification, records and reporting.

A. Any owner or other person subject to the continuous monitoring provisions of 9VAC5-45-40 C shall provide written notifications to the board of the following:

1. The date upon which demonstration of the continuous monitoring system performance begins in accordance with 9VAC5-45-40 C. Notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

2. The date of any emission test the owner wishes the board to consider in determining compliance with a standard. Notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

3. The anticipated date for conducting the opacity observations required by 9VAC5-45-20 A 3. The notification shall also include, if appropriate, a request for the board to provide a visible emissions reader during an emission test. The notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

B. Any owner or other person subject to the continuous monitoring provisions of 9VAC5-45-40 A shall maintain records of the occurrence and duration of any startup, shutdown, or malfunction of the operation subject to the provisions of an article under this chapter; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

C. Each owner or other person required to install a continuous monitoring system (CMS) or monitoring device shall submit a written report of excess emissions (as defined in the applicable emission standard) and either a monitoring systems performance report or a summary report form, or both, to the board semiannually, except when (i) more frequent reporting is specifically required by an applicable emission standard or the CMS data are to be used directly for compliance determination, in which case quarterly reports shall be submitted; or (ii) the board, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. The summary report and form shall meet the requirements of 40 CFR 60.7(d). The frequency of reporting requirements may be reduced as provided in 40 CFR 60.7(e). All reports shall be postmarked or submitted electronically by the 30th day following the end of each calendar half (or quarter, as appropriate). Written reports of excess emissions shall include the following information:

1. The magnitude of excess emissions computed in accordance with 9VAC5-40-41 B 6, any conversion factors used, and the date and time of commencement and completion of each period of excess emissions.

2. The process operating time during the reporting period.

3. Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the source.

4. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.

5. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

6. When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

D. Any owner or other person subject to the continuous monitoring provisions of 9VAC5-45-40 or monitoring requirements of an article under this chapter shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and emission testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this chapter recorded in a permanent

form suitable for inspection. The file shall be retained for at least two years (unless a longer period is specified in the applicable standard) following the date of such measurements, maintenance, reports, and records.

E. Any data or information required by the Regulations for the Control and Abatement of Air Pollution, any permit or order of the board, or which the owner wishes the board to consider, to determine compliance with an emission standard shall be recorded or maintained in a ~~time-frame~~ timeframe consistent with the averaging period of the standard.

F. Any owner or other person that is subject to the provisions of this chapter shall keep records as may be necessary to determine its emissions. Any owner or other person claiming that an operation or product is exempt from the provisions of the Regulations for the Control and Abatement of Air Pollution shall keep records as may be necessary to demonstrate to the satisfaction of the board its continued exempt status.

G. Unless otherwise specified by the provisions of an article under this chapter, all records required to determine compliance with the provisions of an article under this chapter shall be maintained by the owner or other person subject to such provision for two years from the date such record is created and shall be made available to the board upon request.

H. Upon request of the board, the owner or other person subject to the provisions of this chapter shall provide notifications and report, revise reports, maintain records, or report emission test or monitoring results in a manner and form and using procedures acceptable to board.

I. Information submitted to the board to meet the requirements of this chapter shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

9VAC5-45-220. Administrative requirements.

A. Each manufacturer of a portable fuel container subject to and complying with 9VAC5-45-190 shall clearly display on each spill-proof system:

1. The phrase "Spill-Proof System";

2. A date of manufacture or representative date code; and

3. A representative code identifying either:

a. The portable fuel container as subject to and complying with 9VAC5-45-190; or

b. The effective CARB certification executive order issued for the portable fuel container.

B. Each manufacturer of a spout subject to and complying with 9VAC5-45-190 shall clearly display on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:

1. The phrase "Spill-Proof Spout";

2. A date of manufacture or representative date code; and

3. A representative code identifying either:

a. The spout as subject to and complying with 9VAC5-45-190; or

b. The effective CARB certification executive order issued for the spout.

C. Each manufacturer subject to subsection A or B of this section shall file an explanation of both the date code and representative code with the board no later than the later of three months after the effective date of this article or within three months of production, and within three months after any change in coding upon request of the board.

D. Each manufacturer of a spout subject to subsection B of this section shall clearly display the make, model number, and size of those portable fuel containers the spout is designed to accommodate and for which the manufacturer can demonstrate the container's compliance with 9VAC5-45-190 on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto.

E. Manufacturers of portable fuel containers not subject to or not in compliance with 9VAC5-45-190 may not display the phrase "Spill-Proof System" or "Spill-Proof Spout" on the portable fuel container or spout or on any sticker or label affixed thereto or on any accompanying package.

F. Each manufacturer of a portable fuel container or spout subject to and complying with 9VAC5-45-190 that due to its design or other features cannot be used to refuel on-road motor vehicles shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type of 34 point or greater on each of the following:

1. For a portable fuel container sold as a spill-proof system, on the system or on a label affixed thereto, and on the accompanying package, if any; and

2. For a spill-proof spout sold separately from a spill-proof system, on either the spill-proof spout, or a label affixed thereto, and on the accompanying package, if any.

9VAC5-45-320. Alternative control plan (ACP) for consumer products.

A. 1. Manufacturers of consumer products may seek an ACP agreement in accordance with subsections B through L of this section.

2. Only responsible ACP parties for consumer products may enter into an ACP agreement under the provisions of this section.

B. Provisions follow concerning the requirements and process for approval of an ACP.

1. To be considered by the board for approval, an application for a proposed ACP shall be submitted in writing to the board by the responsible ACP party and shall contain all of the following:

a. An identification of the contact persons, phone numbers, names, and addresses of the responsible ACP party that is submitting the ACP application and will be implementing the ACP requirements specified in the ACP agreement.

b. A statement of whether the responsible ACP party is a small business or a one-product business.

c. A listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category for each distinct ACP product that is proposed for inclusion in the ACP.

d. For each proposed ACP product identified in subdivision 1 c of this subsection, a demonstration to the satisfaction of the board that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in subdivision 1 d (5) of this subsection. To provide this demonstration, the responsible ACP party shall either demonstrate to the satisfaction of the board that other records provided to the board in writing by the responsible ACP party meet the minimum criteria of subdivision 1 d (5) of this subsection for tracking product sales of each ACP product, or do all of the following:

(1) Provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales;

(2) Determine the enforceable sales of each product using enforceable sales records;

(3) Demonstrate, to the satisfaction of the board, the validity of the enforceable sales based on enforceable sales records provided by the contact persons or the responsible ACP party;

(4) Calculate the percentage of the gross sales that is composed of enforceable sales; and

(5) Determine which ACP products have enforceable sales that are 75% or more of the gross sales. Only ACP products meeting this criteria shall be allowed to be sold under an ACP.

e. For each of the ACP products identified in subdivision 1 d (5) of this subsection, the inclusion of the following:

(1) Legible copies of the existing labels for each product;

(2) The VOC content and LVP content for each product. The VOC content and LVP content shall be reported for two different periods as follows:

(a) The VOC and LVP contents of the product at the time the application for an ACP is submitted, and

(b) The VOC and LVP contents of the product that were used at any time within the four years prior to the date of submittal of the application for an ACP if either the VOC or LVP contents have varied by more than plus or minus 10% of the VOC or LVP contents reported in subdivision 1 e (2) (a) of this subsection.

f. A written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than five working days after the date an ACP agreement approving an ACP is signed by the board.

g. An operational plan covering all the products identified under subdivision 1 d (5) of this subsection for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(1) An identification of the compliance periods and dates for the responsible ACP party to report the information required by the board in the ACP agreement approving an ACP. The length of the compliance period shall be chosen by the responsible ACP party (not to exceed 365 days). The responsible ACP party shall also choose the dates for reporting information such that all required VOC content and enforceable sales data for all ACP products shall be reported to the board at the same time and at the same frequency.

(2) An identification of specific enforceable sales records to be provided to the board for enforcing the provisions of this article and the ACP agreement approving an ACP. The enforceable sales records shall be provided to the board no later than the compliance period dates specified in subdivision 1 g (1) of this subsection.

(3) For a small business or a one-product business that will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP party that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP.

(4) For each ACP product, all VOC content levels that will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) will be calculated for each specified method.

(5) The projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect.

(6) A detailed demonstration showing the combination of specific ACP reformulations or surplus trading (if

applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (i.e., by ACP reformulation). This demonstration shall use the equations specified in 9VAC5-45-300 C for projecting the ACP emissions and ACP limits during each compliance period. This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold during each compliance period.

(7) A certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or other attempts to circumvent the provisions of this article.

(8) Written explanations of the date-codes that will be displayed on each ACP product's container or packaging.

(9) A statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP.

(10) An operational plan ("reconciliation of shortfalls plan") that commits the responsible ACP party to completely reconcile shortfalls, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

(a) A clear and convincing demonstration of how shortfalls of up to 5.0%, 10%, 15%, 25%, 50%, 75% and 100% of the applicable ACP limit will be completely reconciled within 90 working days from the date the shortfall is determined;

(b) A listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this subsection; and

(c) A commitment to provide a record or information requested by the board to verify that the shortfalls have been completely reconciled.

h. A declaration, signed by a legal representative for the responsible ACP party, that states that all information and operational plans submitted with the ACP application are true and correct.

2. a. In accordance with the time periods specified in subsection C of this section, the board will issue an ACP agreement approving an ACP that meets the requirements of this article. The board will specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in 9VAC5-45-310 A. The ACP shall also include:

(1) Only those ACP products for which the enforceable sales are at least 75% of the gross sales as determined in subdivision 1 d (5) of this subsection;

(2) A reconciliation of shortfalls plan meeting the requirements of this article; and

(3) Operational terms, conditions, and data to be reported to the board to ensure that all requirements of this article are met.

b. The board will not approve an ACP submitted by a responsible ACP party if the board determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in this article, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

C. Provisions follow concerning ACP approval ~~time-frames~~ timeframes.

1. The board will take appropriate action on an ACP within the following time periods:

a. Within 30 working days of receipt of an ACP application, the board will inform the applicant in writing that either:

(1) The application is complete and accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

b. Within 30 working days of receipt of additional information provided in response to a determination that an ACP application is deficient, the board will inform the applicant in writing that either:

(1) The additional information is sufficient to make the application complete, and the application is accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

c. If the board finds that an application meets the requirements of subsection B of this section, then it shall issue an ACP agreement in accordance with the requirements of this article. The board will normally act to approve or disapprove a complete application within 90 working days after the application is deemed complete. The board may extend this time period if additional information is needed.

2. Before the end of each time period specified in this section, the board and the responsible ACP party may mutually agree to a longer time period for the board to take the appropriate action.

D. Provisions follow concerning recordkeeping and availability of requested information.

1. All information specified in the ACP agreement approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period.

2. The records specified in subdivision 1 of this subsection shall be made available to the board or its authorized representative:

a. Immediately upon request, during an on-site visit to a responsible ACP party,

b. Within five working days after receipt of a written request from the board, or

c. Within a time period mutually agreed upon by both the board and the responsible ACP party.

E. Provisions follow concerning violations.

1. Failure to meet a requirement of this article or a condition of an applicable ACP agreement shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied, except as otherwise provided in subdivisions 2 through 8 of this subsection.

2. False reporting of information in an ACP application or in any supporting documentation or amendments thereto shall constitute a single, separate violation of the requirements of this article for each day that the approved ACP is in effect.

3. An exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP agreement approving an ACP shall constitute a single, separate violation of the requirements of this article for each ACP product that exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use.

4. Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement is satisfied:

a. Failure to report data or failure to report data accurately in writing to the board regarding the VOC content, LVP content, enforceable sales, or other information required by the deadline specified in the applicable ACP agreement;

b. False reporting of information submitted to the board for determining compliance with the ACP requirements;

c. Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP agreement within 30 working days from the date of written notification of a shortfall by the board; or

d. Failure to completely reconcile the shortfall as specified in the ACP agreement within 90 working days from the date of written notification of a shortfall by the board.

5. False reporting or failure to report any of the information specified in subdivision F 2 i of this section or the sale or transfer of invalid surplus reductions shall constitute a single, separate violation of the requirements of this article for each day during the time period for which the surplus reductions are claimed to be valid.

6. Except as provided in subdivision 7 of this subsection, an exceedance of the ACP limit for a compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of this article for each day of the applicable compliance period. The board will determine whether an exceedance of the ACP limit has occurred as follows:

a. If the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP agreement approving an ACP, then the board will determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product as reported by the responsible ACP party for the applicable compliance period.

b. If the responsible ACP party has failed to provide all the required information specified in the ACP agreement for an applicable compliance period, the board will determine whether an exceedance of the ACP limit has occurred as follows.

(1) For the missing data days, the board will calculate the total maximum historical emissions as specified in 9VAC5-45-300 C.

(2) For the remaining portion of the compliance period that are not missing data days, the board will calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period.

(3) The ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to subdivision 6 b (1) of this subsection, and the emissions determined pursuant to subdivision 6 b (2) of this subsection.

(4) The board will calculate the ACP limit for the entire compliance period using the ACP standards applicable to each ACP product and the enforceable sales records specified in subdivision 6 b (2) of this subsection. The enforceable sales for each ACP product during missing data days, as specified in subdivision 6 b (1) of this subsection, shall be zero.

(5) An exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to subdivision 6 b (3) of this subsection, exceeds the ACP limit, determined pursuant to subdivision 6 b (4) of this subsection.

7. If a violation specified in subdivision 6 of this subsection occurs, the responsible ACP party may, pursuant to this subdivision, establish the number of violations as calculated according to the following equation:

$$NEV = \frac{(ACP\ emissions - ACP\ limit)}{40\ pounds}$$

where:

NEV = number of ACP limit violations.

ACP emissions = the ACP emissions for the compliance period.

ACP limit = the ACP limit for the compliance period.

40 pounds = number of pounds of emissions equivalent to one violation.

The responsible ACP party may determine the number of ACP limit violations pursuant to this subdivision only if it has provided all required information for the applicable compliance period, as specified in the ACP agreement approving the ACP. By choosing this option, the responsible ACP party waives all legal objections to the calculation of the ACP limit violations pursuant to this subdivision.

8. A cause of action against a responsible ACP party under this section shall be deemed to accrue on the date when the records establishing a violation are received by the board.

9. The responsible ACP party is fully liable for compliance with the requirements of this article, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this article.

F. Provisions follow concerning surplus reductions and surplus trading.

1. The board will issue surplus reduction certificates that establish and quantify, to the nearest pound of VOC reduced, the surplus reductions achieved by a responsible ACP party operating under an ACP. The surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in subdivision 2 of this subsection. All surplus reductions shall be calculated by the board at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates shall not constitute instruments, securities, or another form of property.

2. The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

a. For the purposes of this article, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in 9VAC5-45-310 A may not be used to generate surplus reductions.

b. Surplus reductions are valid only when generated by a responsible ACP party and only while that responsible ACP party is operating under an approved ACP.

c. Surplus reductions are valid only after the board has issued an ACP agreement pursuant to subdivision 1 of this subsection.

d. Surplus reductions issued by the board may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to subdivision J 2 of this section.

e. Surplus reductions cannot be applied retroactively to a compliance period prior to the compliance period in which the reductions were generated.

f. Except as provided in subdivision 2 g (2) of this subsection, only small or one-product businesses selling products under an approved ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

g. While valid, surplus reductions can be used only for the following purposes:

(1) To adjust the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by a responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

(2) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfalls plan approved by the board pursuant to subdivision B 1 g (10) of this section.

h. A valid surplus reduction shall be in effect starting five days after the date of issuance by the board for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

i. At least five working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party that is selling surplus reductions and the responsible ACP party that is buying the surplus reductions shall, either together or separately, notify the board in writing of the transfer. The notification shall include all of the following:

(1) The date the transfer is to become effective.

(2) The date the surplus reductions being traded are due to expire.

(3) The amount (in pounds of VOCs) of surplus reductions that is being transferred.

(4) The total purchase price paid by the buyer for the surplus reductions.

(5) The contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions.

(6) A copy of the board-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of

any remaining nontraded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this section.

j. Surplus reduction credits shall only be traded between ACP products.

3. Provisions follow concerning limited-use surplus reduction credits for early reformulations of ACP products.

a. For the purposes of this subdivision, "early reformulation" means an ACP product that is reformulated to result in a reduction in the product's VOC content, and that is sold, supplied, or offered for sale for the first time during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the board. Early reformulation does not include reformulated ACP products that are sold, supplied, or offered for sale more than one year prior to the date on which the ACP application is submitted to the board.

b. If requested in the application for a proposed ACP, the board will, upon approval of the ACP, issue surplus reduction credits for early reformulation of ACP products, provided that all of the following documentation has been provided by the responsible ACP party to the satisfaction of the board:

(1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level that is below the pre-ACP VOC content of the product or below the applicable VOC standard specified in 9VAC 5-45-310 A, whichever is the lesser of the two;

(2) Accurate documentation demonstrating that the early reformulated ACP product was sold in retail outlets within the time period specified in subdivision 3 a of this subsection;

(3) Accurate sales records for the early reformulated ACP product that meet the definition of enforceable sales records and that demonstrate that the enforceable sales for the ACP product are at least 75% of the gross sales for the product, as specified in subdivision B 1 d of this section; and

(4) Accurate documentation for the early reformulated ACP product that meets the requirements specified in subdivisions B 1 c and d and B 1 g (7) and (8) of this section and that identifies the specific test methods for verifying the claimed early reformulation and the statistical accuracy and precision of the test methods as specified in subdivision B 1 g (4) of this section.

c. Surplus reduction credits issued pursuant to this subsection shall be calculated separately for each early reformulated ACP product by the board according to the following equation:

$$SR = Enforceable\ Sales\ x\ \frac{((VOC\ Content)_{initial} - (VOC\ Content)_{final})}{100}$$

where:

SR = surplus reductions for the ACP product, expressed to the nearest pound.

Enforceable sales = the enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product.

VOC $content_{initial}$ = the pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in 9VAC5-45-310 A, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

VOC $content_{final}$ = the VOC content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

d. The use of limited use surplus reduction credits issued pursuant to this subdivision shall be subject to all of the following provisions:

(1) Limited use surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the ACP agreement approving an ACP, and may not be used for another purpose;

(2) Limited use surplus reduction credits may not be transferred to, or used by, another responsible ACP party; and

(3) Except as provided in this subdivision, limited use surplus reduction credits shall be subject to all requirements applicable to surplus reductions and surplus trading as specified in subdivisions 1 and 2 of this subsection.

G. Provisions follow concerning the reconciliation of shortfalls.

1. At the end of each compliance period, the responsible ACP party shall make an initial calculation of shortfalls occurring in that compliance period as specified in the ACP agreement approving the ACP. Upon receipt of this information, the board will determine the amount of a shortfall that has occurred during the compliance period and shall notify the responsible ACP party of this determination.

2. The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement approving the ACP within 30 working days from the date of written notification of a shortfall by the board.

3. All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the board by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

4. All requirements specified in the ACP agreement approving an ACP, including all applicable ACP limits, shall remain in effect while shortfalls are in the process of being reconciled.

H. Provisions follow concerning the notification of modifications to an ACP by the responsible ACP party.

1. Board pre-approval is not required for modifications that are a change to an ACP product's: (i) product name, (ii) product formulation, (iii) product form, (iv) product function, (v) applicable product category, (vi) VOC content, (vii) LVP content, (viii) date-codes, or (ix) recommended product usage directions. The responsible ACP party shall notify the board of such changes, in writing, no later than 15 working days from the date such a change occurs. For each modification, the notification shall fully explain the following:

a. The nature of the modification;

b. The extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;

c. The extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period; and

d. The effective date and corresponding date-codes for the modification.

2. The responsible ACP party may propose modifications to the enforceable sales records or the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP, however, such modifications require board pre-approval. Any such proposed modifications shall be fully described in writing and forwarded to the board. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this article. The board will act on the proposed modifications using the procedure set forth in subsection C of this section. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as a proposed modification is approved in writing by the board.

3. Except as otherwise provided in subdivisions 1 and 2 of this subsection, the responsible ACP party shall notify the board, in writing, of information known by the responsible ACP party that may alter the information submitted pursuant to the requirements of subsection B of this section. The responsible ACP party shall provide such notification to the board no later than 15 working days from the date such information is known to the responsible ACP party.

I. Provisions follow concerning the modification of an ACP by the board.

1. If the board determines that: (i) the enforceable sales for an ACP product are no longer at least 75% of the gross sales for that product, (ii) the information submitted pursuant to the approval process set forth in subsection C of this section is no longer valid, or (iii) the ACP emissions are exceeding the ACP limit specified in the ACP agreement approving an ACP, then the board will modify the ACP as necessary to ensure that the ACP meets all requirements of this article and that the ACP emissions will not exceed the ACP limit.

2. If any applicable VOC standards specified in 9VAC5-45-310 A are modified by the board in a future rulemaking, the board will modify the ACP limit specified in the ACP agreement approving an ACP to reflect the modified ACP VOC standards as of their effective dates.

J. Provisions follow concerning the cancellation of an ACP.

1. An ACP shall remain in effect until:

a. The ACP reaches the expiration date specified in the ACP agreement;

b. The ACP is modified by the responsible ACP party and approved by the board as provided in subsection H of this section;

c. The ACP is modified by the board as provided in subsection I of this section;

d. The ACP includes a product for which the VOC standard specified in 9VAC5-45-310 A is modified by the board in a future rulemaking, and the responsible ACP party informs the board in writing that the ACP will terminate on the effective date of the modified standard; or

e. The ACP is ~~cancelled~~ canceled pursuant to subdivision 2 of this subsection.

2. The board will cancel an ACP if any of the following circumstances occur:

a. The responsible ACP party demonstrates to the satisfaction of the board that the continuation of the ACP will result in an extraordinary economic hardship.

b. The responsible ACP party violates the requirements of the approved ACP, and the violation results in a shortfall that is 20% or more of the applicable ACP limit (i.e., the ACP emissions exceed the ACP limit by 20% or more).

c. The responsible ACP party fails to meet the requirements of subsection G of this section within the time periods specified in that subsection.

d. The responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

3. Cancellations of ACPs are considered case decisions and will be processed using the procedures prescribed in

9VAC5-170-40 A 2 and applicable provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

4. The responsible ACP party for an ACP that is canceled pursuant to this section and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

a. All remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of subsection G of this section, and

b. All ACP products subject to the ACP shall be in compliance with the applicable VOC standards in 9VAC5-45-310 A immediately upon the effective date of ACP cancellation.

5. Violations incurred pursuant to subsection E of this section shall not be ~~cancelled~~ canceled or affected by the subsequent cancellation or modification of an ACP pursuant to subsection H, I, or J of this section.

K. The information required by subdivisions B 1 a and b and F 2 i of this section is public information that may not be claimed as confidential. Other information submitted to the board to meet the requirements of this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

L. A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

1. The board will be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked or submitted electronically at least five working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

2. The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP agreement approving the ACP and this article.

M. In approving agreements under subsections B through L of this section, the board will take into consideration whether the applicant has been granted an ACP by CARB. A manufacturer of consumer products that has been granted an ACP agreement by the CARB under the provisions in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the California Code of Regulations (see 9VAC5-20-21) may be exempt from Table 45-3A for the period of time that the CARB ACP agreement remains in effect provided that all ACP products used for emission credits within the CARB ACP agreement are contained in Table 45-3A. A manufacturer claiming such an ACP agreement on this basis must submit to the board a copy of the CARB ACP decision (i.e., the executive order), including all conditions established by CARB applicable to the exemption and certification that the manufacturer will comply with the CARB ACP decision for those ACP products in the areas specified in 9VAC5-45-280 C.

9VAC5-45-440. Alternative control plan (ACP) for consumer products.

A. 1. Manufacturers of consumer products may seek an ACP agreement in accordance with subsections B through L of this section.

2. Only responsible ACP parties for consumer products may enter into an ACP agreement under the provisions of this section.

B. Provisions follow concerning the requirements and process for approval of an ACP.

1. To be considered by the board for approval, an application for a proposed ACP shall be submitted in writing to the board by the responsible ACP party and shall contain all of the following:

a. An identification of the contact persons, phone numbers, names, and addresses of the responsible ACP party that is submitting the ACP application and will be implementing the ACP requirements specified in the ACP agreement.

b. A statement of whether the responsible ACP party is a small business or a one-product business.

c. A listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category for each distinct ACP product that is proposed for inclusion in the ACP.

d. For each proposed ACP product identified in subdivision 1 c of this subsection, a demonstration to the satisfaction of the board that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in subdivision 1 d (5) of this subsection. To provide this demonstration, the responsible ACP party shall either demonstrate to the satisfaction of the board that other records provided to the board in writing by the responsible ACP party meet the minimum criteria of subdivision 1 d (5) of this subsection for tracking product sales of each ACP product, or do all of the following:

(1) Provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales;

(2) Determine the enforceable sales of each product using enforceable sales records;

(3) Demonstrate, to the satisfaction of the board, the validity of the enforceable sales based on enforceable sales records provided by the contact persons or the responsible ACP party;

(4) Calculate the percentage of the gross sales that is composed of enforceable sales; and

(5) Determine which ACP products have enforceable sales that are 75% or more of the gross sales. Only ACP products meeting this criteria shall be allowed to be sold under an ACP.

e. For each of the ACP products identified in subdivision 1 d (5) of this subsection, the inclusion of the following:

(1) Legible copies of the existing labels for each product; and

(2) The VOC content and LVP content for each product. The VOC content and LVP content shall be reported for two different periods as follows:

(a) The VOC and LVP contents of the product at the time the application for an ACP is submitted, and

(b) The VOC and LVP contents of the product that were used at any time within the four years prior to the date of submittal of the application for an ACP if either the VOC or LVP contents have varied by more than plus or minus 10% of the VOC or LVP contents reported in subdivision 1 e (2) (a) of this subsection.

f. A written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than five working days after the date an ACP agreement approving an ACP is signed by the board.

g. An operational plan covering all the products identified under subdivision 1 d (5) of this subsection for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(1) An identification of the compliance periods and dates for the responsible ACP party to report the information required by the board in the ACP agreement approving an ACP. The length of the compliance period shall be chosen by the responsible ACP party (not to exceed 365 days). The responsible ACP party shall also choose the dates for reporting information such that all required VOC content and enforceable sales data for all ACP products shall be reported to the board at the same time and at the same frequency.

(2) An identification of specific enforceable sales records to be provided to the board for enforcing the provisions of this article and the ACP agreement approving an ACP. The enforceable sales records shall be provided to the board no later than the compliance period dates specified in subdivision 1 g (1) of this subsection.

(3) For a small business or a one-product business that will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP party that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP.

(4) For each ACP product, all VOC content levels that will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) will be calculated for each specified method.

(5) The projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect.

(6) A detailed demonstration showing the combination of specific ACP reformulations or surplus trading (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (i.e., by ACP reformulation). This demonstration shall use the equations specified in 9VAC5-45-420 C for projecting the ACP emissions and ACP limits during each compliance period. This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold during each compliance period.

(7) A certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or other attempts to circumvent the provisions of this article.

(8) Written explanations of the date-codes that will be displayed on each ACP product's container or packaging.

(9) A statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP.

(10) An operational plan ("reconciliation of shortfalls plan") that commits the responsible ACP party to completely reconcile shortfalls, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

(a) A clear and convincing demonstration of how shortfalls of up to 5.0%, 10%, 15%, 25%, 50%, 75% and 100% of the applicable ACP limit will be completely

reconciled within 90 working days from the date the shortfall is determined;

(b) A listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this subsection; and

(c) A commitment to provide a record or information requested by the board to verify that the shortfalls have been completely reconciled.

h. A declaration, signed by a legal representative for the responsible ACP party, that states that all information and operational plans submitted with the ACP application are true and correct.

2. a. In accordance with the time periods specified in subsection C of this section, the board will issue an ACP agreement approving an ACP that meets the requirements of this article. The board will specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in 9VAC5-45-430 A. The ACP shall also include:

(1) Only those ACP products for which the enforceable sales are at least 75% of the gross sales as determined in subdivision 1 d (5) of this subsection;

(2) A reconciliation of shortfalls plan meeting the requirements of this article; and

(3) Operational terms, conditions, and data to be reported to the board to ensure that all requirements of this article are met.

b. The board will not approve an ACP submitted by a responsible ACP party if the board determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in this article, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

C. Provisions follow concerning ACP approval ~~time frames~~ timeframes.

1. The board will take appropriate action on an ACP within the following time periods:

a. Within 30 working days of receipt of an ACP application, the board will inform the applicant in writing that either:

(1) The application is complete and accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

b. Within 30 working days of receipt of additional information provided in response to a determination that an ACP application is deficient, the board will inform the applicant in writing that either:

(1) The additional information is sufficient to make the application complete, and the application is accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

c. If the board finds that an application meets the requirements of subsection B of this section, then it shall issue an ACP agreement in accordance with the requirements of this article. The board will normally act to approve or disapprove a complete application within 90 working days after the application is deemed complete. The board may extend this time period if additional information is needed.

2. Before the end of each time period specified in this section, the board and the responsible ACP party may mutually agree to a longer time period for the board to take the appropriate action.

D. Provisions follow concerning recordkeeping and availability of requested information.

1. All information specified in the ACP agreement approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period.

2. The records specified in subdivision 1 of this subsection shall be made available to the board or its authorized representative:

a. Immediately upon request, during an on-site visit to a responsible ACP party,

b. Within five working days after receipt of a written request from the board, or

c. Within a time period mutually agreed upon by both the board and the responsible ACP party.

E. Provisions follow concerning violations.

1. Failure to meet a requirement of this article or a condition of an applicable ACP agreement shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied, except as otherwise provided in subdivisions 2 through 8 of this subsection.

2. False reporting of information in an ACP application or in any supporting documentation or amendments thereto shall constitute a single, separate violation of the requirements of this article for each day that the approved ACP is in effect.

3. An exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP agreement approving an ACP shall constitute a single, separate violation of the requirements of this article for each ACP product that exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use.

4. Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement is satisfied:

a. Failure to report data or failure to report data accurately in writing to the board regarding the VOC content, LVP content, enforceable sales, or other information required by the deadline specified in the applicable ACP agreement;

b. False reporting of information submitted to the board for determining compliance with the ACP requirements;

c. Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP agreement within 30 working days from the date of written notification of a shortfall by the board; or

d. Failure to completely reconcile the shortfall as specified in the ACP agreement within 90 working days from the date of written notification of a shortfall by the board.

5. False reporting or failure to report any of the information specified in subdivision F 2 i of this section or the sale or transfer of invalid surplus reductions shall constitute a single, separate violation of the requirements of this article for each day during the time period for which the surplus reductions are claimed to be valid.

6. Except as provided in subdivision 7 of this subsection, an exceedance of the ACP limit for a compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of this article for each day of the applicable compliance period. The board will determine whether an exceedance of the ACP limit has occurred as follows:

a. If the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP agreement approving an ACP, then the board will determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product as reported by the responsible ACP party for the applicable compliance period.

b. If the responsible ACP party has failed to provide all the required information specified in the ACP agreement for an applicable compliance period, the board will determine whether an exceedance of the ACP limit has occurred as follows:

(1) For the missing data days, the board will calculate the total maximum historical emissions as specified in 9VAC5-45-420 C.

(2) For the remaining portion of the compliance period that are not missing data days, the board will calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period.

(3) The ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions determined pursuant to subdivision 6 b (1) of this subsection, and the emissions determined pursuant to subdivision 6 b (2) of this subsection.

(4) The board will calculate the ACP limit for the entire compliance period using the ACP standards applicable to each ACP product and the enforceable sales records specified in subdivision 6 b (2) of this subsection. The enforceable sales for each ACP product during missing data days, as specified in subdivision 6 b (1) of this subsection, shall be zero.

(5) An exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to subdivision 6 b (3) of this subsection, exceeds the ACP limit, determined pursuant to subdivision 6 b (4) of this subsection.

7. If a violation specified in subdivision 6 of this subsection occurs, the responsible ACP party may, pursuant to this subdivision, establish the number of violations as calculated according to the following equation:

$$NEV = \frac{(ACP\ emissions - ACP limit)}{40\ pounds}$$

where:

NEV = number of ACP limit violations.

ACP emissions = the ACP emissions for the compliance period.

ACP limit = the ACP limit for the compliance period.

40 pounds = number of pounds of emissions equivalent to one violation.

The responsible ACP party may determine the number of ACP limit violations pursuant to this subdivision only if it has provided all required information for the applicable compliance period, as specified in the ACP agreement approving the ACP. By choosing this option, the responsible ACP party waives all legal objections to the calculation of the ACP limit violations pursuant to this subdivision.

8. A cause of action against a responsible ACP party under this section shall be deemed to accrue on the date when the records establishing a violation are received by the board.

9. The responsible ACP party is fully liable for compliance with the requirements of this article, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this article.

F. Provisions follow concerning surplus reductions and surplus trading.

1. The board will issue surplus reduction certificates that establish and quantify, to the nearest pound of VOC reduced,

the surplus reductions achieved by a responsible ACP party operating under an ACP. The surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in subdivision 2 of this subsection. All surplus reductions shall be calculated by the board at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates shall not constitute instruments, securities, or another form of property.

2. The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

a. For the purposes of this article, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in 9VAC5-45-430 A may not be used to generate surplus reductions.

b. Surplus reductions are valid only when generated by a responsible ACP party and only while that responsible ACP party is operating under an approved ACP.

c. Surplus reductions are valid only after the board has issued an ACP agreement pursuant to subdivision 1 of this subsection.

d. Surplus reductions issued by the board may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to subdivision J 2 of this section.

e. Surplus reductions cannot be applied retroactively to a compliance period prior to the compliance period in which the reductions were generated.

f. Except as provided in subdivision 2 g (2) of this subsection, only small or one-product businesses selling products under an approved ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

g. While valid, surplus reductions can be used only for the following purposes:

(1) To adjust the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by a responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

(2) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfalls plan approved by the board pursuant to subdivision B 1 g (10) of this section.

h. A valid surplus reduction shall be in effect starting five days after the date of issuance by the board for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

i. At least five working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party that is selling surplus reductions and the responsible ACP party that is buying the surplus reductions shall, either together or separately, notify the board in writing of the transfer. The notification shall include all of the following:

(1) The date the transfer is to become effective.

(2) The date the surplus reductions being traded are due to expire.

(3) The amount (in pounds of VOCs) of surplus reductions that is being transferred.

(4) The total purchase price paid by the buyer for the surplus reductions.

(5) The contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions.

(6) A copy of the board-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining nontraded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this section.

j. Surplus reduction credits shall only be traded between ACP products.

3. Provisions follow concerning limited-use surplus reduction credits for early reformulations of ACP products.

a. For the purposes of this subdivision, "early reformulation" means an ACP product that is reformulated to result in a reduction in the product's VOC content, and that is sold, supplied, or offered for sale for the first time during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the board. Early reformulation does not include reformulated ACP products that are sold, supplied, or offered for sale more than one year prior to the date on which the ACP application is submitted to the board.

b. If requested in the application for a proposed ACP, the board will, upon approval of the ACP, issue surplus reduction credits for early reformulation of ACP products, provided that all of the following documentation has been provided by the responsible ACP party to the satisfaction of the board:

(1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level that is below the pre-ACP VOC content of the product or below the applicable VOC standard specified in ~~9VAC 5-45-430~~ 9VAC5-45-430 A, whichever is the lesser of the two;

(2) Accurate documentation demonstrating that the early reformulated ACP product was sold in retail outlets within the time period specified in subdivision 3 a of this subsection;

(3) Accurate sales records for the early reformulated ACP product that meet the definition of enforceable sales records and that demonstrate that the enforceable sales for the ACP product are at least 75% of the gross sales for the product, as specified in subdivision B 1 d of this section; and

(4) Accurate documentation for the early reformulated ACP product that meets the requirements specified in subdivisions B 1 c and d and B 1 g (7) and (8) of this section and that identifies the specific test methods for verifying the claimed early reformulation and the statistical accuracy and precision of the test methods as specified in subdivision B 1 g (4) of this section.

c. Surplus reduction credits issued pursuant to this subsection shall be calculated separately for each early reformulated ACP product by the board according to the following equation:

$$SR = Enforceable\ Sales\ x\ \frac{((VOC\ Content)_{initial} - (VOC\ Content)_{final})}{100}$$

where:

SR = surplus reductions for the ACP product, expressed to the nearest pound.

Enforceable sales = the enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product.

VOC content$_{initial}$ = the pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in 9VAC5-45-430 A, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

VOC content$_{final}$ = the VOC content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

d. The use of limited use surplus reduction credits issued pursuant to this subdivision shall be subject to all of the following provisions:

(1) Limited use surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the ACP agreement approving an ACP, and may not be used for another purpose;

(2) Limited use surplus reduction credits may not be transferred to, or used by, another responsible ACP party; and

(3) Except as provided in this subdivision, limited use surplus reduction credits shall be subject to all requirements applicable to surplus reductions and surplus trading as specified in subdivisions 1 and 2 of this subsection.

G. Provisions follow concerning the reconciliation of shortfalls.

1. At the end of each compliance period, the responsible ACP party shall make an initial calculation of shortfalls occurring in that compliance period as specified in the ACP agreement approving the ACP. Upon receipt of this information, the board will determine the amount of a shortfall that has occurred during the compliance period and shall notify the responsible ACP party of this determination.

2. The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement approving the ACP within 30 working days from the date of written notification of a shortfall by the board.

3. All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the board by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

4. All requirements specified in the ACP agreement approving an ACP, including all applicable ACP limits, shall remain in effect while shortfalls are in the process of being reconciled.

H. Provisions follow concerning the notification of modifications to an ACP by the responsible ACP party.

1. Board pre-approval is not required for modifications that are a change to an ACP product's: (i) product name, (ii) product formulation, (iii) product form, (iv) product function, (v) applicable product category, (vi) VOC content, (vii) LVP content, (viii) date-codes, or (ix) recommended product usage directions. The responsible ACP party shall notify the board of such changes, in writing, no later than 15 working days from the date such a change occurs. For each modification, the notification shall fully explain the following:

a. The nature of the modification;

b. The extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;

c. The extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period; and

d. The effective date and corresponding date-codes for the modification.

2. The responsible ACP party may propose modifications to the enforceable sales records or the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP, however, such modifications require board pre-approval. Any such proposed modifications shall be fully described in writing and forwarded to the board. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this article. The board will act on the proposed modifications using the procedure set forth in subsection C of this section. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as a proposed modification is approved in writing by the board.

3. Except as otherwise provided in subdivisions 1 and 2 of this subsection, the responsible ACP party shall notify the board, in writing, of information known by the responsible ACP party that may alter the information submitted pursuant to the requirements of subsection B of this section. The responsible ACP party shall provide such notification to the board no later than 15 working days from the date such information is known to the responsible ACP party.

I. Provisions follow concerning the modification of an ACP by the board.

1. If the board determines that~~:~~ (i) the enforceable sales for an ACP product are no longer at least 75% of the gross sales for that product, (ii) the information submitted pursuant to the approval process set forth in subsection C of this section is no longer valid, or (iii) the ACP emissions are exceeding the ACP limit specified in the ACP agreement approving an ACP, then the board will modify the ACP as necessary to ensure that the ACP meets all requirements of this article and that the ACP emissions will not exceed the ACP limit.

2. If any applicable VOC standards specified in 9VAC5-45-430 A are modified by the board in a future rulemaking, the board will modify the ACP limit specified in the ACP agreement approving an ACP to reflect the modified ACP VOC standards as of their effective dates.

J. Provisions follow concerning the cancellation of an ACP.

1. An ACP shall remain in effect until:

a. The ACP reaches the expiration date specified in the ACP agreement;

b. The ACP is modified by the responsible ACP party and approved by the board as provided in subsection H of this section;

c. The ACP is modified by the board as provided in subsection I of this section;

d. The ACP includes a product for which the VOC standard specified in 9VAC5-45-430 A is modified by the board in a future ~~rule-making~~ rulemaking, and the responsible ACP party informs the board in writing that the ACP will terminate on the effective date of the modified standard; or

e. The ACP is ~~cancelled~~ canceled pursuant to subdivision 2 of this subsection.

2. The board will cancel an ACP if any of the following circumstances occur:

a. The responsible ACP party demonstrates to the satisfaction of the board that the continuation of the ACP will result in an extraordinary economic hardship.

b. The responsible ACP party violates the requirements of the approved ACP, and the violation results in a shortfall that is 20% or more of the applicable ACP limit (i.e., the ACP emissions exceed the ACP limit by 20% or more).

c. The responsible ACP party fails to meet the requirements of subsection G of this section within the time periods specified in that subsection.

d. The responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

3. Cancellations of ACPs are considered case decisions and will be processed using the procedures prescribed in 9VAC5-170-40 A 2 and applicable provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

4. The responsible ACP party for an ACP that is canceled pursuant to this section and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

a. All remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of subsection G of this section, and

b. All ACP products subject to the ACP shall be in compliance with the applicable VOC standards in 9VAC5-45-430 A immediately upon the effective date of ACP cancellation.

5. Violations incurred pursuant to subsection E of this section shall not be ~~cancelled~~ canceled or affected by the subsequent cancellation or modification of an ACP pursuant to subsection H, I, or J of this section.

K. The information required by subdivisions B 1 a and b and F 2 i of this section is public information that may not be claimed as confidential. Other information submitted to the board to meet the requirements of this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

L. A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

1. The board will be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked or submitted electronically at least five working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

2. The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP agreement approving the ACP and this article.

M. In approving agreements under subsections B through L of this section, the board will take into consideration whether the applicant has been granted an ACP by CARB. A manufacturer of consumer products that has been granted an ACP agreement by the CARB under the provisions in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the California Code of Regulations (see 9VAC5-20-21) may be exempt from Table 45-4A for the period of time that the CARB ACP agreement remains in effect provided that all ACP products used for emission credits within the CARB ACP agreement are contained in Table 45-4A. A manufacturer claiming such an ACP agreement on this basis must submit to the board a copy of the CARB ACP decision (i.e., the executive order), including all conditions established by CARB applicable to the exemption and certification that the manufacturer will comply with the CARB ACP decision for those ACP products in the areas specified in 9VAC5-45-400 B.

9VAC5-45-560. Administrative requirements.

Each manufacturer of any architectural coatings subject to this article shall display the information listed in subdivisions 1 through 8 of this section on the coating container (or label) in which the coating is sold or distributed.

1. The date the coating was manufactured, or a date code representing the date, shall be indicated on the label, lid, or bottom of the container. If the manufacturer uses a date code for any coating, the manufacturer shall file an explanation of each code with the board upon request of the board.

2. A statement of the manufacturer's recommendation regarding thinning of the coating shall be indicated on the label or lid of the container. This requirement does not apply to the thinning of architectural coatings with water. If thinning of the coating prior to use is not necessary, the recommendation shall specify that the coating is to be applied without thinning.

3. Each container of any coating subject to this article shall display either the maximum or the actual VOC content of the coating, as supplied, including the maximum thinning as recommended by the manufacturer. VOC content shall be displayed in grams of VOC per liter of coating. VOC content displayed shall be calculated using product formulation data, or shall be determined using the test methods in 9VAC5-45-590 C. The equations in 9VAC5-45-590 B shall be used to calculate VOC content.

4. In addition to the information specified in subdivisions 1, 2, and 3 of this section, each manufacturer of any industrial maintenance coating subject to this article shall display on the label or the lid of the container in which the coating is sold or distributed one or more of the descriptions listed in this subdivision.

a. "For industrial use only."

b. "For professional use only."

c. "Not for residential use" or "Not intended for residential use."

5. The labels of all clear brushing lacquers shall prominently display the statements "For brush application only," and "This product shall not be thinned or sprayed."

6. The labels of all rust preventive coatings shall prominently display the statement "For Metal Substrates Only."

7. The labels of all specialty primers, sealers, and undercoaters shall prominently display one or more of the descriptions listed in this subdivision.

a. For blocking stains.

b. For fire-damaged substrates.

c. For smoke-damaged substrates.

d. For water-damaged substrates.

e. For excessively chalky substrates.

8. The labels of all quick dry enamels shall prominently display the words "Quick Dry" and the dry hard time.

9. The labels of all nonflat high-gloss coatings shall prominently display the words "High Gloss."

9VAC5-50-10. Applicability.

A. The provisions of this chapter, unless specified otherwise, shall apply to new and modified sources.

B. The provisions of this chapter shall apply to sources specified below except as provided in 9VAC5-40-10 B:

1. Any stationary source (or portion of it), the construction, modification or relocation of which commenced on or after March 17, 1972.

2. Any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

C. If a facility becomes subject to any requirement in the Regulations for the Control and Abatement of Air Pollution because it exceeds an exemption level, the facility shall continue to be subject to all applicable requirements even if future conditions cause the facility to fall below the exemption level.

D. The provisions of ~~9VAC5 Chapter 40 (9VAC5-40-10 et seq.)~~ 9VAC5-40, unless specified otherwise, shall apply to new and modified sources to the extent that those provisions thereof are more restrictive than the provisions of this chapter, ~~9VAC5 Chapter 80 (9VAC5-80-10 et seq.)~~ 9VAC5-80, or any permit issued pursuant to ~~9VAC5 Chapter 80 (9VAC5-80-10 et seq.)~~ 9VAC5-80.

E. For sources subject to the applicable subparts listed in 9VAC5-50-410, the provisions of 40 CFR 60.7, 40 CFR 60.8, 40 CFR 60.11 and 40 CFR 60.13 shall be implemented through this part. In cases where there are differences between the provisions of this part and the provisions of 40 CFR Part 60, the more restrictive provisions shall apply.

F. Any owner subject to the provisions of this chapter may provide any report, notification or other document by electronic media if acceptable to both the owner and board. ~~This subsection shall not apply to documents requiring signatures or certification under 9VAC5-20-230.~~

9VAC5-50-50. Notification, records and reporting.

A. Any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board of the following:

1. The date of commencement of construction, reconstruction or modification of a new or modified source postmarked or submitted electronically no later than 30 days after such date.

2. The anticipated date of initial startup of a new or modified source postmarked not more than 60 days nor less than 30 days prior to such date.

3. The actual date of initial startup of a new or modified source postmarked or submitted electronically within 15 days after such date.

4. The date of any performance test required by ~~9VAC5 Chapter 80 (9VAC5-80)~~ 9VAC5-80 and any other performance test the owner wishes the board to consider in determining compliance with a standard. Notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

5. The date upon which demonstration of the continuous monitoring system performance begins in accordance with 9VAC5-50-40 C. Notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

6. The anticipated date for conducting the opacity observations required by 9VAC5-50-20 G 1. The notification shall also include, if appropriate, a request for the board to provide a visible emissions reader during a performance test. The notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

B. Any owner of a new or modified source subject to the provisions of 9VAC5-50-40 A shall maintain records of the occurrence and duration of any startup, shutdown or malfunction in the operation of such source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

C. Each owner required to install a continuous monitoring system (CMS) or monitoring device shall submit a written report of excess emissions (as defined in the applicable subpart in 9VAC5-50-410) and either a monitoring systems performance report or a summary report form, or both to the board semiannually, except when (i) more frequent reporting is specifically required by an applicable subpart listed in 9VAC5-50-410 or the CMS data are to be used directly for compliance determination, in which case quarterly reports shall be submitted or (ii) the board, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. The summary report and form shall meet the requirements of 40 CFR 60.7(d). The frequency of reporting requirements may be reduced as provided in 40 CFR 60.7(e). All reports shall be postmarked or submitted electronically by the 30th day following the end of each calendar half (or quarter, as appropriate). Written reports of excess emissions shall include the following information:

1. The magnitude of excess emissions computed in accordance with 40 CFR 60.13(h), any conversion factors used, and the date and time of commencement and completion of each period of excess emissions. The process operating time during the reporting period.

2. Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the source. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.

3. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

4. When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired or adjusted, such information shall be stated in the report.

D. Any owner of a new or modified source subject to the provisions of this chapter shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this chapter recorded in a permanent form suitable for inspection. The file shall be retained for at least two years (unless a longer period is specified in the applicable standard) following the date of such measurements, maintenance, reports and records.

E. Any data or information required by the Regulations for the Control and Abatement of Air Pollution, any permit or order of the board, or which the owner wishes the board to consider, to determine compliance with an emission standard shall be recorded or maintained in a ~~time frame~~ timeframe consistent with the averaging period of the standard.

F. The owner of a stationary source shall keep records as necessary to determine its emissions. Any owner claiming that a facility is exempt from the provisions of the Regulations for the Control and Abatement of Air Pollution shall keep records to demonstrate its continued exempt status.

G. The owner of a new or modified source subject to any volatile organic compound emission standard for a coating operation or printing process shall maintain records in accordance with the applicable procedure in 9VAC5-20-121.

H. Upon request of the board, the owner of a new or modified source subject to the provisions of this chapter shall provide notifications and reports, maintain records or report performance test or monitoring results in a manner and form and using procedures acceptable to the board.

9VAC5-60-10. Applicability.

A. The provisions of this chapter shall apply to all existing, new and modified hazardous air pollutant sources for which emission standards are prescribed under this chapter.

B. For sources subject to the applicable subparts listed in 9VAC5-60-70, the provisions of 40 CFR 61.09, 40 CFR 61.10, 40 CFR 61.12, 40 CFR 61.13, and 40 CFR 61.14 shall be implemented through this part. In cases where there are differences between the provisions of this part and the provisions of 40 CFR Part 61, the more restrictive provisions shall apply.

C. For sources subject to the applicable subparts listed in 9VAC5-60-100, the provisions of 40 CFR 63.6, 40 CFR 63.7, 40 CFR 63.8, 40 CFR 63.9, 40 CFR 63.10 and 40 CFR 63.11 shall be implemented through this part. In cases where there are differences between the provisions of this part and the provisions of 40 CFR Part 63, the more restrictive provisions shall apply.

D. Any owner subject to the provisions of this chapter may provide any report, notification or other document by electronic media if acceptable to both the owner and the board. ~~This subsection shall not apply to documents requiring signatures or certification under 9VAC5-20-230.~~

9VAC5-60-50. Notification, records and reporting.

A. Any owner of a hazardous air pollutant source subject to the provisions of this chapter shall provide written notifications to the board of the following:

1. The date of commencement of construction, reconstruction or modification of a new or modified hazardous air pollutant source postmarked or submitted electronically no later than 30 days after such date.

2. The anticipated date of initial startup of any new or modified hazardous air pollutant source not more than 60 days or less than 30 days prior to such date.

3. The actual date of initial startup of any new or modified hazardous air pollutant source within 15 days after such date.

4. The date of any emission test the owner wishes the board to consider in determining compliance with a standard. Notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

B. Any owner of a hazardous air pollutant source subject to the provisions of subparts listed in 9VAC5-60-70 shall maintain records of the occurrence and duration of any startup, shutdown or malfunction in the operation of a hazardous air pollutant source; any malfunction in the operation of a hazardous air pollutant source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

C. The owner of any existing hazardous air pollutant source or any new or modified hazardous air pollutant source to which an emission standard prescribed under the subparts listed in 9VAC5-60-70 is applicable which has an initial startup which preceded the effective date of an emission standard prescribed under this chapter shall, within 90 days after the effective date, provide the following information in writing to the board:

1. Name and address of the owner;

2. The location of the source;

3. The type of hazardous air pollutants emitted by the source;

4. A brief description of the nature, size, design and method of operation of the source including the operating design capacity of such source. Identify each point of emission for each hazardous air pollutant;

5. The average weight per month of the hazardous materials being processed by the source, over the last 12 months preceding the date of the report;

6. A description of the existing control equipment for each emission point;

a. Primary control devices for each hazardous air pollutant.

b. Secondary control devices for each hazardous air pollutant.

c. Estimated control efficiency (percent) for each control device.

7. A statement by the owner of the source as to whether he can comply with the emission standards prescribed in this chapter within 90 days of the effective date.

D. Changes in the information provided under subsection C of this section shall be provided to the board within 30 days after such change, except that, if the changes result from modification of the source, the provisions of ~~9VAC5 Chapter 80 (9VAC5-80-10 et seq.)~~ 9VAC5-80 are applicable.

E. Reporting under this section shall be according to procedures acceptable to the board. Advice on reporting the status of compliance may be obtained from the board.

F. Upon request of the board, the owner of a hazardous air pollutant source subject to the provisions of this chapter shall provide notifications and reports, revise reports, maintain records or report emission test or monitoring results in a manner and form and using procedures acceptable to the board.

9VAC5-80-350. Annual permit program emissions fee payment.

A. Upon determining that the owner owes an annual permit program emissions fee, the department shall mail a bill for the fee to that owner no later than August 1 unless the governor determines that fees are needed earlier for Virginia to maintain primacy over the program, as provided in § 10.1-1322 B of the Virginia Air Pollution Control Law.

B. Within 30 days following the date of the postmark or electronic submittal on the bill, the owner shall respond in one of the following ways:

1. The owner may pay the fee in full.

2. The owner may pay the fee in equal quarterly payments and shall pay one quarter of the fee. The first payment shall be accompanied by a written statement that the second quarter of the fee shall be paid no later than December 1 of the year of the issuance of the bill, the third quarter of the fee shall be paid no later than March 1 of the year following the issuance of the bill, and the fourth quarter of the fee shall be paid no later than June 1 of the year following the issuance of the bill. If an owner fails to pay a quarterly payment by the deadline, the department may, in addition to other remedies available under the law, issue to the owner a notice of failure to pay. The notice will require payment of the entire remainder of the annual fee payment within 30 days of the date of the notice, or inform the owner that the owner is ineligible to opt for the quarterly payment schedule established in this subdivision until eligibility is reinstated by written notice from the department, or both.

3. The owner may request that the fee amount be revised if the owner can document that the emissions estimate on which the fee was based is in error. This request shall include appropriate source identification data, the revised emissions estimate, the revised fee amount, adequate supporting documentation, and other information as the department may require. The owner shall file the request with the appropriate regional office in a form acceptable to the department. If the department approves the request, the revised fee amount shall be paid in one of two ways:

a. In full within 30 days of the date of approval; or

b. In quarterly payments, with the first payment being paid within 30 days of the date of approval and the other payments being paid according to the schedule set out in subdivision 2 of this subsection.

C. The annual permit program emissions fee shall be paid by check, draft, or money order made payable to the Treasurer of Virginia and mailed to the address specified by the department.

9VAC5-80-1105. Permit exemptions.

A. The general requirements for minor NSR permit exemptions are as follows:

1. The provisions of this article do not apply to the following stationary sources or emissions units:

a. The construction of any stationary source or emissions unit that is exempt under the provisions of subsections B through F of this section. In determining whether a source is exempt from the provisions of this article, the provisions of subsections B through D of this section are independent from the provisions of subsections E and F of this section. A source must be determined to be exempt both under the provisions of subsections B through D of this section taken as a group and under the provisions of subsections E and F of this section to be exempt from this article.

b. Vegetative waste recycling/mulching operations that do not exceed 2100 hours of operation in any 12-month consecutive period at a single stationary source. To qualify as an exemption under this subdivision, the total rated capacity of all diesel engines at the source, including portable diesel engines temporarily located at the site, may not exceed 1200 brake horsepower (output).

c. The location of a portable emissions unit at a site subject to the following conditions:

(1) Any new emissions from the portable emissions unit are secondary emissions.

(2) The portable emissions unit is either subject to (i) a minor NSR permit authorizing the emissions unit as a portable emissions unit subject to this subdivision or (ii) a general permit.

(3) The emissions of the portable emissions unit at the site would be temporary.

(4) The portable emissions unit would not undergo modification or replacement that would be subject to this article.

(5) The portable emissions unit is suitable to the area in which it is to be located.

(6) Reasonable notice is given to the department prior to locating the emissions unit to the site identifying the proposed site and the probable duration of operation at the site. Such notice shall be provided to the department not less than 15 days prior to the date the emissions unit is to be located at the site unless a different notification schedule is previously approved by the department.

d. The reactivation of a stationary source unless a determination concerning shutdown has been made pursuant to the provisions of 9VAC5-20-220.

e. The use by any existing stationary source or emissions unit of an alternative fuel or raw material, if the following conditions are met:

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

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

2. The provisions of this article do not apply to the following stationary sources or emissions units provided the stationary source or emissions unit is (i) exempt under the provisions of subsections E and F of this section and (ii) meets any other applicable criteria or conditions set forth in this subdivision.

a. Replacement of an emissions unit subject to the following criteria:

(1) The replacement emission unit is (i) of an equal or lesser size and (ii) of an equal or lesser rated capacity as compared to the replaced emissions unit.

(2) The replacement emissions unit is functionally equivalent to the replaced emissions unit.

(3) The replacement emissions unit does not change the basic design parameters of the process operation.

(4) The potential to emit of the replacement emissions unit does not exceed the potential to emit of the replaced emissions unit. If the replaced emissions unit is subject to terms and conditions contained in a minor NSR permit, the owner may, concurrently with the notification required in subdivision (6) of this subdivision, request a minor amendment as provided in 9VAC5-80-1280 B 4 to that permit to apply those terms and conditions to the replacement emissions unit. However, the replacement emissions unit's potential to emit is not limited for the purposes of this subdivision unless (and until) the requested minor permit amendment is granted by the department.

(5) The replaced emissions unit is either removed or permanently shut down in accordance with the provisions of 9VAC5-20-220.

(6) The owner notifies the department, in writing, of the proposed replacement at least 15 days prior to commencing construction on the replacement emissions unit. Such notification shall include the size, function, and rated capacity of the existing and replacement emissions units and the registration number of the affected stationary source.

b. A reduction in stack outlet elevation provided that the stack serves only facilities that have been previously determined to be exempt from the minor NSR program.

3. In determining whether a facility is exempt from the provisions of this article under the provisions of subsection B of this section, the definitions in 9VAC5-40 (Existing Stationary Sources) that would cover the facility if it were an existing source shall be used unless deemed inappropriate by the department.

4. Any owner claiming that a facility is exempt from this article under the provisions of this section shall keep records as may be necessary to demonstrate to the satisfaction of the department that the facility was exempt at the time a minor NSR permit would have otherwise been required under this article.

B. Facilities as specified below shall be exempt from the provisions of this article.

1. Fuel burning equipment units (external combustion units, not engines and turbines) and space heaters in a single application as follows:

a. Except as provided in subdivision b of this subdivision, the exemption thresholds in subdivisions (1) through (4) of this subdivision shall be applied on an individual unit basis for each fuel type.

(1) Using solid fuel with a maximum heat input of less than 1,000,000 Btu per hour.

(2) Using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.

(3) Using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.

(4) Using gaseous fuel with a maximum heat input of less than 50,000,000 Btu per hour.

b. In ozone nonattainment areas designated in 9VAC5-20-204 or ozone maintenance areas designated in 9VAC5-20-203, the exemption thresholds in subdivision a of this

subdivision shall be applied in the aggregate for each fuel type.

2. Engines and turbines that are used for emergency purposes only and that do not individually exceed 500 hours of operation per year at a single stationary source as follows. All engines and turbines in a single application must also meet the following criteria to be exempt.

a. Gasoline engines with an aggregate rated brake (output) horsepower of less than 910 hp and gasoline engines powering electrical generators having an aggregate rated electrical power output of less than 611 kilowatts.

b. Diesel engines with an aggregate rated brake (output) horsepower of less than 1,675 hp and diesel engines powering electrical generators having an aggregate rated electrical power output of less than 1125 kilowatts.

c. Combustion gas turbines with an aggregate of less than 10,000,000 Btu per hour heat input (low heating value).

3. Engines that power mobile sources during periods of maintenance, repair, or testing.

4. Volatile organic compound storage and transfer operations involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and any operation specified below:

a. Volatile organic compound transfer operations involving:

(1) Any tank of 2,000 gallons or less storage capacity; or

(2) Any operation outside the volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Volatile organic compound storage operations involving any tank of 40,000 gallons or less storage capacity.

5. Vehicle customizing coating operations, if production is less than 20 vehicles per day.

6. Vehicle refinishing operations.

7. Coating operations for the exterior of fully assembled aircraft or marine vessels.

8. Petroleum liquid storage and transfer operations involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of this article when used or stored at ambient temperatures); and any operation or facility specified below:

a. Gasoline bulk loading operations at bulk terminals located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Gasoline dispensing facilities.

c. Gasoline bulk loading operations at bulk plants:

(1) With an expected daily throughput of less than 4,000 gallons, or

(2) Located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

d. Account/tank trucks; however, permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the same requirements as those trucks serving existing facilities.

e. Petroleum liquid storage operations involving:

(1) Any tank of 40,000 gallons or less storage capacity;

(2) Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer; or

(3) Any tank storing waxy, heavy pour crude oil.

9. Petroleum dry cleaning plants with a total manufacturers' rated solvent dryer capacity less than 84 pounds as determined by the applicable new source performance standard in 9VAC5-50-410.

10. Any addition of, relocation of, or change to a woodworking machine within a wood product manufacturing plant provided the system air movement capacity, expressed as the cubic feet per minute of air, is not increased and maximum control efficiency of the control system is not decreased.

11. Wood sawmills and planing mills primarily engaged in sawing rough lumber and timber from logs and bolts, or resawing cants and flitches into lumber, including box lumber and softwood cut stock; planing mills combined with sawmills; and separately operated planing mills that are engaged primarily in producing surfaced lumber and standard workings or patterns of lumber. This also includes facilities primarily engaged in sawing lath and railroad ties and in producing tobacco hogshead stock, wood chips, and snow fence lath. This exemption does not include any facility that engages in the kiln drying of lumber.

12. Exhaust flares at natural gas and coalbed methane extraction wells.

13. Temporary facilities subject to the following conditions:

a. The operational period of the temporary facility (the period from the date that the first pollutant-emitting operation is commenced to the date of shutdown of the temporary facility) is 12 months or less.

b. The uncontrolled emissions rate of any regulated air pollutant that would be emitted from the temporary facility during the operational period does not exceed the applicable exempt emission rate as set forth in 9VAC5-80-1105 C (exemption rates for new stationary sources) or 9VAC5-80-1105 D (exemption rates for projects). The uncontrolled emission rate may be calculated based upon the total number of hours in the operational period instead of 8760 hours. All temporary facilities that will be co-located at a stationary source shall be considered in the aggregate when calculating the uncontrolled emissions rate under this subdivision.

c. Upon completion of the operational period, the temporary facility shall be either (i) shut down in accordance with 9VAC5-20-220 or (ii) returned to its original state and condition unless, prior to the end of the operational period, the owner demonstrates in writing to the satisfaction of the department that the facility is exempt under 9VAC5-80-1105 C (exemption rates for new stationary sources) or D (exemption rates for new stationary projects) using 8760 hours of operation per year.

d. Not less than 30 calendar days prior to commencing the operational period, the owner shall notify the department in writing of the proposed temporary facility and shall provide (i) calculations demonstrating that the temporary facility is exempt under this subdivision and under 9VAC5-80-1105 E and F and (ii) proposed dates for commencing the first pollutant-emitting operation and shutdown of the temporary facility.

e. The owner shall provide written notifications to the department of (i) the actual date of commencing the first pollutant-emitting operation and (ii) the actual date of shutdown of the temporary facility. Notifications shall be postmarked or electronically submitted not more than 10 days after such dates.

14. Open pit incinerators subject to 9VAC5-130 (Regulation for Open Burning) and used solely for the purpose of disposal of clean burning waste and debris waste.

15. Poultry or swine incinerators located on a farm where all of the following conditions are met:

a. Auxiliary fuels for the incinerator unit shall be limited to natural gas, liquid petroleum gas, ~~and/or~~ or distilled petroleum liquid fuel. Solid fuels, waste materials, or residual petroleum oil products shall not be used to fire the incinerator.

b. The waste incinerated shall be limited to pathological waste (poultry or swine remains). Litter and animal bedding or any other waste materials shall not be incinerated.

c. The design burn rate or capacity rate of the incinerator shall be 400 pounds per hour or less of poultry or swine. This value shall apply only to the mass of the poultry or swine and shall not include the mass of the fuel.

d. The incinerator shall be used solely to dispose of poultry or swine originating on the farm where the incinerator is located.

e. The incinerator shall be owned and operated by the owner or operator of the farm where the incinerator is located.

f. The incinerator shall not be charged beyond the manufacturer's recommended rated capacity.

g. Records shall be maintained on site to demonstrate compliance with the conditions for this exemption, including ~~but not limited to~~ the total amount of pathological waste incinerated and the fuel usage on a calendar year quarterly basis.

C. The exemption of new stationary sources shall be determined as specified below:

1. New stationary sources with uncontrolled emission rates less than all of the emission rates specified below shall be exempt from the provisions of this article. The uncontrolled emission rate of a new stationary source is the sum of the uncontrolled emission rates of the individual affected emissions units. Facilities exempted by subsection B of this section shall not be included in the summation of uncontrolled emissions for purposes of exempting new stationary sources under this subsection.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Particulate Matter (PM_{10})	15 tpy
Particulate Matter ($PM_{2.5}$)	10 tpy
Volatile organic compounds	25 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H_2S)	9 tpy
Total Reduced Sulfur (including H_2S)	9 tpy
Reduced Sulfur Compounds (including H_2S)	9 tpy
Municipal waste combustor organics (measured as total tetra-throughocta-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6} tpy

Municipal waste combustor metals (measured as particulate matter)	13 tpy
Municipal waste combustor acid gases (measured as the sum of SO_2 and HCl)	35 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	22 tpy

2. If the particulate matter (PM_{10} or $PM_{2.5}$) emissions for a stationary source can be determined in a manner acceptable to the department and the stationary source is deemed exempt using the emission rate for particulate matter (PM_{10} or $PM_{2.5}$), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM_{10} or $PM_{2.5}$) cannot be determined in a manner acceptable to the department, the emission rate for particulate matter (PM) shall be used to determine the exemption status.

3. The provisions of this article do not apply to a new stationary source if all of the emissions considered in calculating the uncontrolled emission rate of the new stationary source are fugitive emissions.

D. The exemption of projects shall be determined as specified below:

1. A project that would result in increases in uncontrolled emission rates at the stationary source less than all of the emission rates specified below shall be exempt from the provisions of this article. The uncontrolled emission rate increase of a project is the sum of the uncontrolled emission rate increases of the individual affected emissions units. Uncontrolled emissions rate decreases are not considered as part of this calculation. Facilities exempted by subsection B of this section shall not be included in the summation of uncontrolled emissions for purposes of exempting projects under this subsection.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	10 tpy
Sulfur Dioxide	10 tpy
Particulate matter	15 tpy
Particulate matter PM_{10}	10 tpy
Particulate matter ($PM_{2.5}$)	6 tpy
Volatile organic compounds	10 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H_2S)	9 tpy
Total Reduced Sulfur (including H_2S)	9 tpy
Reduced Sulfur Compounds (including H_2S)	9 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6} tpy
Municipal waste combustor metals (measured as particulate matter)	13 tpy
Municipal waste combustor acid gases (measured as the sum of SO_2 and HCl)	35 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	22 tpy

2. If the particulate matter (PM_{10} or $PM_{2.5}$) emissions for a stationary source can be determined in a manner acceptable to the department and the stationary source is deemed exempt using the emission rate for particulate matter (PM_{10} or $PM_{2.5}$), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM_{10} or $PM_{2.5}$) cannot be determined in a manner acceptable to the department, the emission rate for particulate matter (PM) shall be used to determine the exemption status.

3. The provisions of this article do not apply to a project if all of the emissions considered in calculating the uncontrolled emission rate increase of the project are fugitive emissions.

E. Exemptions for stationary sources of toxic pollutants not subject to the federal hazardous air pollutant new source review program shall be as follows:

1. Stationary sources exempt from the requirements of Article 5 (9VAC5-60-300 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) as provided in 9VAC5-60-300 C 1, C 2, C 7, D, or E shall be exempt from the provisions of this article.

2. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the provisions of this article.

a. Incinerators, unless (i) the incinerator is used exclusively as air pollution control equipment, (ii) the incinerator is an open pit incinerator subject to 9VAC5-130 (Regulation for Open Burning) and used solely for the disposal of clean burning waste and debris waste, or (iii) the incinerator is a poultry or swine incinerator located on a farm and all of the conditions of subdivision B 15 of this section are met.

b. Ethylene oxide sterilizers.

c. Boilers, incinerators, or industrial furnaces as defined in 40 CFR 260.10 and subject to 9VAC20-60 (Hazardous Waste Regulations).

F. This subsection provides information on the extent to which any source category or portion of a source category subject to the federal hazardous air pollutant new source review program may be exempt from the provisions of this article.

1. This subdivision addresses those source categories subject to the provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08, and 40 CFR 61.15 that establish the requirements for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 61.

2. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.5 that establish the requirements for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D, and E. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 63.

3. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.50 through 40 CFR 63.56 that establish the requirements for issuing notices of MACT approval prior to the construction of a new emissions unit listed in the source category schedule for standards. Any information regarding exemptions for a source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program may be found in Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

4. This subdivision addresses those source categories for which EPA has promulgated a formal determination that no regulations or other requirements need to be established pursuant to § 112 of the federal Clean Air Act in the source category schedule for standards. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article.

9VAC5-80-2290. Permit application fee payment.

A. The permit application fee required by this article is due on the date that the permit application is received by the appropriate regional office of the department. The permit application fee is nonrefundable. Incomplete payment shall be deemed as nonpayment.

B. The permit application shall not be considered complete until a permit application fee for the proper amount is received. Review of the application will not proceed past an initial applicability determination until a permit application fee for the proper amount is received.

C. The permit application fee shall be paid by check, draft, or postal money order made payable to the Treasurer of Virginia and mailed or sent electronically to the address specified by the department.

D. The permit application should be mailed or submitted electronically to the appropriate regional office of the department.

9VAC5-80-2350. Annual permit maintenance fee payment.

A. Upon determining that the owner of a stationary source owes an annual permit maintenance fee, the department will mail or send electronically a bill for the fee to that owner no later than August 1.

B. Within 30 days following the date of the postmark or electronic submittal on the bill, the owner shall respond in one of the following ways:

1. The owner may pay the fee in full.

2. The owner may request that the fee amount be revised if the owner can document that the status of the permits on which the fee was based is in error. This request shall include appropriate source identification data, copies of all valid air permits, the revised fee amount, adequate supporting documentation, and other information as the department may require. The owner shall file the request with the appropriate regional office in a form acceptable to the department. If the department approves the request, the revised fee amount shall be paid in full within 30 days of the date of approval.

C. The annual permit maintenance fee shall be paid by check, draft, or money order made payable to the Treasurer of Virginia and mailed to the address specified by the department.

9VAC5-510-230. Reporting requirements.

A. The permittee shall comply with the reporting requirements in this section. Any document (including reports) required by a permit term or condition to be submitted to the department shall contain a certification by a responsible official that meets the requirements of 9VAC5-510-100 E.

B. The permittee shall submit, according to procedures established by the department, an annual emissions update. Any additional information requested by the department under this subsection shall be submitted to the department within 30 days of the date of request.

C. To meet the requirements of 9VAC5-510-210 with respect to reporting, the permittee shall submit reports of any required monitoring at least every six months. All instances of deviations from permit requirements shall be clearly identified in such reports.

D. The permittee shall furnish written notification to the department and the regional office of the U.S. Environmental Protection Agency of the following:

1. The actual date on which construction or installation or modification or reconstruction or relocation of any emission unit commenced, postmarked or submitted electronically within 30 days after that date.

2. The actual startup date of the emission unit within 15 days after that date.

3. The anticipated date of visible emissions evaluations for affected facilities subject to 40 CFR Part 60, Subpart OOO, postmarked or submitted electronically at least 30 days prior to that date.

4. The anticipated date of stack emissions tests of the affected facilities subject to 40 CFR Part 60, Subpart OOO, postmarked or submitted electronically at least 30 days prior to that date.

E. Within 30 days of completion, the permittee shall furnish written notification of equipment replacement, to include the following information, as applicable (for crushing, grinding, screening, elevator/belt conveying, bagging, storage bins, and truck/rail enclosed loading stations):

1. The rated capacity, in tons per hour, of the crusher being replaced; and the replacement crusher.

2. The total surface area of the top screen deck of:

a. The screening operation being replaced; and

b. The replacement screening operation.

3. The conveyor belt width of:

a. The conveyor operation being replaced; and

b. The replacement conveyor.

4. The rated storage capacity, in tons, of:

a. The bins being replaced; and

b. The replacement bins.

5. A description of the control device used to reduce particulate matter emissions from the equipment and a list of all other pieces of equipment controlled by the same device.

6. The estimated age of the emissions units being replaced.

7. The identification of the emission standards applicable to the equipment being replaced and the replacement equipment.

F. The permittee shall comply with the reporting requirements of 9VAC5-20-180 concerning facility and control equipment maintenance or malfunction.

9VAC5-530-210. Reporting requirements.

A. The owner shall furnish written notification to the regional office of the following:

1. The actual date on which construction of each affected unit commenced within 30 days after such date.

2. If necessary, the actual date on which the integration operational period of each affected unit commenced within 15 days after such date.

3. The anticipated startup date of each affected unit postmarked or submitted electronically not more than 60 days nor less than 30 days prior to such date.

4. The actual startup date of each affected unit within 15 days after such date.

5. The anticipated date of performance tests of each affected unit postmarked or submitted electronically at least 30 days prior to such date.

B. The owner shall furnish notification to the regional office of malfunctions of the affected unit or related air pollution control equipment that may cause excess emissions for more than one hour.

1. Such notification shall be made as soon as practicable but no later than four daytime business hours after the malfunction is discovered.

2. The owner shall provide a written statement giving all pertinent facts, including the estimated duration of the breakdown, within two weeks of discovery of the malfunction.

3. When the condition causing the failure or malfunction has been corrected and the equipment is again in operation, the owner shall notify the regional office.

9VAC5-530-290. Reporting requirements.

A. The owner shall furnish written notification to the regional office of the following:

1. The actual date on which construction of each affected unit commenced within 30 days after such date.

2. If necessary, the actual date on which the integration operational period of each affected unit commenced within 15 days after such date.

3. The anticipated startup date of each affected unit postmarked or submitted electronically not more than 60 days nor less than 30 days prior to such date.

4. The actual startup date of each affected unit within 15 days after such date.

5. The anticipated date of performance tests of each affected unit postmarked or submitted electronically at least 30 days prior to such date.

B. The owner shall furnish notification to the regional office of malfunctions of the affected unit or related air pollution control equipment that may cause excess emissions for more than one hour.

1. Such notification shall be made as soon as practicable, but no later than four daytime business hours after the malfunction is discovered.

2. The owner shall provide a written statement giving all pertinent facts, including the estimated duration of the breakdown, within two weeks of discovery of the malfunction.

3. When the condition causing the failure or malfunction has been corrected and the equipment is again in operation, the owner shall notify the regional office.

9VAC5-540-210. Reporting requirements.

The owner shall furnish written notification to the regional office of the following:

1. The actual date on which construction or modification of each affected unit commenced within 30 days after such date.

2. If necessary, the actual date on which the integration operational period of each affected unit commenced within 15 days after such date.

3. The anticipated start-up date of each affected unit postmarked or submitted electronically not more than 60 days nor less than 30 days prior to such date.

4. The actual start-up date of each affected unit within 15 days after such date.

VA.R. Doc. No. R24-7667; Filed January 26, 2024, 2:55 p.m.

STATE WATER CONTROL BOARD

Final Regulation

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

Titles of Regulations: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-25, 9VAC25-31-100).**

9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (amending 9VAC25-32-25).

9VAC25-210. Virginia Water Protection Permit Program Regulation (amending 9VAC25-210-90).

9VAC25-610. Groundwater Withdrawal Regulations (amending 9VAC25-610-130).

9VAC25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (amending 9VAC25-660-100).

9VAC25-670. Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (amending 9VAC25-670-100).

9VAC25-680. Virginia Water Protection General Permit for Linear Transportation Projects (amending 9VAC25-680-100).

9VAC25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (amending 9VAC25-690-100).

9VAC25-790. Sewage Collection and Treatment Regulations (amending 9VAC25-790-210).

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, 124, 403, and 503 (9VAC25-31-25, 9VAC25-31-100, 9VAC25-32-25, 9VAC25-790-210).

§ 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.) (9VAC25-210-90, 9VAC25-660-100, 9VAC25-670-100, 9VAC25-680-100, 9VAC25-69-100).

§ 62.1-256 of the Code of Virginia (9VAC25-610-130).

Effective Date: March 27, 2024.

Agency Contact: William K. Norris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 350-2743, or email william.norris@deq.virginia.gov.

Background: The U.S. Environmental Protection Agency (EPA) finalized changes to its test procedures required by industries and municipalities when analyzing the chemical, physical, and biological properties of wastewater and other environmental samples for reporting under EPA's National Pollutant Discharge Elimination System (NPDES) permit program. The Clean Water Act (CWA) requires EPA to promulgate these test procedures (analytical methods) for analysis of pollutants. EPA anticipates that these changes will provide increased flexibility for the regulated community in meeting monitoring requirements while improving data quality. In addition, this update to the CWA methods is incorporating technological advances in analytical technology. Section 402 of the Clean Water Act (33 USC § 1251 et seq.)

authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with EPA and operates the Virginia Pollutant Discharge Elimination System (VPDES) program. Virginia's regulations need to maintain consistency with the federal regulations. Various regulations of the State Water Control Board include references to EPA regulations under Title 40 of the Code of Federal Regulations (CFR).

Summary:

The amendments bring references to 40 CFR 136 in several State Water Control Board regulations up to date with the federal requirements published in the July 1, 2023, update.

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

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced and incorporated in this chapter that regulation shall be as it exists and has been published in the July 1, ~~2019~~ 2023, update.

9VAC25-31-100. Application for a permit.

A. Duty to apply. The following shall submit a complete application to the department in accordance with this section. The requirements for concentrated animal feeding operations are described in subdivisions C 1 and 2 of 9VAC25-31-130.

1. Any person who discharges or proposes to discharge pollutants; and

2. Any person who owns or operates a sludge-only facility whose biosolids use or sewage sludge disposal practice is regulated by 9VAC25-31-420 through 9VAC25-31-720 and who does not have an effective permit.

B. Exceptions. The following are not required to submit a complete application to the department in accordance with this section unless the department requires otherwise:

1. Persons covered by general permits;

2. Persons excluded from the requirement for a permit by this chapter; or

3. A user of a privately owned treatment works.

C. Who applies.

1. The owner of the facility or operation.

2. 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 permit.

3. Notwithstanding the requirements of subdivision 2 of this subsection, biosolids land application by the operator may be authorized by the owner's permit.

D. Time to apply.

1. 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 department. Facilities proposing a new discharge of stormwater associated with industrial activity shall submit an application 180 days before that facility commences industrial activity ~~which~~ that may result in a discharge of stormwater associated with that industrial activity. 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 180-day requirement to avoid delay. New discharges composed entirely of stormwater, other than those dischargers identified in 9VAC25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9VAC25-31-120 B.

2. All TWTDS whose biosolids use or sewage sludge disposal practices are regulated by 9VAC25-31-420 through 9VAC25-31-720 must submit permit applications according to the applicable schedule in subdivision 2 a or b of this subsection.

a. A TWTDS with a currently effective VPDES permit must submit a permit application at the time of its next VPDES permit renewal application. Such information must be submitted in accordance with subsection D of this section.

b. Any other TWTDS not addressed under subdivision 2 a of this subsection must submit the information listed in subdivisions 2 b (1) through (5) of this subsection to the department within one year after publication of a standard applicable to its biosolids use or sewage sludge disposal practice or practices, using a form provided by the department. The department will determine when such TWTDS must submit a full permit application.

(1) The TWTDS's name, mailing address, location, and status as federal, state, private, public, or other entity;

(2) The applicant's name, address, telephone number, ~~electronic mail~~ email address, and ownership status;

(3) A description of the biosolids use or sewage sludge disposal practices. Unless the biosolids meets the requirements of subdivision Q 9 d of this section, the description must include the name and address of any facility where biosolids or sewage sludge is sent for treatment or disposal and the location of any land application sites;

(4) Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

(5) The most recent data the TWTDS may have on the quality of the biosolids or sewage sludge.

c. Notwithstanding subdivision 2 a or b of this subsection, the department may require permit applications from any

TWTDS at any time if the department determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

d. Any TWTDS that commences operations after promulgation of an applicable standard for biosolids use or sewage sludge disposal shall submit an application to the department at least 180 days prior to the date proposed for commencing operations.

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

F. Completeness.

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

2. No application for a VPDES permit to discharge sewage into or adjacent to state waters from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

3. No application for a new individual VPDES permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be considered complete unless it contains notification from the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. The county, city, or town shall inform in writing the applicant and the department of the discharging facility's compliance or noncompliance not more than 30 days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the county, city, or town fail to provide such written notification within 30 days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid VPDES permit had been issued prior to March 10, 2000.

4. A permit application shall not be considered complete if the department has waived application requirements under subsection K or Q of this section and EPA has disapproved the waiver application. If a waiver request has been submitted to EPA more than 210 days prior to permit expiration and EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

5. Except as specified in subdivision 5 a of this subsection, a permit application shall not be considered complete unless all required quantitative data are collected in accordance with sufficiently sensitive analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N (Effluent Guidelines and Standards) or O (Sewage Sludge).

a. For the purposes of this requirement, a method approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N or O is "sufficiently sensitive" when:

(1) The method minimum level (ML) is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter;

(2) The method ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

(3) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N or O for the measured pollutant or pollutant parameter.

b. When there is no analytical method that has been approved under 40 CFR 136, required under 40 CFR Chapter I, Subchapter N or O, and is not otherwise required by the director, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method's precision, accuracy, or resolution, may be considered when assessing the performance of the method.

6. In accordance with § 62.1-44.19:3 A of the Code of Virginia, no application for a permit or variance to authorize the storage of biosolids shall be complete unless it contains certification from the governing body of the locality in which the biosolids is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

7. No application for a permit to land apply biosolids in accordance with Part VI (9VAC25-31-420 et seq.) of this chapter shall be complete unless it includes the written consent of the landowner to apply biosolids on his property.

G. Information requirements. All applicants for VPDES permits, other than POTWs and other TWTDS, shall provide the following information to the department, using the application form provided by the department (additional information required of applicants is set forth in subsections H through L and Q through R of this section).

1. The activities conducted by the applicant that require it to obtain a VPDES permit;

2. Name, mailing address, and location of the facility for which the application is submitted;

3. Up to four SIC and NAICS codes that best reflect the principal products or services provided by the facility;

4. The operator's name, address, telephone number, ~~electronic mail~~ 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 or applied for under any of the following programs:

a. Hazardous Waste Management program under RCRA (42 USC § 6921);

b. UIC program under SDWA (42 USC § 300h);

c. VPDES program under the CWA and the 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; and

i. 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, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area;

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

9. An indication of whether the facility uses cooling water and the source of the cooling water; and

10. An indication of whether the facility is requesting any of the variances in subsection M of this section, if known at the time of application.

H. Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial mining, and silvicultural dischargers applying for VPDES permits, except for those facilities subject to the requirements of subsection I of this section, shall provide the following information to the department, using application forms provided by the department.

1. The latitude and longitude of each outfall to the nearest 15 seconds and the name of the receiving water.

2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subdivision 3 of this subsection. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

3. A narrative identification of each type of process, operation, or production area that contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and stormwater run-off; the average flow that each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of stormwater may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

4. If any of the discharges described in subdivision 3 of this subsection are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for stormwater run-off, spillage, or leaks).

5. If an effluent guideline promulgated under § 304 of the CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility as required by 9VAC25-31-230 B 2.

6. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

7. Information on the discharge of pollutants specified in this subdivision (except information on stormwater discharges that is to be provided as specified in 9VAC25-31-120).

a. When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 unless use of another method is required under 40 CFR Subchapter N or O. When no analytical method is approved, the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the department may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in subdivisions 7 e and f of this subsection that an 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. When this subdivision requires analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including E. coli) and Enterococci (previously known as fecal streptococcus at 40 CFR 122.26 (d)(2)(iii)(A)(3)), or volatile organics, grab samples must be collected for those pollutants. For all other pollutants, a 24-hour composite sample, using a minimum of four grab samples, must be used unless specified otherwise at 40 CFR 136. 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 department may waive composite sampling for any outfall for which the 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. Results of analyses of individual grab samples for any parameter may be averaged to obtain the daily average. Grab samples that are not required to be analyzed immediately (see Table II at 40 CFR 136.3 (e)) may be composited in the laboratory, provided that container, preservation, and holding time requirements are met (see Table II at 40 CFR 136.3(e)) and that sample integrity is not compromised by compositing.

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 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 (applicants submitting permit applications for stormwater discharges under 9VAC25-31-120 C may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the department). 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 9VAC25-31-120 B 1. For all stormwater permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9VAC25-31-120 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The 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. An 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 run-off from the facility.)

c. Every applicant must report quantitative data for every outfall for the following pollutants:

(1) Biochemical oxygen demand (BOD_5);

(2) Chemical oxygen demand;

(3) Total organic carbon;

(4) Total suspended solids;

(5) Ammonia (as N);

(6) Temperature (both winter and summer); and

(7) pH.

d. The 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 subdivision 7 c of this subsection if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

e. Each 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, except as indicated in subdivisions 7 e (3), (4), and (5) of this subsection:

(1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D for the applicant's industrial category or categories unless the applicant qualifies as a small business under subdivision 8 of this subsection. 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 ~~which~~ that uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

(2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals, cyanide, and total phenols).

(3) Subdivision H 7 e (1) of this section and the corresponding portions of the VPDES Application Form 2C are suspended as they apply to coal mines.

(4) Subdivision H 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES Application Form 2C are suspended as they apply to:

(a) Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

(b) Testing and reporting for the volatile, base/neutral, and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (40 CFR Part 440, Subpart B) and testing and reporting for all four fractions in all other subcategories of this industrial category.

(c) Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

(5) Subdivision H 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES Application Form 2C are suspended as they apply to:

(a) Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

(b) Testing and reporting for the pesticide fraction in the leather tanning and finishing, paint and ink formulation, and photographic supplies industrial categories.

(c) Testing and reporting for the acid, base/neutral, and pesticide fractions in the petroleum refining industrial category.

(d) Testing and reporting for the pesticide fraction in the Papergrade Sulfite Subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral, and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

(e) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process waste streams of the Steam Electric Power Plant industrial category.

f. Each 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 applicant must report quantitative data. For every pollutant discharged that is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

g. 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 subdivision 7 e of this subsection, is discharged from each outfall. For every

pollutant expected to be discharged in concentrations of 10 ppb or greater the 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 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 applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subdivision 8 of this subsection is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic pollutants).

h. Each 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 applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

i. Each 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.

j. Where quantitative data are required in subdivisions H 7 a through i of this section, existing data may be used, if available, in lieu of sampling done solely for the purpose of the application, provided that all data requirements are met; sampling was performed, collected, and analyzed no more than four and one-half years prior to submission; all data are representative of the discharge; and all available representative data are considered in the values reported.

8. An applicant ~~which~~ that qualifies as a small business under one of the following criteria is exempt from the requirements in subdivision 7 e (1) or 7 f of this subsection to submit quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic pollutants):

a. For coal mines, a probable total annual production of less than 100,000 tons per year; or

b. For all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars).

9. A listing of any toxic pollutant that the applicant currently uses or manufactures as an intermediate or final product or byproduct. The department may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the department has adequate information to issue the permit.

10. Reserved.

11. An identification of any biological toxicity tests that the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water in relation to a discharge.

12. If a contract laboratory or consulting firm performed any of the analyses required by subdivision 7 of this subsection, the identity of each laboratory or firm and the analyses performed.

13. In addition to the information reported on the application form, applicants shall provide to the department, at its request, such other information, including pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the department, as the department may reasonably require to assess the discharges of the facility and to determine whether to issue a VPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

I. Application requirements for manufacturing, commercial, mining and silvicultural facilities ~~which~~ that discharge only nonprocess wastewater. Except for stormwater discharges, all manufacturing, commercial, mining, and silvicultural dischargers applying for VPDES permits that discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department using application forms provided by the department:

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

2. Date of expected commencement of discharge;

3. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;

4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the department. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136. When analysis of pH, temperature, residual chlorine, oil and grease, or fecal coliform (including E. coli), and Enterococci (previously known as fecal streptococcus) and volatile organics is required in subdivisions I 4 a (1) through (11) of this section, grab samples must be collected for those pollutants. For all other pollutants, a 24-hour composite sample, using a minimum of four grab samples, must be used unless specified otherwise at 40 CFR Part 136. For a composite sample, only one analysis of the composite of aliquots is required. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(1) Biochemical oxygen demand (BOD_5).

(2) Total suspended solids (TSS).

(3) Fecal coliform (if believed present or if sanitary waste is or will be discharged).

(4) Total residual chlorine (if chlorine is used).

(5) Oil and grease.

(6) Chemical oxygen demand (COD) (if noncontact cooling water is or will be discharged).

(7) Total organic carbon (TOC) (if noncontact cooling water is or will be discharged).

(8) Ammonia (as N).

(9) Discharge flow.

(10) pH.

(11) Temperature (winter and summer).

b. The department may waive the testing and reporting requirements for any of the pollutants or flow listed in subdivision 4 a of this subsection if the applicant submits a request for such a waiver before or with his application that demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

c. If the applicant is a new discharger, he must submit the information required in subdivision 4 a of this subsection by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not submit testing results that he has already performed and reported under the discharge monitoring requirements of his VPDES permit.

d. The requirements of subdivisions 4 a and 4 c of this subsection that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met;

5. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for stormwater run-off, leaks, or spills);

6. A brief description of any treatment system used or to be used;

7. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 9VAC25-31-230 G;

8. Signature of certifying official under 9VAC25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the department.

J. Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities. New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the department, using the application form provided by the department:

1. For concentrated animal feeding operations:

a. The name of the owner or operator;

b. The facility location and mailing address;

c. Latitude and longitude of the production area (entrance to the production area);

d. A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of subdivision G 7 of this section;

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

f. The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

g. The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

h. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and

i. For CAFOs required to seek coverage under a permit after December 31, 2009, a nutrient management plan that at a minimum satisfies the requirements specified in subsection E of 9VAC25-31-200 and subdivision C 5 of 9VAC25-31-130, including, for all CAFOs subject to 40 CFR Part 412 Subpart C or Subpart D, the requirements of 40 CFR 412.4(c), as applicable.

2. For concentrated aquatic animal production facilities:

a. The maximum daily and average monthly flow from each outfall;

b. The number of ponds, raceways, and similar structures;

c. The name of the receiving water and the source of intake water;

d. For each species of aquatic animals, the total yearly and maximum harvestable weight;

e. The calendar month of maximum feeding and the total mass of food fed during that month; and

f. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the department.

K. Application requirements for new and existing POTWs and treatment works treating domestic sewage. Unless otherwise indicated, all POTWs and other dischargers designated by the department must provide to the department, at a minimum, the information in this subsection using an application form provided by the department. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The department may waive any requirement of this subsection if it has access to substantially identical information. The department may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the department's justification for the waiver. A regional administrator's disapproval of the department's proposed waiver does not constitute final agency action but does provide notice to the department and permit applicant that EPA may object to any department-issued permit issued in the absence of the required information.

1. All applicants must provide the following information:

a. Name, mailing address, and location of the facility for which the application is submitted;

b. Name, mailing address, telephone number, and ~~electronic mail~~ email address of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;

c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

(1) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;

(2) Underground Injection Control program under the Safe Drinking Water Act (SDWA);

(3) NPDES program under the Clean Water Act (CWA);

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(5) Nonattainment program under the Clean Air Act;

(6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(8) Dredge or fill permits under § 404 of the CWA; and

(9) Other relevant environmental permits, including state permits;

d. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

e. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

g. Identification of types of collection systems used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises;

h. The following information for outfalls to surface waters and other discharge or disposal methods:

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

(b) The average daily volume discharged to each surface impoundment; and

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

(b) The size of each land application site, in acres;

(c) The average daily volume applied to each land application site, in gallons per day; and

(d) Whether land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge:

(a) The means by which the effluent is transported;

(b) The name, mailing address, contact person, phone number, and ~~electronic mail~~ email address of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c) The name, mailing address, contact person, phone number, ~~electronic mail~~ email address, and VPDES permit number (if any) of the receiving facility; and

(d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through (4) of this subsection (e.g., underground percolation, underground injection):

(a) A description of the disposal method, including the location and size of each disposal site, if applicable;

(b) The annual average daily volume disposed of by this method, in gallons per day; and

(c) Whether disposal through this method is continuous or intermittent; and

i. An indication of whether applicant is operating under or requesting to operate under a variance as specified in subsection N of this section, if known at the time of application.

2. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:

a. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

b. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

(1) Treatment plant area and unit processes;

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

(3) Each well where fluids from the treatment plant are injected underground;

(4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;

(5) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

(6) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

c. Process flow diagram or schematic:

(1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and

(2) A narrative description of the diagram; and

d. The following information regarding scheduled improvements:

(1) The outfall number of each outfall affected;

(2) A narrative description of each required improvement;

(3) Scheduled or actual dates of completion for the following:

(a) Commencement of construction;

(b) Completion of construction;

(c) Commencement of discharge; and

(d) Attainment of operational level; and

(4) A description of permits and clearances concerning other federal or state requirements.

3. Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

a. The following information about each outfall:

(1) Outfall number;

(2) State, county, and city or town in which outfall is located;

(3) Latitude and longitude, to the nearest second;

(4) Distance from shore and depth below surface;

(5) Average daily flow rate, in million gallons per day;

(6) The following information for each outfall with a seasonal or periodic discharge:

(a) Number of times per year the discharge occurs;

(b) Duration of each discharge;

(c) Flow of each discharge; and

(d) Months in which discharge occurs; and

(7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used.

b. The following information, if known, for each outfall through which effluent is discharged to surface waters:

(1) Name of receiving water;

(2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;

(3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and

(4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable).

c. The following information describing the treatment provided for discharges from each outfall to surface waters:

(1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(a) Design biochemical oxygen demand (BOD_5 or $CBOD_5$) removal (percent);

(b) Design suspended solids (SS) removal (percent); and, where applicable;

(c) Design phosphorus (P) removal (percent);

(d) Design nitrogen (N) removal (percent); and

(e) Any other removals that an advanced treatment system is designed to achieve.

(2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).

4. Effluent monitoring for specific parameters.

a. As provided in subdivisions 4 b through 4 k of this subsection, all applicants must submit to the department effluent monitoring information for samples taken from each outfall through which effluent is discharged to surface waters, except for CSOs. The department may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The department may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone. For POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge;

b. All applicants must sample and analyze for the following pollutants:

(1) Biochemical oxygen demand (BOD_5 or $CBOD_5$);

(2) Fecal coliform;

(3) Design flow rate;

(4) pH;

(5) Temperature; and

(6) Total suspended solids.

c. All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the following pollutants:

(1) Ammonia (as N);

(2) Chlorine (total residual, TRC);

(3) Dissolved oxygen;

(4) Nitrate/Nitrite;

(5) Kjeldahl nitrogen;

(6) Oil and grease;

(7) Phosphorus; and

(8) Total dissolved solids.

d. Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine.

e. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as required by the department must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J, and for any other pollutants for which the department or EPA have established water quality standards applicable to the receiving waters.

f. The department may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

g. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The department may require additional samples, as appropriate, on a case-by-case basis.

h. All existing data for pollutants specified in subdivisions 4 b through 4 f of this subsection that is collected within 4-1/2 years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

i. Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 unless an alternative is specified in the existing VPDES permit. When analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including E. coli), or volatile organics is required in subdivisions K 4 b, c, and e of this section, grab samples must be collected for those pollutants. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

j. The effluent monitoring data provided must include at least the following information for each parameter:

(1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

(3) The analytical method used; and

(4) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

k. Unless otherwise required by the department, metals must be reported as total recoverable.

5. Effluent monitoring for whole effluent toxicity.

a. All applicants must provide an identification of any whole effluent toxicity tests conducted during the 4-1/2 years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge. For POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge.

b. As provided in subdivisions 5 c through i of this subsection, the following applicants must submit to the department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(1) All POTWs with design flow rates greater than or equal to one million gallons per day;

(2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(3) Other POTWs, as required by the department, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(b) The ratio of effluent flow to receiving stream flow;

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, or a water designated as an outstanding natural resource water; or

(e) Other considerations (including the history of toxic impacts and compliance problems at the POTW) that the department determines could cause or contribute to adverse water quality impacts.

c. Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the department may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The department may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

d. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide:

(1) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(2) Results from four tests performed at least annually in the 4-1/2 year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the department.

e. Applicants must conduct tests with multiple species (no less than two species, e.g., fish, invertebrate, plant) and test for acute or chronic toxicity, depending on the range of receiving water dilution. The department recommends that applicants conduct acute or chronic testing based on the following dilutions: (i) acute toxicity testing if the dilution of the effluent is greater than 100:1 at the edge of the mixing zone or (ii) chronic toxicity testing if the dilution of the effluent is less than or equal to 100:1 at the edge of the mixing zone.

f. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

g. Applicants must provide the results using the form provided by the department, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to subdivision 5 b of this subsection for which such information has not been reported previously to the department.

h. Whole effluent toxicity testing conducted pursuant to subdivision 5 b of this subsection must be conducted using methods approved under 40 CFR Part 136, as directed by the department.

i. For whole effluent toxicity data submitted to the department within 4-1/2 years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

j. Each POTW required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past 4-1/2 years revealed toxicity.

6. Applicants must submit the following information about industrial discharges to the POTW:

a. Number of significant industrial users (SIUs) and nonsignificant categorical industrial users (NSCIUs),

including SIUs and NSCIUs that truck or haul waste, discharging to the POTW; and

b. POTWs with one or more SIUs shall provide the following information for each SIU, as defined in 9VAC25-31-10, that discharges to the POTW:

(1) Name and mailing address;

(2) Description of all industrial processes that affect or contribute to the SIU's discharge;

(3) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;

(4) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;

(5) Whether the SIU is subject to local limits;

(6) Whether the SIU is subject to categorical standards and, if so, under which category and subcategory; and

(7) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past 4-1/2 years.

c. The information required in subdivisions 6 a and b of this subsection may be waived by the department for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in subdivisions 6 a and b of this subsection:

(1) An annual report submitted within one year of the application; or

(2) A pretreatment program.

7. Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

a. If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261, the applicant must report the following:

(1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and

(2) The hazardous waste number and amount received annually of each hazardous waste.

b. If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and § 3004(u) or 3008(h) of RCRA, the applicant must report the following:

(1) The identity and description of the site or facility at which the wastewater originates;

(2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261, if known; and

(3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

c. Applicants are exempt from the requirements of subdivision 7 b of this subsection if they receive no more than 15 kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e).

8. Each applicant with combined sewer systems must provide the following information:

a. The following information regarding the combined sewer system:

(1) A map indicating the location of the following:

(a) All CSO discharge points;

(b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and

(c) Waters supporting threatened and endangered species potentially affected by CSOs; and

(2) A diagram of the combined sewer collection system that includes the following information:

(a) The location of major sewer trunk lines, both combined and separate sanitary;

(b) The locations of points where separate sanitary sewers feed into the combined sewer system;

(c) In-line and off-line storage structures;

(d) The locations of flow-regulating devices; and

(e) The locations of pump stations.

b. The following information for each CSO discharge point covered by the permit application:

(1) The following information on each outfall:

(a) Outfall number;

(b) State, county, and city or town in which outfall is located;

(c) Latitude and longitude, to the nearest second;

(d) Distance from shore and depth below surface;

(e) Whether the applicant monitored any of the following in the past year for this CSO: (i) rainfall, (ii) CSO flow volume, (iii) CSO pollutant concentrations, (iv) receiving water quality, or (v) CSO frequency; and

(f) The number of storm events monitored in the past year;

(2) The following information about CSO overflows from each outfall:

(a) The number of events in the past year;

(b) The average duration per event, if available;

(c) The average volume per CSO event, if available; and

(d) The minimum rainfall that caused a CSO event, if available, in the last year;

(3) The following information about receiving waters:

(a) Name of receiving water;

(b) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code, if known; and

(c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code, if known; and

(4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable state water quality standard).

9. All applicants must provide the name, mailing address, telephone number, ~~electronic mail~~ email address, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility.

10. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.

11. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the department.

L. Application requirements for new sources and new discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits (except for new discharges of facilities subject to the requirements of subsection I of this section or new discharges of stormwater associated with industrial activity that are subject to the requirements of 9VAC25-31-120 B 1 and this subsection) shall provide the following information to the department, using the application forms provided by the department:

1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;

2. The expected date of commencement of discharge;

3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

b. A line drawing of the water flow through the facility with a water balance as described in subdivision H 2;

c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for stormwater run-off, spillage, or leaks);

4. If a new source performance standard promulgated under § 306 of the CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

5. The requirements in subdivisions I 4 a, b, and c of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.

a. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The department may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application ~~which~~ that demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements:

(1) Biochemical oxygen demand (BOD).

(2) Chemical oxygen demand (COD).

(3) Total organic carbon (TOC).

(4) Total suspended solids (TSS).

(5) Flow.

(6) Ammonia (as N).

(7) Temperature (winter and summer).

(8) pH.

b. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and nonconventional pollutants).

c. Each applicant must report estimated daily maximum, daily average, and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

(1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals, in the discharge from any outfall, Total cyanide, and total phenols);

(2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than $100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloro-propionate (Erbon) (CAS #136-25-4);

(4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phos-phorothioate (Ronnel) (CAS #299-84-3);

(5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

(6) Hexachlorophene (HCP) (CAS #70-30-4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than 24 months after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection H of this section. However, the applicant need not complete those portions of subsection H of this section requiring tests that have already been performed and reported under the discharge monitoring requirements of the VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

8. Signature of certifying official under 9VAC25-31-110; and

9. Pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and details satisfactory to the department.

M. Variance requests by non-POTWs. A discharger ~~which~~ that 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 permit; or

(2) For a request from best available technology economically achievable (BAT) or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated regulations; or

(b) 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.

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 ~~which~~ 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 permit number, the outfall number, 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 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 Division Director 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 permit on the 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 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 permit. A copy of the request shall be sent simultaneously to the department.

N. Variance requests by POTWs. A discharger ~~which~~ that is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under § 301(h) of the CWA of requirements of § 301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G.

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

O. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsections M and N of this section, the department may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations ~~which~~ that are eligible for variances. In the notice the department may require the 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 permit application has been submitted. The draft or final permit may contain the alternative limitations that may become effective upon final grant of the variance.

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

P. Recordkeeping. Except for information required by subdivision D 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI (9VAC25-31-420 et seq.) of this chapter), applicants shall keep records of all data used to complete 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.

Q. Sewage sludge management. All TWTDS subject to subdivision D 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The department may waive any requirement of this subsection if it has access to substantially identical information. The department may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the department's justification for the waiver. A regional administrator's disapproval of the department's proposed waiver does not constitute final agency action, but does provide notice to the department and the permit applicant that EPA may object to any department issued permit issued in the absence of the required information.

1. All applicants must submit the following information:

a. The name, mailing address, and location of the TWTDS for which the application is submitted;

b. Whether the facility is a Class I Sludge Management Facility;

c. The design flow rate (in million gallons per day);

d. The total population served;

e. The TWTDS's status as federal, state, private, public, or other entity;

f. The name, mailing address, telephone number, and ~~electronic mail~~ email address of the applicant; and

g. Indication whether the applicant is the owner, operator, or both.

2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:

a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);

b. UIC program under the Safe Drinking Water Act (SDWA);

c. NPDES program under the Clean Water Act (CWA);

d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

e. Nonattainment program under the Clean Air Act;

f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

g. Dredge or fill permits under § 404 of the CWA;

h. Other relevant environmental permits, including state or local permits.

3. All applicants must identify any generation, treatment, storage, land application of biosolids, or disposal of sewage sludge that occurs in Indian country.

4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:

a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and

b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.

5. All applicants must submit a line drawing or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge; the destination of all liquids and solids leaving each such unit; and all processes used for pathogen reduction and vector attraction reduction.

6. All applicants must submit an odor control plan that contains at minimum:

a. Methods used to minimize odor in producing biosolids;

b. Methods used to identify malodorous biosolids before land application (at the generating facility);

c. Methods used to identify and abate malodorous biosolids that have been delivered to the field, prior to land application; and

d. Methods used to abate malodor from biosolids if land applied.

7. The applicant must submit biosolids monitoring data for the pollutants for which limits in biosolids have been established in Part VI (9VAC25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application with the following conditions:

a. When applying for authorization to land apply a biosolids source not previously included in a VPDES or Virginia Pollution Abatement Permit, the biosolids shall be sampled and analyzed for PCBs. The sample results shall be submitted with the permit application or request to add the source.

b. The department may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

c. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the biosolids and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.

d. Applicants must collect and analyze samples in accordance with analytical methods specified in 9VAC25-31-490, 40 CFR Part 503 ~~(March 26, 2007)~~, and 40 CFR Part 136 ~~(March 26, 2007)~~.

e. The monitoring data provided must include at least the following information for each parameter:

(1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;

(2) The analytical method used; and

(3) The method detection level.

8. If the applicant is a person who prepares biosolids or sewage sludge, as defined in 9VAC25-31-500, the applicant must provide the following information:

a. If the applicant's facility generates biosolids or sewage sludge, the total dry metric tons per 365-day period generated at the facility.

b. If the applicant's facility receives biosolids or sewage sludge from another facility, the following information for each facility from which biosolids or sewage sludge is received:

(1) The name, mailing address, and location of the other facility;

(2) The total dry metric tons per 365-day period received from the other facility; and

(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.

c. If the applicant's facility changes the quality of biosolids or sewage sludge through blending, treatment, or other activities, the following information:

(1) Whether the Class A pathogen reduction requirements in 9VAC25-31-710 A or the Class B pathogen reduction requirements in 9VAC25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(2) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.

d. If biosolids from the applicant's facility meets the ceiling concentrations in 9VAC25-31-540 B Table 1, the pollutant concentrations in 9VAC25-31-540 B Table 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through 8, and if the biosolids is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

e. If biosolids from the applicant's facility is sold or given away in a bag or other container for application to the land, and the biosolids is not subject to subdivision 8 d of this subsection, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of biosolids subject to this subsection that is sold or given away in a bag or other container for application to the land; and

(2) A copy of all labels or notices that accompany the biosolids being sold or given away.

f. If biosolids or sewage sludge from the applicant's facility is provided to another person who prepares biosolids, as defined in 9VAC25-31-500, and the biosolids is not subject to subdivision 8 d of this subsection, the applicant must provide the following information for each facility receiving the biosolids or sewage sludge:

(1) The name, mailing address, and ~~electronic mail~~ email address of the receiving facility;

(2) The total dry metric tons per 365-day period of biosolids or sewage sludge subject to this subsection that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9VAC25-31-530 G; and

(5) If the receiving facility places biosolids in bags or containers for sale or give-away for application to the land, a copy of any labels or notices that accompany the biosolids.

9. If biosolids from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 8 d, e, or f of this subsection, the applicant must provide the following information:

a. Written permission of landowners on the most current form approved by the department.

b. The total dry metric tons per 365-day period of biosolids subject to this subsection that is applied to the land.

c. If any land application sites are located in states other than the state where the biosolids is prepared, a description of how the applicant will notify the permitting authority for the state where the land application sites are located.

d. The following information for each land application site that has been identified at the time of permit application:

(1) The DEQ control number, if previously assigned, identifying the land application field or site. If a DEQ control number has not been assigned, provide the site identification code used by the permit applicant to report activities and the site's location;

(2) The site's latitude and longitude in decimal degrees to three decimal places and method of determination;

(3) A legible topographic map and aerial photograph, including legend, of proposed application areas to scale as needed to depict the following features:

(a) Property boundaries;

(b) Surface water courses;

(c) Water supply wells and springs;

(d) Roadways;

(e) Rock outcrops;

(f) Slopes;

(g) Frequently flooded areas (National Resources Conservation Service (NRCS) designation);

(h) Occupied dwellings within 400 feet of the property boundaries and all existing extended dwelling and property line setback distances;

(i) Publicly accessible properties and occupied buildings within 400 feet of the property boundaries and the associated extended setback distances; and

(j) The gross acreage of the fields where biosolids will be applied;

(4) County map or other map of sufficient detail to show general location of the site and proposed transport vehicle haul routes to be utilized from the treatment plant;

(5) County tax maps labeled with Tax Parcel ID or IDs for each farm to be included in the permit, which may include multiple fields, to depict properties within 400 feet of the field boundaries;

(6) A USDA soil survey map, if available, of proposed sites for land application of biosolids;

(7) The name, mailing address, telephone number, and ~~electronic mail~~ email address of each site owner, if different from the applicant;

(8) The name, mailing address, telephone number, and ~~electronic mail~~ email address of the person who applies biosolids to the site, if different from the applicant;

(9) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9VAC25-31-500;

(10) Description of agricultural practices including a list of proposed crops to be grown;

(11) Whether either of the vector attraction reduction options of 9VAC25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in biosolids;

(12) Pertinent calculations justifying storage and land area requirements for biosolids application including an annual biosolids balance incorporating such factors as precipitation, evapotranspiration, soil percolation rates, wastewater loading, and monthly storage (input and drawdown); and

(13) Other information that describes how the site will be managed, as specified by the department.

e. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 to the site:

(1) Whether the applicant has contacted the permitting authority in the state where the bulk biosolids subject to 9VAC25-31-540 B Table 2 will be applied, to ascertain whether bulk biosolids subject to 9VAC25-31-540 B Table 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name, phone number, and ~~electronic mail~~ email address, if available, of a contact person at the permitting authority; and

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 9 e (1) of this subsection, bulk biosolids subject to cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 has been applied to the site since July 20, 1993.

10. Biosolids storage facilities not located at the site of the wastewater treatment plant. Plans and specifications for biosolids storage facilities not located at the site of the wastewater treatment plant generating the biosolids, including routine and on-site storage, shall be submitted for issuance of a certificate to construct and a certificate to operate in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790) and shall depict the following information:

a. Site layout on a recent 7.5 minute topographic quadrangle or other appropriate scaled map;

b. Location of any required soil, geologic, and hydrologic test holes or borings;

c. Location of the following field features within 0.25 miles of the site boundary (indicate on map) with the approximate distances from the site boundary:

(1) Water wells (operating or abandoned);

(2) Surface waters;

(3) Springs;

(4) Public water supplies;

(5) Sinkholes;

(6) Underground and surface mines;

(7) Mine pool (or other) surface water discharge points;

(8) Mining spoil piles and mine dumps;

(9) Quarries;

(10) Sand and gravel pits;

(11) Gas and oil wells;

(12) Diversion ditches;

(13) Occupied dwellings, including industrial and commercial establishments;

(14) Landfills and dumps;

(15) Other unlined impoundments;

(16) Septic tanks and drainfields; and

(17) Injection wells;

d. Topographic map (10-foot contour preferred) of sufficient detail to clearly show the following information:

(1) Maximum and minimum percent slopes;

(2) Depressions on the site that may collect water;

(3) Drainage ways that may attribute to rainfall run-on to or run-off from this site; and

(4) Portions of the site, if any, that are located within the 100-year floodplain;

e. Data and specifications for the liner proposed for seepage control;

f. Scaled plan view and cross-sectional view of the facilities showing inside and outside slopes of all embankments and details of all appurtenances;

g. Calculations justifying impoundment capacity; and

h. Groundwater monitoring plans for the facilities if required by the department. The groundwater monitoring plan shall include pertinent geohydrological data to justify upgradient and downgradient well location and depth.

11. Staging. Generic plans are required for staging of biosolids.

12. A biosolids management plan shall be provided that includes the following minimum site specific information at the time of permit application:

a. A comprehensive, general description of the operation shall be provided, including biosolids source or sources, quantities, flow diagram illustrating treatment works biosolids flows and solids handling units, site description, methodology of biosolids handling for application periods, including storage and nonapplication period storage, and alternative management methods when storage is not provided.

b. A nutrient management plan approved by the Department of Conservation and Recreation as required for application sites prior to department authorization under the following conditions:

(1) Sites operated by an owner or lessee of a confined animal feeding operation, as defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry feeding operation, as defined in subsection A of § 62.1-44.17:1.1 of the Code of Virginia;

(2) Sites where land application is proposed more frequently than once every three years at greater than 50% of the annual agronomic rate;

(3) Mined or disturbed land sites where land application is proposed at greater than agronomic rates; or

(4) Other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters.

13. Biosolids transport.

a. General description of transport vehicles to be used;

b. Procedures for biosolids offloading at the biosolids facilities and the land application site together with spill prevention, cleanup (including vehicle cleaning), field reclamation, and emergency spill notification and cleanup measures; and

c. Voucher system used for documentation and recordkeeping.

14. Field operations.

a. Storage.

(1) Routine storage at facilities not located at the site of the wastewater treatment plant – supernatant handling and disposal, biosolids handling, and loading of transport vehicles, equipment cleaning, freeboard maintenance, and inspections for structural integrity;

(2) On-site storage – procedures for department approval and implementation;

(3) Staging – procedures to be followed including either designated site locations provided in the "Design Information" or the specific site criteria for such locations including the liner/cover requirements and the time limit assigned to such use; and

(4) Field reestablishment of offloading (staging) areas.

b. Application methodology.

(1) Description and specifications on spreader vehicles;

(2) Procedures for calibrating equipment for various biosolids contents to ensure uniform distribution and appropriate loading rates on a day-to-day basis; and

(3) Procedures used to ensure that operations address the following constraints: application of biosolids to frozen ground, pasture/hay fields, crops for direct human consumption and saturated or ice-covered or snow-covered ground; establishment of setback distances, slopes, prohibited access for beef and dairy animals, and soil pH requirements; and proper site specific biosolids loading rates on a field-by-field basis.

15. An applicant for a permit authorizing the land application of biosolids shall provide to the department, and to each locality in which the applicant proposes to land apply biosolids, written evidence of financial responsibility. Evidence of financial responsibility shall be provided in accordance with requirements specified in Article 6 (9VAC25-32-770 et seq.) of Part IX (9VAC25-32-303 et seq.) of the Virginia Pollution Abatement (VPA) Permit Regulation.

16. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period.

b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

(1) The site name or number, contact person, mailing address, telephone number, and ~~electronic mail~~ email address for the surface disposal site; and

(2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site.

c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(1) The name or number and the location of the active sewage sludge unit;

(2) The unit's latitude and longitude to the nearest second, and method of determination;

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

(4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit ~~number(s)~~ number for leachate disposal;

(8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the

actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a) The name, contact person, mailing address, and ~~electronic mail~~ email address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(12) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any groundwater monitoring occurring at the active sewage sludge unit:

(a) A description of any groundwater monitoring occurring at the active sewage sludge unit;

(b) Any available groundwater monitoring data, with a description of the well locations and approximate depth to groundwater;

(c) A copy of any groundwater monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified groundwater scientist that the aquifer has not been contaminated; and

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

17. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period.

b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

(1) The name or number, contact person, mailing address, telephone number, and ~~electronic mail~~ email address of the sewage sludge incinerator; and

(2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator.

18. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

a. The name, contact person, mailing address, ~~electronic mail~~ email address, location, and all applicable permit numbers of the MSWLF;

b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;

c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Solid Waste Management Regulations, 9VAC20-81.

19. All applicants must provide the name, mailing address, telephone number, ~~electronic mail~~ email address, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to biosolids or sewage sludge generation, treatment, use, or disposal.

20. At the request of the department, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9VAC25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the biosolids use and sewage sludge disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and details satisfactory to the department.

21. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.

R. Applications for facilities with cooling water intake structures.

1. Application requirements. New facilities with new or modified cooling water intake structures. New facilities with cooling water intake structures as defined in 9VAC25-31-165 must report the information required under subdivisions 2, 3, and 4 of this subsection and under 9VAC25-31-165. Requests for alternative requirements under 9VAC25-31-165 must be submitted with the permit application.

2. Source water physical data. These include:

a. A narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including area dimensions, depths, salinity and temperature regimes, and other documentation that supports the determination of the water body type where each cooling water intake structure is located;

b. Identification and characterization of the source water body's hydrological and geomorphologic features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies; and

c. Location maps.

3. Cooling water intake structure data. These include:

a. A narrative description of the configuration of each cooling water intake structure and where it is located in the water body and in the water column;

b. Latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure;

c. A narrative description of the operation of each cooling water intake structure, including design intake flow, daily hours of operation, number of days of the year in operation, and seasonal changes, if applicable;

d. A flow distribution and water balance diagram that includes all sources of water to the facility, recirculation flows, and discharges; and

e. Engineering drawings of the cooling water intake structure.

4. Source water baseline biological characterization data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The department may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan as required in 9VAC25-31-165 should be revised. This supporting information must include existing data if available. Existing data may be supplemented with data from newly conducted field studies. The information must include:

a. A list of the data in subdivisions 4 b through 4 f of this subsection that is not available and efforts made to identify sources of the data;

b. A list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;

c. Identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;

d. Identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

e. Data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;

f. Identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at the cooling water intake structures;

g. Documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan; and

h. If information requested in this subdivision 4 is supplemented with data collected using field studies, supporting documentation for the source water baseline biological characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling ~~and/or~~ and data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

9VAC25-32-25. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced and incorporated in this chapter that regulation shall be as it exists and has been published in the July 1, ~~2017~~ 2023, update. ~~The final rule published in the Federal Register on August 28, 2017 (82 FR 40836), which amends 40 CFR Part 136, is also incorporated by reference in this chapter.~~

9VAC25-210-90. Conditions applicable to all VWP permits.

A. Duty to comply. The permittee shall comply with all conditions and limitations of the VWP permit. Nothing in this chapter shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, toxic standards, and prohibitions. Any VWP permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for enforcement action, VWP permit termination, VWP permit revocation, VWP permit modification, or denial of an application for a VWP permit extension or reissuance.

B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the

VWP permit that may have a reasonable likelihood of adversely affecting human health or the environment.

D. Inspection and entry. Upon presentation of credentials, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to conduct the actions listed in this section. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

1. Enter upon permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;

2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit; and

3. Sample or monitor any substance, parameter, or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

E. Duty to provide information. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the department prior to commencing construction.

F. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 as published in the 40 CFR July 1, ~~2017~~ 2023, update ~~and 82 FR 40836 (August 28, 2017)~~.

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

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of permit expiration. This period may be extended by request of the department at any time.

4. Records of monitoring information shall include as appropriate:

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

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

G. Duty to reapply. Any permittee desiring to continue a previously permitted activity after the expiration date of the VWP permit shall apply for and obtain a new permit or, if applicable, shall request an extension in accordance with 9VAC25-210-180.

9VAC25-610-130. Conditions applicable to all groundwater permits.

A. Duty to comply. The permittee shall comply with all conditions of the permit. Nothing in this chapter shall be construed to relieve the groundwater withdrawal permit holder of the duty to comply with all applicable federal and state statutes and prohibitions. At a minimum, a person must obtain a well construction permit or a well site approval letter from the Virginia Department of Health prior to the construction of any well for any withdrawal authorized by the Department of Environmental Quality. Any permit violation is a violation of the law and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit application.

B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a permit has been granted in order to maintain compliance with the conditions of the permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to:

1. Avoid all adverse impacts to lawful groundwater users ~~which~~ that could result from the withdrawal; and

2. Where impacts cannot be avoided, provide mitigation of the adverse impact as described in 9VAC25-610-110 D 3 g.

D. Inspection and entry. Upon presentation of credentials, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to conduct actions listed in this section. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

1. Entry upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the permit conditions;

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

3. Sample or monitor any substance, parameter, or activity for the purpose of ~~assuring~~ ensuring compliance with the conditions of the permit or as otherwise authorized by law.

E. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the department may request to determine whether cause exists for modifying or revoking, reissuing, or terminating the permit~~,~~ or to determine compliance with the permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

F. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 as published in the 40 CFR July 1, ~~2017~~ 2023, ~~update~~ and 82 FR 40836 (August 28, 2017).

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

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the expiration of a granted permit. This period may be extended by request of the department at any time.

4. Records of monitoring information shall include as appropriate:

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

b. The name of the individuals who performed the sampling or measurements;

c. The date the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

G. Permit action.

1. A permit may be modified or revoked as set forth in Part VI (9VAC25-610-290 et seq.) of this chapter.

2. If a permittee files a request for permit modification or revocation, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the department makes a final case decision. This provision shall not be used to extend the expiration date of the effective permit.

3. Permits may be modified or revoked upon the request of the permittee, or upon department initiative, to reflect the requirements of any changes in the statutes or regulations.

9VAC25-660-100. VWP general permit.

VWP GENERAL PERMIT NO. WP1 FOR IMPACTS LESS THAN ONE-HALF ACRE UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016
Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I.

Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts to less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the department in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-660-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-660-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs,

provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in

wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in a Department of Environmental Quality VWP general permit coverage letter, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection control structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

F. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and are accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II.

Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit.

2. Compensation options that may be considered under this VWP general permit include the purchase of mitigation bank credits or the purchase of in-lieu fee program credits with a primary service area that covers the impact site in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-660-70, and the associated provisions of 9VAC25-210-116.

3. The final compensation plan shall be submitted to and approved by the department prior to a construction activity in permitted impacts areas. The department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the department.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs remain on the project site and shall depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted ~~below~~ in this subdivision. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-660-100 Part II C. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first authorized impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered that require debris removal or involve a potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

6. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

7. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

8. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters, including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

9. Submittals required by this VWP general permit shall contain the following signed certification statement:

"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 violation."

Part III.

Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit ~~which~~ that may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. Coverage under this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of ~~assuring~~ ensuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the department of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The department does not within 15 days notify the current and new permittees of the board's intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-660-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the department after public notice and opportunity for a hearing in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the department that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to the VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the department shall follow the applicable procedures for termination under 9VAC25-210-180 and § 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-660-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the department information that the department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 ~~(2000)~~ as published in the July 1, 2023, update, Guidelines Establishing Test Procedures for the Analysis of Pollutants.

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

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general permit expiration. This period may be extended by request of the department at any time.

4. Records of monitoring information shall include, as appropriate:

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

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alter or degrade existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-660-27.

9VAC25-670-100. VWP general permit.

VWP GENERAL PERMIT NO. WP2 FOR FACILITIES AND ACTIVITIES OF UTILITIES AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016
Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of surface waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I.

Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the department in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-670-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-670-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species ~~which~~ that normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in such a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude any unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact areas where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in a Department of Environmental Quality VWP general permit coverage letter, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental

Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted steam flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands, not to exceed 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a trench drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

Part II.

Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-670-70.

3. The permittee-responsible compensation site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site. A site change may require a modification to coverage.

4. For compensation involving the purchase of mitigation bank credits or the purchase of in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or of the in-lieu fee program credit purchase has been submitted to and received by the Department of Environmental Quality.

5. The final compensation plan shall be submitted to and approved by the department prior to a construction activity in permitted impact areas. The department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the department.

a. The final permittee-responsible wetlands compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams, if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

b. The final permittee-responsible stream compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing or drawings of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

6. The following criteria shall apply to permittee-responsible wetland or stream compensation:

a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.

b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the department.

c. The Department of Environmental Quality shall be notified in writing prior to the initiation of construction activities at the compensation site.

d. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.

e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at a minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year or if the

wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

g. The surveyed wetland boundary for the compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

h. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the department. All vegetation removal shall be done by manual means, unless authorized by the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted ~~below~~ in this subdivision. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-670-100 Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites, including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year ~~1)~~ one) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years ~~1, 2, 3, and 5~~ one, two, three, and five, unless otherwise approved by the

Department of Environmental Quality. In all cases, if all success criteria have not been met in the fifth monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site, or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year following Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-670-100 Part II E 6.

D. Permittee-responsible stream compensation and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental Quality, heavy equipment may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo-monitoring stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year ~~1~~) one) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years ~~1~~ one and ~~2~~ two, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation site monitoring reports shall be submitted in accordance with 9VAC25-670-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The Department of Environmental Quality shall be notified in writing prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year, in which case the report shall be submitted at least 60 days prior to the expiration of the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site, including a site location map identifying photo-monitoring stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan that includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) Discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) Summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) Corrective action plan that includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered ~~which~~ that require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

11. Submittals required by this VWP general permit shall contain the following signed certification statement:

"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 violation."

Part III.

Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit ~~which~~ that may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of ~~assuring~~ ensuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing

contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the department of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The department does not within the 15 days notify the current and new permittees of the board's intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-670-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the department after public notice and opportunity for a hearing in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the department that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to the VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the department shall follow the applicable procedures for termination under 9VAC25-210-180 and § 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-670-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the department any information that the department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 ~~(2000)~~ as published in the July 1, 2023, update, Guidelines Establishing Test Procedures for the Analysis of Pollutants.

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

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general permit expiration. This period may be extended by request of the department at any time.

4. Records of monitoring information shall include, as appropriate:

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

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-670-27.

9VAC25-680-100. VWP general permit.

VWP GENERAL PERMIT NO. WP3 FOR LINEAR TRANSPORTATION PROJECTS UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016
Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I.

Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the department in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-680-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-680-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species ~~which~~ that normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless specifically approved by the Department of Environmental Quality on a case-by-case basis and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipe and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes or culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in Department of Environmental Quality VWP general permit coverage, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap aprons for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

F. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease, and the Department of Environmental Quality shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted.

6. For navigation channels the following shall apply:

a. A buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, filter bags, or other similar filtering practices, any of which shall be properly stabilized prior to placing the dredged material within the containment area.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

G. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II.

Construction and Compensation Requirements, Monitoring and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-680-70.

3. The permittee-responsible compensation site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site. A site change may require a modification to coverage.

4. For compensation involving the purchase of mitigation bank credits or the purchase of in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or of the in-lieu fee program credit purchase has been submitted to and received by the Department of Environmental Quality.

5. The final compensatory mitigation plan shall be submitted to and approved by the department prior to a construction activity in permitted impact areas. The department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the department.

a. The final permittee-responsible wetlands compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams, if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

b. The final permittee-responsible stream compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing or drawings of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate;

a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

6. The following criteria shall apply to permittee-responsible wetland or stream compensation:

a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.

b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the department.

c. The Department of Environmental Quality shall be notified in writing prior to the initiation of construction activities at the compensation site.

d. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.

e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete as confirmed by the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for the Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

g. The surveyed wetland boundary for the compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

h. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the department. All vegetation removal shall be done by manual means only, unless authorized by the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent

preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted ~~below~~ in this subdivision. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-680-100 Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites, including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year ~~1)~~ one) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years ~~1, 2, 3, and 5~~ one, two, three, and five, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured weekly during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-680-100 Part II E 6.

D. Permittee-responsible stream compensation and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks and channel

relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental Quality, heavy equipment may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo-monitoring stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year ~~1)~~ one) after stream compensation site constructions activities, including planting, have been completed. Monitoring shall be required for monitoring years ~~1~~ one and ~~2~~ two, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation site monitoring reports shall be submitted in accordance with 9VAC25-680-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The Department of Environmental Quality shall be notified in writing prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year, in which case the report shall be submitted at least 60 days prior to the expiration of the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan that includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) Discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) Summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) Corrective action plan that includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered ~~which~~ that require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

11. Submittals required by this VWP general permit shall contain the following signed certification statement:

"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 violation."

Part III.

Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit that may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of ~~assuring~~ ensuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the department of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The department does not within 15 days notify the current and new permittees of the board's intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-680-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the department after public notice and opportunity for a hearing in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the department that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the department shall follow the applicable procedures for termination under 9VAC25-210-180 and § 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-680-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit authorization or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the department any information that the department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 ~~(2000)~~ as published in the July 1, 2023, update, Guidelines Establishing Test Procedures for the Analysis of Pollutants.

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

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general permit expiration. This period may be extended by request of the department at any time.

4. Records of monitoring information shall include, as appropriate:

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

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after August 1, 2001, for linear transportation projects of the Virginia Department of Transportation, or on and after October 1, 2001, for all other projects, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-680-27.

9VAC25-690-100. VWP general permit.

VWP GENERAL PERMIT NO. WP4 FOR IMPACTS FROM DEVELOPMENT AND CERTAIN MINING ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016
Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I.

Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the department in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-690-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-690-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species ~~which~~ that normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or for mining activities covered by this general permit, the standards issued by the Virginia Department of Energy that are effective as those in the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and

streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in Department of Environmental Quality VWP general permit coverage, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized the Department of Environmental Quality. Restoration shall be the seeding of planting of the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive specifies identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

F. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease, and the Department of Environmental Quality shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted.

6. For navigation channels the following shall apply:

a. A buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, filter bags, or other similar filtering practices, any of which shall be properly stabilized prior to placing the dredged material within the containment area.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

G. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II.

Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-690-70.

3. The permittee-responsible compensation site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site. A site change may require a modification to coverage.

4. For compensation involving the purchase of mitigation bank credits or the purchase of in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or of the in-lieu fee program credit purchase has been submitted to and received by the Department of Environmental Quality.

5. The final compensation plan shall be submitted to and approved by the department prior to a construction activity in permitted impact areas. The department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the department.

a. The final permittee-responsible wetlands compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams, if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

b. The final permittee-responsible stream compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing or drawings of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

6. The following criteria shall apply to permittee-responsible wetland or stream compensation:

a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.

b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the department.

c. The Department of Environmental Quality shall be notified in writing prior to the initiation of construction activities at the compensation site.

d. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.

e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined, and a corrective action plan shall be submitted to the Department of

Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

g. The surveyed wetland boundary for the wetlands compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

h. Herbicides or algicides shall not be used in or immediately adjacent to the wetlands or stream compensation site or sites without prior authorization by the department. All vegetation removal shall be done by manual means, unless authorized by the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted ~~below~~ in this subdivision. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-690-100 Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites, including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year ~~1)~~ one) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years ~~1, 2, 3, and 5~~ one, two, three, and five, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-690-100 Part II E 6.

D. Permittee-responsible stream compensation and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental Quality, heavy equipment may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo-monitoring stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year ~~1)~~ one) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years ~~1~~ one and ~~2~~ two, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual

sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation site monitoring reports shall be submitted by in accordance with 9VAC25-690-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The Department of Environmental Quality shall be notified in writing prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year, in which case the report shall be submitted at least 60 days prior to the expiration of the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan that includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian

restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) Discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) Summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) Corrective action plan that includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered ~~which~~ that require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

11. Submittals required by this VWP general permit shall contain the following signed certification statement:

"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 violation."

Part III.

Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit ~~which~~ that may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credential, the permittee shall allow the department or any duly authorized agent of the department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of ~~assuring~~ ensuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the department of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The department does not within 15 days notify the current and new permittees of the board's intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-690-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the department after public notice and opportunity for a hearing in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the department that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the department shall follow the applicable procedures for termination under 9VAC25-210-180 and § 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-690-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the department any information that the department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 ~~(2000)~~ as published in the July 1, 2023, update, Guidelines Establishing Test Procedures for the Analysis of Pollutants.

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

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general permit expiration. This period may be extended by request of the department at any time.

4. Records of monitoring information shall include, as appropriate:

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

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-690-27.

9VAC25-790-210. Nonconventional methods, processes or equipment.

A. Policy. The policy of the department is to encourage the development of any new or nonconventional methods, processes, and equipment that appear to have application for the treatment or conveyance of sewage. Sewage treatment methods, processes, and equipment may be subject to a special permit application procedure if (i) they are not covered by the Manual of Practice (Part III (9VAC25-790-310 et seq.) of this chapter) and (ii) they are in principle, or application, deemed to be nonconventional.

B. Provisional CTO. The performance reliability of nonconventional processes and equipment shall have been thoroughly demonstrated through an approved testing program for similar installations (loadings of 75% or more of design level) before they may be considered for conventional approval and use. Where the department approves such a testing program, a provisional CTO will be issued for treatment works in which new or nonconventional processes and equipment are to be evaluated. The provisional CTO will specify conditions related to the testing requirements and agreements necessary for issuance of a final CTO. The owner of the facility shall submit the required test results to the department according to an approved schedule for approval prior to issuance of a final CTO. It is the owner's responsibility to operate in compliance with requirements imposed by permits issued for the sewerage system or treatment works.

C. Assurance resources. As a prerequisite to the issuance of a provisional CTO, the owner must furnish assurance of financial ability or resources available to modify, convert, or replace, the new or nonconventional processes or equipment in the event the performance reliability cannot be established over the period of time specified by the provisional CTO. These assurances may be in the form of funds placed in escrow, letters of credit, performance bonds, etc., which would revert to the facility owner if performance reliability cannot be established.

D. Performance reliability testing. All procedures used in testing of the performance reliability shall be conducted under the supervision of a licensed professional engineer who shall attest to the accuracy of sampling and testing procedures. The required samples shall be tested through a qualified laboratory. The testing program shall provide as a minimum the following:

1. Samples shall be collected at designated locations at a stated frequency and analyzed in accordance with provisions of the provisional CTO. The minimum testing period shall be 12 months under the comparable environmental and operational conditions for which the process and equipment will receive conventional approvals for any additional installations.

2. All analyses shall be made in accordance with the 19th Edition of Standard Methods for the Examination of Water and Wastewater (1995) and 40 CFR Part 136 as published in the 40 CFR July 1, ~~2017~~ 2023, update ~~and 82 FR 40836 (August 28, 2017)~~, or other approved analytical methods.

E. CTC. After the area engineer evaluates the plans and testing data, the director can issue a CTC if the performance data verifies that the method, process, or equipment can perform reliably in accordance with the design specifications and the operation standards of Part II, and that the method, process, or equipment may be installed as conventional for similar site specific operation.

F. Provisional CTO. Upon completion of construction or modification, a provisional CTO for a definite period of time will be issued for the operation of the nonconventional methods, processes, and equipment. Not more than one provisional CTO will be granted for a similar installation during the evaluation period. The provisional CTO shall require that:

1. The evaluation period shall be a minimum of 12 months and no longer than 18 months,

2. The holder of a provisional CTO must submit reports on operation during the evaluation period. The reports shall be prepared by either a licensed professional engineer experienced in the field of environmental engineering, the owner's operating or engineering staff, or a qualified testing firm.

G. Final CTO. The director will issue a final CTO upon lapse of the provisional CTO, if, on the basis of testing during that period, the new or nonconventional method, process, or equipment demonstrates reliable performance in accordance with permit requirements and the operation standards of Part II. If the standards are not met, then the owner shall provide for modification of the sewerage systems or treatment works, in a

manner that will enable those standards to be met in accordance with this chapter.

VA.R. Doc. No. R24-7077; Filed February 1, 2024, 4:04 p.m.

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC25-630. Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management.**

Agency Contact: Betsy Bowles, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 659-1913, or email betsy.bowles@deq.virginia.gov.

FORMS (9VAC25-630)

Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Waste Growers, RS VPG2 (eff. 2/2021)

Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Waste End-Users and Poultry Waste Brokers, RS End Users/Brokers VPG2 (eff. 2/2021)

~~Fact Sheet Requirements for Poultry Litter Use and Storage (eff. 2/2021)~~

Fact Sheet Requirements for Poultry Litter Use and Storage (rev. 1/2024)

VA.R. Doc. No. R24-7794; Filed January 26, 2024, 1:24 p.m.

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Proposed Regulation

Title of Regulation: **12VAC35-230. Operation of the Individual and Family Support Program (amending 12VAC35-230-10, 12VAC35-230-20, 12VAC35-230-90, 12VAC35-230-100, 12VAC35-230-110; adding 12VAC35-230-31, 12VAC35-230-35, 12VAC35-230-45, 12VAC35-230-55, 12VAC35-230-65, 12VAC35-230-75, 12VAC35-230-85; repealing 12VAC35-230-30, 12VAC35-230-40, 12VAC35-230-50, 12VAC35-230-60, 12VAC35-230-70, 12VAC35-230-80).**

Statutory Authority: § 37.2-203 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: April 26, 2024.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, TDD (804) 371-8977, or email ruthanne.walker@dbhds.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia authorizes the State Board of Behavioral Health and Developmental Services to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the Department of Behavioral Health and Developmental Services (DBHDS) and the Commissioner of DBHDS.

Purpose: These amendments are essential to protect the health, safety, and welfare of individuals with developmental disability (DD) who are on the waiting list for a Medicaid Home and Community-Based Services Developmental Disability Waiver and who reside in their own or their family homes, which include the home of the principal caregiver. The change from the current distribution of annual funds from a first-come, first-served basis will be to one based on program categories and set criteria that will be more needs-based and that has significant stakeholder input. The department, based on information gathered through public input and in consultation with the Individual and Family Support Program (IFSP) State Council, shall annually establish eligibility criteria, the award process, the appeals process, and any other protocols necessary for ensuring the effective use of state funds.

Substance: Amendments to 12VAC35-230 make clear the procedures for funding awards that (i) detail the criteria for annual awards that must be reviewed annually; (ii) set out that the IFSP State Council will work in consultation with DBHDS to establish eligibility criteria, the award process, the appeals process, and any other protocols necessary for ensuring the effective use of state funds; (iii) require additional stakeholder comment be sought; and (iv) clarify the following expectations for DBHDS in regard to community coordination: (a) engage with the public and stakeholders to establish programming that encourages the continued residence of individuals with DD in community settings; (b) establish the IFSP State Council; (c) coordinate the development of strategic plans and activities that are consistent with the IFSP goals through the work of the council; and (d) provide technical assistance to individuals or family members for the purpose of facilitating the purchase services that are intended to enhance or improve an individual's or family's quality of life and promote the independence and continued residence of an individual with DD in each individual's own home or the family home, which include the home of a principal caregiver. Additionally, amendments make

clear the department's responsibility regarding the establishment of procedures for eligibility determination, the award process, appeals process, and any other protocols necessary for ensuring the effective use of state funds. All procedures shall be published in draft form for public comment and in final form prior to opening the funding opportunity.

Issues: The primary advantage to the public is that people most in need of assistance will be considered based on defined categories of need. Also, the public will have the opportunity to comment annually on draft revisions of funding award procedures. The primary disadvantage to the public of implementing the amendments is that individuals on the waiting list for the Medicaid Home and Community-Based Services DD Waivers and their families will have to learn the new procedures for application for funding. Those who previously benefited from the first-come, first-served basis potentially may be categorized differently with the new structure. Additionally, a redesigned application portal will be available to the public that is intended to be more user-friendly. The primary advantage to DBHDS and the Commonwealth is confidence that the funds are distributed in a targeted manner. There are no disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. This regulatory action would make permanent an emergency regulation that has been in effect since January 19, 2023 and[2] that changed the distribution of Individual and Family Support Program (IFSP) funds from a first-come, first-served basis to one based on program categories and established criteria. This change results from Item 313.NN. of the 2022 Appropriation Act (Chapter 2, 2022 Special Session 1 Acts of Assembly).[3]

Background. IFSP assists individuals and their families who are on the waiting list for Virginia's Medicaid Home and Community-Based Services Developmental Disability Waivers with accessing short term, person-centered and family-centered resources, supports, and services. The purpose of the program is to support individuals with developmental disabilities living in the community, in either their own home or the home of a family member (which includes the home of the principal caregiver), until they start receiving services and supports from the Medicaid waivers. Unlike Medicaid waivers, which include federal funding, IFSP is fully funded from state general fund resources. The total annual amount of state funding has been $2.9 million since state fiscal year (FY) 2020, although funds available each year varied due to carry-overs of funding from previous fiscal years. In addition, prior to the emergency regulation up to $1,000 was available per person per year.

The impetus behind this action extends back to 1999, when the U.S. Supreme Court ruled in Olmstead v. L.C.[4] that the Americans with Disabilities Act requires public services and supports to be furnished in the most integrated settings appropriate to each person's needs in order to prevent their exclusion from the rights of citizenship. In 2009, the U.S. Department of Justice (DOJ) Civil Rights Division launched an aggressive effort to enforce Olmstead v. L.C. The division was involved in more than 40 matters in 25 states including Virginia.[5] In 2012, the Commonwealth of Virginia and DOJ signed a settlement agreement as a result of DOJ's investigation of services provided to individuals with intellectual disabilities in Virginia's training centers, as well as services in the community for individuals with intellectual and other developmental disabilities.[6]

In a 2021 report,[7] the court appointed independent reviewer stated that while the Commonwealth continues to make progress, it is not fully meeting the requirements related to individual and family supports. This report prompted the General Assembly to pass Item 313.NN. of the 2022 Appropriation Act, which mandated the Department of Behavioral Health and Developmental Services (DBHDS) promulgate emergency regulations to change the current distribution of annual IFSP funds from a first-come, first-served basis to one based on program categories and established criteria. Specifically, DBHDS was mandated to create an annual public input process that includes a survey of needs and satisfaction in order to establish plans for disbursing IFSP funding in consultation with the IFSP State Council (an advisory group that pre-dates the emergency regulation).

DBHDS is currently using three main tools to meet the directives of the General Assembly: the State Plan, which sets goals and expectations; the program guidelines, which set the funding allocation and the items and services that will be covered based on priority levels; and the scoring instructions to Community Service Boards (CSB) on how to determine the priority levels as individuals on the waitlist are assessed by community services boards for assignment into a particular waitlist priority category.

The goals in the current state IFSP plan[8] are as follows:

Goal 1: Ensure that at least 3,000 individuals with developmental disabilities and their families have access to funding that prioritizes those with the greatest needs and most at risk of institutionalization every year.

Goal 2: Establish an active individual and family council structure that is made up of one statewide council and a regional council in each of the five DBHDS regions for the purpose of assessing needs and distributing information to individuals on the waiting list.

Goal 3: Develop a comprehensive communication plan that provides information to individuals and families as well as stakeholders who support them at least semi-annually.

Goal 4: Ensure the IFSP Program will connect individuals to appropriate supports and services while waiting on the waiting list through My Life My Community, Family to Family, Peer Supports and/or the Regional Council Structure.

In order to achieve these goals, current funding guidelines[9] establish the following distribution of funding based on the waiver waitlist priority categorizations of 1, 2, and 3, as follows:

Priority 1: 50% of funds ($1,250,000). A maximum of $1000 per approved recipient. Application period will be open until funding is exhausted. Funding approval will be given to individuals in Priority 1 who are most at-risk of institutionalization indicated by a Critical Needs Summary score, as well as the date and time of the application is received.

Priorities 2 and 3 (combined): 50% of funds ($1,250,000). A maximum of $500 per approved recipient. Application period will be open for a month and then closed. No applications will be reviewed or funds distributed before the application period is closed. Funding approval will be given randomly to applicants within Priorities 2 and 3 based on the number of applications received and funds requested not to exceed predetermined funding amounts. IFSP will award funds to a randomized sample until all applicants in Priority 2 and 3 have had opportunity to access funding before repeating funding for previous awardees.

This guideline also establishes a detailed list of items and services that eligible for funding under three categories: safe living, community integration, and improved health outcomes. The priority levels in turn are assigned by the Community Service Boards based on a separate guideline.[10]

The process of establishing goals, priority levels, and scoring are all subject to change over time based on the Council's recommendation and information gathered during the public input period. More specifically, DBHDS will draft annual funding priorities and program criteria for each of the required program categories. These priorities and criteria will then be published in draft form for public comment and then in final form, prior to opening the funding opportunity, as part of the annual IFSP review process. Additionally, DBHDS, based on information gathered through public input and in consultation with the IFSP State Council, must annually establish eligibility criteria, the award process, the appeals process, and any other protocols necessary for ensuring the effective use of state funds.

The legislative mandate has already been implemented through an emergency regulation that became effective on January 19, 2023, and is currently set to expire on July 18, 2024. This proposed action would make the emergency regulation permanent.

Estimated Benefits and Costs. Prior to the emergency regulation, the total annual funding made available for IFSP in the budget was distributed based on a first-come, first-served approach. The legislative mandate directed DBHDS to adopt a distribution methodology based on assessment of needs, and to review and revise the needs assessment annually. Consequently, the proposed permanent action mainly sets out that IFSP funding awards will be based on annual funding priorities and program criteria developed by the DBHDS, in consultation with the IFSP State Council.

According to DBHDS, it would be impractical to establish specific criteria in the regulation because the regulatory timelines and review process specified by the Administrative Process Act are too inflexible to accommodate changes to criteria that would be subject to annual review and revisions within the annual state funding cycle. Thus, rather than setting specific criteria in regulation, the proposal sets out a process to determine criteria according to which an individual's needs would be assessed for funding purposes. Since the specific criteria would be fluid based on annual reviews and feedback, the distribution of funds among eligible persons and the types of services would be subject to change over time depending on future reviews and criteria.

As part of the needs approach, DBHDS has established in program guidelines that Priority 1 awards would be limited to no more than $1,000 per applicant and comprise 50% of the funding, and Priority 2 and 3 awards would be limited to no more than $500 and combined they would comprise the remaining 50% of the funding. Priority 2 and 3 applications are pooled together for consideration of awards. In the past, any applicant could be awarded up to $1,000 if their application was submitted before other applications. DBHDS states that the goal of the IFSP is to minimize the risk of being institutionalized by considering both the individual circumstances of the applicant and their family, which is not consistent with a first-come, first-served approach. Thus, the request for use of funds must fall under a type of support (based on a published list of allowable expenditures) within three categories: safe living, community integration, and improved health outcomes. By utilizing the priority levels as the criteria for funding awards, state resources would be more appropriately distributed.

It is worth noting that the IFSP resources are limited by the amount of funds allocated by the General Assembly. Hence, nothing in this regulatory action would affect the total amount of funding. Instead, the main effect that would result from the proposed regulation is the distribution of funding among individuals and the types of services and supports they receive, as driven by the specific criteria adopted and updated by DBHDS on an ongoing basis.

The following table compares the funding distribution resulting from the different methodologies: fiscal year FY 2020 (which was based on first-come, first-served approach) and FY 2023 (which is based on a needs assessment).[11, 12]

Funding, Applications and Awards	FY2020	FY2023
Total Funding	$2,500,226	$2,499,618
Applications Received	3,646	4,914
Applications Funded	2,531	3,770
Average Award Amount	$988	$663
Distribution of Requests by Type	FY $s and %	FY $s and %
Safe Living (Respite/Home repairs/Safety and Security Systems)	$646,170 (26%)	$923,133 (37%)
Improved Health Outcomes (Medical Care/Therapies/ Communication Devices)	$764,791 (31%)	$797,585 (32%)
Community Integration (Day Support/Transportation/ Summer Camps)	$647,996 (26%)	$778,900 (31%)
Emergency Supports (Rent or Mortgage/Utility Assistance)	$441,269 (18%)	$0 (0%)
Distribution of Funding by Priority Type	FY $s and %	FY $s and %
Priority 1 (up to a $1,000 award)	NA	$1,249,985 (50%)
Priority 2 (up to a $500 award)	NA	$703,179 (28%)
Priority 3 (up to a $500 award)	NA	$546,457 (22%)

Note that the decrease in the average award amount is driven in part by the increase in the number of applications received. Based on this comparison, the most significant result of the change in methodology appears to be in the distribution of funds by type of service. For example, emergency supports (which includes help with rent, mortgage, and utility assistance) has been eliminated and funds from this category have been redirected mostly to safe living (i.e., an 11% increase) and community integration (i.e., a 5.0% increase). According to DBHDS, the elimination of the emergency supports category occurred because IFSP funding is intended to meet one-time needs, not ongoing support needs such as rent, mortgage, and utility costs. In contrast, the funding amount allotted to improved health outcomes has seen only a modest increase (i.e., 1.0%).

Additionally, it appears that categorization of priorities would make some funding available at all priority levels. That is 50%, 28%, and 22% have been allotted to Priority categories 1, 2, and 3 respectively under the new distribution methodology. Awards in categories 2 and 3 would be given randomly, such that the percentage allotted would vary each year.

In theory, allocation of scarce resources based on needs rather than on a first-come, first-served basis should improve the efficiency of the distribution of funds and lead to better health, safety, and welfare outcomes in the aggregate. However, the expected improvement in outcomes results from the legislative mandate, not the regulatory change, because the regulation itself does not set the specific criteria. Instead, the regulation establishes a process wherein funding parameters (i.e., goals, priority levels, and scoring) will be revised on an ongoing basis outside the regulatory process. Moreover, this regulatory change does not result from a discretionary board action but rather the board's implementation of the legislative mandate.

Another effect of the legislative mandate, rather than the regulatory change, is an expected increase in administrative costs to continuously collect and evaluate data and revise the funding parameters on an annual basis. For example, the development of a new application process could potentially result in one-time costs for DBHDS staff to develop the new system. However, DBHDS reports ongoing efforts have contributed to greater technological functionality of the waiver system and IFSP system in recent years. The IFSP portal and the WaMS[13] system have been connected in order to facilitate automation across the entire system that, overall, has contributed to a reduction in the manual work performed by staff during the application process. As such, additional staff time required to develop and establish criteria is offset by the reduction in needed staff time associated with the improved automation. Additionally, DBHDS is not aware of any increase in the number of appeals. Also, the functionality of the IFSP system is expected to improve as a result of this change. For instance, under the first-come, first-served system, individuals would rush to submit their application as soon as the system opened, which lead to two major crashes of the IFSP Web portal. As there is no longer an individual benefit to applying first, DBHDS expects to see reduction in transient pressures on their computer system. Similarly, DBHDS expects that the IFSP State Council as well as CSBs will be able to handle the increased role in their consultation responsibilities by using existing resources. Finally, eligible individuals and their families would have to learn the new procedures involved with the application for funding if they have not already done so.

In summary, while the change in the IFSP funding distribution method would affect the distribution of funds among the eligible individuals and introduce some administrative compliance costs, those effects are the direct result of the legislative mandate and not the regulation itself. Instead, the main impact of the proposed regulation is to facilitate compliance with the legislative mandate by establishing a process to determine specific distribution criteria, evaluating those criteria, and revising them annually as directed.

Businesses and Other Entities Affected. The proposed changes mainly apply to individuals on the waiting list for Medicaid

waivers. In FY 2020 and FY 2023, there were 3,646 and 4,914 applications received, respectively.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[14] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the proposal would repeal regulatory text that has no application currently or in the future. Thus, no adverse impact is indicated.

Small Businesses[15] Affected.[16] The proposed amendments do not adversely affect small businesses.

Localities[17] Affected.[18] The proposed action by itself does not introduce costs nor particularly affect any locality more than others.

Projected Impact on Employment. The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property. No effects on the use and value of private property or real estate development costs are expected.

[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9690

[3]https://budget.lis.virginia.gov/item/2022/2/HB30/Chapter/1/313/

[4]Olmstead v. L.C., 527 U.S. 581 (1999).

[5]https://rga.lis.virginia.gov/Published/2015/RD385/PDF

[6]See United States of America v. Commonwealth of Virginia, Civil Action No. 3:12cv059-JAG, https://dbhds.virginia.gov/doj-settlement-agreement/

[7]https://dbhds.virginia.gov/assets/doc/settlement/indreview/ir-report-18th-review-period-as-filed-061421revised.pdf, page 55

[8]https://dbhds.virginia.gov/assets/MyLifeMyCommunity/IFSP-Councils/IFSP State% 20Plan.pdf

[9]https://dbhds.virginia.gov/assets/MyLifeMyCommunity/IFSP-Funding/IFSP-Funding Program Guidelines and FAQs.pdf

[10]https://dbhds.virginia.gov/library/developmental services/critical needs summary guidance 8 22 16.pdf

[11]Comparable data could not be constructed for FY2021 and FY2022 due to the data breach of the funding portal.

[12]Source: DBHDS

[13]Virginia Waiver Management System (WaMS) is the data management system that manages the DD waivers; houses a record of the Individualized Service Plan (ISP); is the entry point to request Service Authorization for DD waiver services; and, acts as a conduit for communication between providers, support coordinators, and DBHDS.

[14]Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

[16]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[17]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[18]Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The State Board of Behavioral Health and Developmental Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

Pursuant to Item 313 NN of Chapter 2 of the 2022 Acts of Assembly, Special Session I, the proposed amendments change the current distribution of annual Individual and Family Support Program (IFSP) funds from a first-come, first-served basis to one based on program categories and set criteria developed through an annual public input process that includes a survey of needs and satisfaction in order to establish plans for the disbursement of IFSP funding in consultation with the IFSP State Council. The proposed amendments establish (i) eligibility criteria, (ii) the award process, (iii) the appeals processes, and (iv) other protocols necessary for ensuring the effective use of state funds.

12VAC35-230-10. Definitions.

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

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Custodial family member" means a family member who has primary authority to make all major decisions affecting the individual and with whom the individual primarily resides.

"Department" means the Department of Behavioral Health and Developmental Services.

"Developmental disability" or "DD" means a severe, chronic disability of an individual that:

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments, other than a sole diagnosis of mental illness;

2. Is manifested before the individual ~~attains age~~ reaches 22 years of age;

3. Is likely to continue indefinitely;

4. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care; (ii) receptive and expressive language; (iii) learning; (iv) mobility; (v) self-direction; (vi) capacity for independent living; ~~and~~ or (vii) economic self-sufficiency; and

5. Reflects the individual's need for a combination and sequence of special, interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. ~~(42 USC § 15002)~~

An individual from birth to age nine years, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in subdivisions 1 through 5 of this definition if the individual, without services and supports, has a high probability of meeting those criteria later in life.

"Family member" means an immediate family member of an individual receiving services or the principal caregiver of that individual. A principal caregiver is a person who acts in the place of an immediate family member, including other relatives and foster care providers, but does not have a proprietary interest in the care of the individual receiving services. (§ 37.2-100 of the Code of Virginia)

~~"Individual and Family Support" means an array of individualized items and services that are intended to support the continued residence of an individual with intellectual or developmental disabilities (ID/DD) in his own or the family home.~~

~~"Intellectual disability" or "ID" means a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. (§ 37.2-100 of the Code of Virginia)~~

"Individual and Family Support Program" or "IFSP" means an array of individualized person-centered and family-centered resources, supports, items, services, and other assistance approved by the department that are intended to support the continued residence of individuals with developmental disabilities who are on the waiting list for a Medicaid Home and Community-Based Services Developmental Disability Waiver in each individual's own home or the family home, which includes the home of the principal caregiver.

"Individual and Family Support Program State Council" or "IFSP State Council" means an advisory group of stakeholders selected by the department that shall provide consultation to the department on creating a family support program intended to increase the resources and supports for individuals and families and promote community engagement and coordination. The IFSP State Council shall include individuals with DD and family members of individuals with DD.

"Medicaid HCBS DD Waiver" means a Medicaid Home and Community-Based Services Developmental Disability Waiver.

12VAC35-230-20. Program description.

A. The Individual and Family Support Program assists individuals with ~~intellectual disability or~~ developmental disabilities and their family members to access needed person-centered and family-centered resources, supports, services, and other assistance ~~as approved by the department. As such, Individual and Family Support Program funds shall be distributed directly to the requesting individual or family member or a third party designated by the individual or family member.~~ ~~B.~~ The overall objective of the Individual and Family Support Program is to support the continued residence of ~~an individual~~ individuals with ~~intellectual or~~ developmental disabilities in ~~his~~ each individual's own home or the family home, which ~~include~~ includes the home of a principal caregiver.

B. The department shall administer the IFSP funding awards directly or through a third party designated by the department to administer all or part of the IFSP, based on annual funding priorities and program criteria developed by the department in consultation with the department's IFSP State Council.

C. ~~Individual and Family Support Program~~ IFSP funds shall be distributed directly to the requesting individual or custodial family member or a third party designated by the individual or custodial family member. IFSP funds shall not supplant or in any way limit the availability of services provided through ~~a~~ Medicaid ~~Home and Community-Based Waiver, Early and Periodic Screening, Diagnosis, and Treatment, or similar~~ programs.

12VAC35-230-30. ~~Program eligibility requirements.~~ (Repealed.)

~~Eligibility for Individual and Family Support Program funds shall be limited to individuals who are living in their own or a family home and are on the statewide waiting list for the Intellectual Disability (ID) Medicaid Waiver or the Individual and Family Developmental Disabilities Support (IFDDS)~~

~~Medicaid Waiver and family members who are assisting those individuals.~~

12VAC35-230-31. Community coordination.

The department shall:

1. Ensure an annual public input process that encourages the continued residence of individuals on the waiting list for a Medicaid HCBS DD Waiver in community settings and includes a survey of needs and satisfaction.

2. Establish the IFSP State Council.

3. Develop, in coordination with the IFSP State Council, a strategic plan that is consistent with this chapter and the purpose of the IFSP and that is updated as necessary as determined by the department.

4. Provide technical assistance to individuals or family members to facilitate an individual's or a family member's access to covered services and supports listed in 12VAC35-230-55 that are intended to enhance or improve the individual's or family member's quality of life and promote the independence and continued residence of an individual with DD in the individual's own home or the family home, which includes the home of a principal caregiver.

12VAC35-230-35. Program eligibility requirements and policies.

A. Eligibility for IFSP funds shall be limited to individuals who are living in their own home or a family home and are on the statewide waiting list for a Medicaid HCBS DD Waiver and their custodial family members who are assisting those individuals.

B. The department, based on information gathered through public input and in consultation with the IFSP State Council, shall annually establish eligibility criteria, the award process, the appeals process, and any other protocols necessary for ensuring the effective use of state funds. All procedures used by the department for determining funding awards shall be published annually in draft form for public comment and in final form prior to opening the funding opportunity using the Virginia Regulatory Town Hall and the Virginia Register of Regulations.

C. For each funding period, the department shall base funding awards on the following published information:

1. Criteria for prioritized funding categories;

2. A summary of allowable expenditures;

3. Application deadlines; and

4. Award notification schedules.

D. All procedures used by the department for funding awards shall be reviewed annually.

12VAC35-230-40. ~~Program implementation.~~ (Repealed.)

~~A. Individual and Family Support Program funds shall be limited by the amount of funds allocated to the program by the General Assembly. Department approval of funding requests shall not exceed the funding available for the fiscal year.~~

~~B. Based on funding availability, the department shall establish an annual individual financial support limit, which is the maximum annual amount of funding that can be provided to support an eligible individual during the applicable fiscal year.~~

~~C. Individual and Family Support Program funds may be provided to individuals or family members in varying amounts, as requested and approved by the department, up to the established annual individual financial support limit.~~

~~D. On an annual basis, the department shall announce Individual and Family Support Program total funding availability and the annual individual financial support limit for the applicable fiscal year. This announcement shall include a summary of covered services, the application, and the application review criteria.~~

~~E. Individuals and family members may submit applications for Individual and Family Support Program funding as needs arise throughout the year. Applications shall be considered by the department on a first-come, first-served basis until the annual allocation appropriated to the program by the General Assembly for the applicable fiscal year has been expended.~~

~~F. Individuals and their family members may apply for Individual and Family Support Program funding each year and may submit more than one application in a single year; however, the total amount approved during the year shall not exceed the annual individual financial support limit.~~

12VAC35-230-45. Program implementation.

A. IFSP funds shall be limited by the amount of funds allocated to the IFSP by the General Assembly. The department approval of funding requests shall not exceed the funding available for the fiscal year. Based on information gathered through relevant data and public input, and in collaboration with the IFSP State Council, the department shall establish annual funding categories.

B. IFSP funds may be provided to individuals or custodial family members in varying amounts, as determined by the department's annually prioritized funding categories.

12VAC35-230-50. ~~Covered services and supports.~~ (Repealed.)

~~Services and items funded through the Individual and Family Support Program are intended to support the continued residence of an individual in his own or the family home and may include:~~

~~1. Professionally provided services and supports, such as respite, transportation services, behavioral consultation, and behavior management;~~

~~2. Assistive technology and home modifications, goods, or products that directly support the individual;~~

~~3. Temporary rental assistance or deposits;~~

~~4. Fees for summer camp and other recreation services;~~

~~5. Temporary assistance with utilities or deposits;~~

~~6. Dental or medical expenses of the individual;~~

~~7. Family education, information, and training;~~

~~8. Peer mentoring and family-to-family supports;~~

~~9. Emergency assistance and crisis support; or~~

~~10. Other direct support services as approved by the department.~~

12VAC35-230-55. Covered services and supports.

Services and items funded through the IFSP, as published annually, using the Virginia Regulatory Town Hall and the Virginia Register of Regulations, in accordance with this chapter, are intended to support the continued residence of an individual in that individual's own home or the family home and may be approved in the following three main categories: (i) safe community living, (ii) improved health outcomes, and (iii) community integration. No services or items shall be funded by the IFSP if not listed in the department's procedures or if covered by another entity.

12VAC35-230-60. ~~Application for funding.~~ (Repealed.)

~~A. Eligible individuals or family members who choose to apply for Individual and Family Support Program funds shall submit a completed application to the department.~~

~~B. Completed applications shall include the following information:~~

~~1. A detailed description of the services or items for which funding is requested;~~

~~2. Documentation that the requested services or items are needed to support the continued residence of the individual with ID/DD in his own or the family home and no other public funding sources are available;~~

~~3. The requested funding amount and frequency of payment; and~~

~~4. A statement in which the individual or family member:~~

~~a. Agrees to provide the department with documentation to establish that the requested funds were used to purchase only approved services or items; and~~

~~b. Acknowledges that failure to provide documentation that the requested funds were used to purchase only approved services or items may result in recovery of such funds and denial of subsequent funding requests.~~

~~C. The application shall be signed by the individual or family member requesting the funding.~~

12VAC35-230-65. Application for funding.

A. Eligible individuals or custodial family members who choose to apply for IFSP funds shall submit a completed application to the department.

B. Completed applications shall include the following information:

1. A description of the services or items for which funding is requested;

2. Acknowledgment that the requested services or items are needed to support the continued residence of the individual with DD in that individual's own home or the family home and no other public funding sources are available;

3. The requested funding amount; and

4. A statement in which the individual or custodial family member:

a. Agrees to provide to the department, if requested, documentation that the requested funds were used to purchase only services or items described in the application and approved by the department; and

b. Acknowledges that failure to provide documentation, when requested, that the funds applied for were used to purchase only services or items described in the application and approved by the department may result in recovery of such funds and denial of subsequent funding requests.

C. The application shall be signed by the individual or custodial family member requesting the funding.

12VAC35-230-70. ~~Application review criteria.~~ (Repealed.)

~~Upon receipt of a completed application, the department shall:~~

~~1. Verify that the individual is on the statewide ID or IFDDS Medicaid Waiver waiting list;~~

~~2. Confirm that the services or items for which funding is requested are eligible for funding in accordance with 12VAC35-230-50;~~

~~3. Determine that the services or items for which funding is requested are needed to support the continued residence of the individual with ID/DD in his own or the family home;~~

~~4. Determine that other public funding sources have been fully explored and utilized and are not available to purchase or provide the requested services or items;~~

~~5. Evaluate the cost of the requested services or items; and~~

~~6. Consider past performance of the individual and family members regarding compliance with this chapter.~~

12VAC35-230-75. Reporting.

A. For each funding period, the department shall develop and publish a summary, using the Virginia Regulatory Town Hall and the Virginia Register of Regulations, that details the total dollar amount of funded awards, a summary of expenditure requests, the number of applications received, and the number of applications and individuals approved for receipt of IFSP funds.

B. The department, with input from the IFSP State Council, shall develop an annual summary of accomplishments toward meeting the goals of the Virginia State Plan to Increase Individual and Family Supports.

12VAC35-230-80. ~~Funding decision-making process.~~ (Repealed.)

~~A. Applications may be approved at a reduced amount when the amount requested exceeds a reasonable amount as determined by department staff as being necessary to purchase the services or items.~~

~~B. Applications shall be denied if the department determines that:~~

~~1. The service or item for which funding is requested is not eligible for funding in accordance with 12VAC35-230-50;~~

~~2. The request exceeds the maximum annual individual financial support limit for the applicable fiscal year;~~

~~3. Other viable public funding sources have not been fully explored or utilized;~~

~~4. The requesting individual or family member has not used previously received Individual and Family Support Program funds in accordance with the department's written notice approving the request or has failed to comply with these regulations; or~~

~~5. The total annual Individual and Family Support Program funding appropriated by the General Assembly has been expended for the applicable fiscal year.~~

~~C. The department shall provide a written notice to the individual or family member who submitted the application indicating the funding decision.~~

~~1. Approval notices shall include:~~

~~a. The services, supports, or other items for which funding is approved;~~

~~b. The amount and time frame of the financial allocation;~~

~~c. The expected date that the funds should be released; and~~

~~d. Financial expenditure documentation requirements, and the date or dates by which this documentation shall be provided to the department.~~

~~2. For applications where funding is denied or approved at a reduced amount, the department's notice shall state the reason or reasons why the requested services, supports, or other items were denied or were approved at a reduced amount and the process for requesting the department to reconsider its funding decision.~~

12VAC35-230-85. Funding decision-making process.

A. Applications shall be denied if the department determines that the service or item for which funding is requested is not eligible for funding in accordance with 12VAC35-230-55, other public funding sources are available, or the total annual IFSP funding appropriated by the General Assembly has been expended for the applicable fiscal year.

B. Additionally, applications for IFSP funds may be denied if the requesting individual or custodial family member has not used previously received IFSP funds in accordance with the department's written notice approving the request or has failed to comply with this chapter.

C. The department shall provide a written notice to the individual or custodial family member who submitted the application indicating the funding decision, including the reason for denial of funding, if applicable.

12VAC35-230-90. Requests for reconsideration.

A. Individuals or custodial family members who disagree with the determination of the department may submit a written request for reconsideration to the commissioner~~,~~ or ~~his~~ the commissioner's designee~~,~~ within 30 days of the date of the written notice of denial or approval at a reduced amount.

B. The commissioner~~,~~ or ~~his~~ the commissioner's designee~~,~~ shall provide an opportunity for the person requesting reconsideration to submit for review any additional information or reasons why the funding should be approved as originally requested.

C. The commissioner~~,~~ or ~~his~~ the commissioner's designee, after reviewing all submitted materials shall render a written decision on the request for reconsideration within 30 calendar days of the receipt of the request and shall notify all involved parties in writing. The ~~commissioner's~~ decision shall be binding.

D. Applicants may obtain further review of the decision in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

12VAC35-230-100. Post-funding review.

A. Utilization review of documentation or verification of funds expended may be undertaken by department staff. Reviews may include home visits to view items purchased or services delivered.

B. Individuals and family members receiving ~~Individual and Family Support Program~~ IFSP funds shall permit the department representatives to conduct utilization reviews, including home visits.

C. Individuals and family members receiving ~~Individual and Family Support Program~~ IFSP funds shall fully cooperate with

such reviews and provide all information requested by the department.

D. Failure to use funds in accordance with the ~~department's written notice~~ procedures for funding awards or provide documentation, if requested, that the funds were used to purchase only approved services or items as described in the application and approved by the department may result in recovery of such by the department.

12VAC35-230-110. Termination of funding for services, supports, or other assistance.

Funding through the ~~Individual and Family Support Program~~ IFSP shall be terminated when the individual is enrolled in ~~the ID or IFDDS~~ a Medicaid HCBS DD Waiver if the individual is found to be no longer eligible to be on a waiting list for a Medicaid HCBS DD Waiver in accordance with 12VAC30-122-90 and any appeal has been exhausted, or if approved funds are used for purposes not approved by the department in its written notice. ~~Any~~ In such circumstance, any funds approved~~,~~ but not yet released~~, will be forfeited in such circumstances~~ shall not be disbursed.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (12VAC35-230)

Individual and Family Support Program Funding Application online application available at the Virginia Waiver Management System (WaMS) Portal at https://www.dbhds.virginia.gov/waitlistforms

VA.R. Doc. No. R23-4560; Filed February 7, 2024, 10:43 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **14VAC5-170. Rules Governing Minimum Standards for Medicare Supplement Policies (amending 14VAC5-170-75, 14VAC5-170-85, 14VAC5-170-95, 14VAC5-170-100, 14VAC5-170-130).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: April 1, 2024.

Agency Contact: Jackie Myers, Chief Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9630, or email jackie.myers@scc.virginia.gov.

Summary:

Pursuant to Chapters 371 and 372 of the 2023 Acts of Assembly, the amendments (i) expand the definition of a disability as a reason for eligibility for Medicare; (ii) establish a six-month period to enroll in a Medicare supplement policy for an individual who is younger than 65 years of age and is eligible for Medicare by reason of disability under 42 USC § 426-1; and (iii) place a limitation on premium rates that issuers may charge for plans for eligible persons

AT RICHMOND, FEBRUARY 5, 2024

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2023-00096

Ex Parte: In the matter of Amending

Rules Governing Minimum Standards

for Medicare Supplement Policies

ORDER ADOPTING AMENDMENTS TO RULES

On November 28, 2023, the State Corporation Commission ("Commission") entered an Order to Take Notice regarding a proposal by the Bureau of Insurance ("Bureau") to amend rules set forth in Chapter 170 of the Virginia Administrative Code, 14VAC5-170-10 et seq., entitled "Rules Governing Minimum Standards for Medicare Supplement Policies" ("Chapter 170").

The Bureau has recommended amendments to Chapter 170: specifically, to 14VAC5-170-75, 14VAC5-170-85, 14VAC5-170-95, 14VAC5-170-100 and 14VAC5-170-130. The Bureau states that the proposed amendments identify the specific requirements for offering policies to individuals under age 65 who are eligible for Medicare by reason of disability, clarify enrollment periods, and establish requirements for premium rates that may be charged for policies issued to such individuals. The Bureau asserts that these amendments are necessary to align the provisions of Chapter 170 with legislation enacted by the General Assembly during its 2023 regular session amending § 38.2-3610 of the Code of Virginia ("Code").[1]

The Order to Take Notice and proposed amendments to Chapter 170 were posted on the Commission's website; sent to all carriers licensed in Virginia to issue Medicare supplement policies or certificates and to all Life & Health interested persons on November 29, 2023; sent to the Office of the Virginia Attorney General's Division of Consumer Counsel

("Consumer Counsel"); and published in the Virginia Register of Regulations on December 18, 2023.

Licensees, Consumer Counsel, and other interested parties were afforded the opportunity to file written comments and/or request a hearing on or before January 19, 2024. No comments and no requests for a hearing were filed with the Clerk of the Commission.

The Bureau has recommended to the Commission that the amendments to Chapter 170 be adopted as proposed.

NOW THE COMMISSION, having considered this matter, concludes that the attached amendments to Chapter 170 should be adopted effective April 1, 2024.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to "Rules Governing Minimum Standards for Medicare Supplement Policies" at Chapter 170 of Title 14 of the Virginia Administrative Code, specifically 14VAC5-170-75, 14VAC5-170-85, 14VAC5-170-95, 14VAC5-170-100 and 14VAC5-170-130, which are attached hereto and made a part hereof, are hereby ADOPTED effective April 1, 2024.

(2) The Bureau shall provide notice of the adopted amendments to Chapter 170 to all insurers licensed in Virginia to issue Medicare supplement policies or certificates and to all Life & Health interested persons.

(3) The Commission's Office of General Counsel shall cause a copy of this Order, and the adopted amendments to Chapter 170, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the attached adopted amendments to Chapter 170 on the Commission's website: scc.virginia.gov/pages/Case-Information.

(5) The Bureau shall file with the Clerk of the Commission a certificate of compliance with the notice requirements of Ordering Paragraph (2) above.

(6) This case is dismissed.

Commissioner James C. Dimitri participated in this matter.

A COPY hereof shall be sent electronically by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219, MBrowder@oag.state.va.us; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie S. Blauvelt.

[1]See 2023 Va. Acts Chs. 371 and 372.

14VAC5-170-75. Benefit standards for 2010 Medicare supplement policies delivered on or after June 1, 2010.

A. The following standards are applicable to all Medicare supplement benefit plan policies or certificates delivered or issued for delivery in this Commonwealth with an effective date for coverage on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this Commonwealth as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any 1990 standardized Medicare supplement benefit plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued with an effective date for coverage prior to June 1, 2010, remain subject to the requirements of 14VAC5-170-70.

B. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this chapter.

1. A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

2. A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

3. A Medicare supplement policy or certificate shall provide that benefits designed to cover cost-sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

4. No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

5. Each Medicare supplement policy shall be guaranteed renewable.

a. The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

b. The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

c. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided in subdivision 5 e of this subsection, the issuer shall offer certificateholders an individual Medicare supplement policy ~~which~~ that, at the option of the certificateholder:

(1) Provides for continuation of the benefits contained in the group policy; or

(2) Provides for benefits that otherwise meet the requirements of this subsection.

d. If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(1) Offer the certificateholder the conversion opportunity described in subdivision 5 c of this subsection; or

(2) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

e. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

6. Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

7. a. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period not to exceed 24 months in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within 90 days after the date the individual becomes entitled to assistance.

b. If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificateholder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

c. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under § 226 (b) of the Social Security Act and is covered under a group health plan as defined in § 1862 (b)(1)(A)(v) of the Social Security Act. If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

d. Reinstitution of coverages as described in subdivisions 7 b and c of this subsection:

(1) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(2) Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and

(3) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have been applied to the policyholder or certificateholder had the coverage not been suspended.

C. Standards for basic (core) benefits common to Medicare supplement insurance benefit plans A, B, C, D, F, F with High Deductible, G, M, and N. Every issuer of Medicare supplement insurance benefit plans shall make available to any eligible individual age 65 years or older a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective eligible insureds age 65 years or older any of the other Medicare supplement insurance benefit plans in addition to the basic core package, but not in lieu of it.

1. Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

2. Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

3. Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

4. Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

5. Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a

prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible; and

6. Coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

D. Standards for additional benefits. The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, F with High Deductible, G, M, and N as provided by 14VAC5-170-85.

1. Medicare Part A deductible: Coverage for 100% of the Medicare Part A inpatient hospital deductible amount per benefit period.

2. Medicare Part A deductible: Coverage for 50% of the Medicare Part A inpatient hospital deductible amount per benefit period.

3. Skilled nursing facility care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

4. Medicare Part B deductible: Coverage for 100% of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

5. 100% of the Medicare Part B excess charges: Coverage for all of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

6. Medically necessary emergency care in a foreign country: Coverage to the extent not covered by Medicare for 80% of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

14VAC5-170-85. Standard plans for 2010 standardized Medicare supplement policies delivered on or after June 1, 2010.

A. The following standard plans are applicable to all Medicare supplement benefit plan policies or certificates delivered or issued for delivery in this Commonwealth with an effective date for coverage on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this Commonwealth as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued with an effective date for coverage before June 1, 2010, remain subject to the requirements of 14VAC5-170-80.

B. For persons age 65 years or older:

1. An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic (core) benefits, as defined in 14VAC5-170-75 C.

2. If an issuer makes available any of the additional benefits described in 14VAC5-170-75 D, or offers standardized benefit ~~Plans~~ Plan K or L (as described in subdivisions F 8 and F 9 of this section), then the issuer shall make available to each prospective policyholder and certificateholder, in addition to a policy form or certificate form with only the basic (core) benefits as described in subdivision 1 of this subsection, a policy form or certificate form containing either standardized benefit Plan C (as described in subdivision F 3 of this section) or standardized benefit Plan F (as described in subdivision F 5 of this section).

C. No groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this Commonwealth, except as may be permitted in subsection G of this section and 14VAC5-170-90.

D. Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit plans listed in this subsection and conform to the definitions in 14VAC5-170-30. Each benefit shall be structured in accordance with the format provided in 14VAC5-170-75 C and D; or, in the case of ~~plans~~ Plan K or L, in subdivision F 8 or F 9 of this section and list the benefits in the order shown. For purposes of this section, the term "structure, language, and format" means style, arrangement, and overall content of a benefit.

E. In addition to the benefit plan designations required in subsection D of this section, an issuer may use other designations to the extent permitted by law.

F. Make-up of 2010 standardized benefit plans:

1. Standardized Medicare supplement benefit Plan A shall include only the basic (core) benefits as defined in 14VAC5-170-75 C.

2. Standardized Medicare supplement benefit Plan B shall include only the basic (core) benefit as defined in 14VAC5-170-75 C, plus 100% of the Medicare Part A deductible as defined in 14VAC5-170-75 D 1.

3. Standardized Medicare supplement benefit Plan C shall include only the basic (core) benefit as defined in 14VAC5-170-75 C, plus 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B deductible, and medically necessary emergency care in a

foreign country as defined in 14VAC5-170-75 D 1, 3, 4, and 6, respectively.

4. Standardized Medicare supplement benefit Plan D shall include only the basic (core) benefit as defined in 14VAC5-170-75 C, plus 100% of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in 14VAC5-170-75 D 1, 3, and 6, respectively.

5. Standardized Medicare supplement benefit Plan F shall include only the basic (core) benefit as defined in 14VAC5-170-75 C, plus 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in 14VAC5-170-75 D 1, 3, 4, 5, and 6, respectively.

6. Standardized Medicare supplement benefit Plan F ~~With~~ with High Deductible shall include only 100% of covered expenses following the payment of the annual deductible as defined in subdivision 6 b of this subsection.

a. The basic (core) benefit as defined in 14VAC5-170-75 C, plus 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in 14VAC5-170-75 D 1, 3, 4, 5, and 6, respectively.

b. The annual deductible in Plan F ~~With~~ with High Deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be $1,500 and shall be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

7. Standardized Medicare supplement benefit Plan G shall include only the basic (core) benefit as defined in 14VAC5-170-75 C, plus 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in 14VAC5-170-75 D 1, 3, 5, and 6, respectively. Effective January 1, 2020, the standardized benefit plans described in 14VAC5-170-87 D 3 (Plan G with High Deductible) may be offered to any individual who was eligible for Medicare prior to January 1, 2020.

8. Standardized Medicare supplement benefit Plan K is mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following:

a. Part A hospital coinsurance 61st through 90th days: Coverage of 100% of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

b. Part A hospital coinsurance, 91st through 150th days: Coverage of 100% of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

c. Part A hospitalization after 150 days: Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

d. Medicare Part A deductible: Coverage for 50% of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subdivision 8 j of this subsection;

e. Skilled nursing facility care: Coverage for 50% of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in subdivision 8 j of this subsection;

f. Hospice care: Coverage for 50% of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in subdivision 8 j of this subsection;

g. Blood: Coverage for 50%, under Medicare Part A or B, of the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in subdivision 8 j of this subsection;

h. Part B cost sharing: Except for coverage provided in subdivision 8 i of this subsection, coverage for 50% of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in subdivision 8 j of this subsection;

i. Part B preventive services: Coverage of 100% of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

j. Cost sharing after out-of-pocket limits: Coverage of 100% of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $4,000 in 2006, indexed each year by the appropriate inflation

adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

9. Standardized Medicare supplement benefit Plan L is mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following:

a. The benefits described in subdivisions 8 a, b, c, and i of this subsection;

b. The benefit described in subdivisions 8 d, e, f, g, and h of this subsection, but substituting 75% for 50%; and

c. The benefit described in subdivision 8 j of this subsection, but substituting $2,000 for $4,000.

10. Standardized Medicare supplement benefit Plan M shall include only the basic (core) benefit as defined in 14VAC5-170-75 C, plus 50% of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in 14VAC5-170-75 D 2, 3, and 6, respectively.

11. Standardized Medicare supplement benefit Plan N shall include only the basic (core) benefit as defined in 14VAC5-170-75 C, plus 100% of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in 14VAC5-170-75 D 1, 3, and 6, respectively, with copayments in the following amounts:

a. The lesser of $20 or the Medicare Part B coinsurance or copayment for each covered health care provider office visit (including visits to medical specialists); and

b. The lesser of $50 or the Medicare Part B coinsurance or copayment for each covered emergency room visit; however, this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

G. New or innovative benefits. An issuer may, with the prior approval of the commission, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not otherwise available, and are cost-effective. Approval of new or innovative benefits must not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

14VAC5-170-95. Persons eligible by reason of disability.

A. ~~On or after January 1, 2021, an~~ An issuer that offers individual Medicare supplement policies ~~or certificates~~ shall offer ~~at least one of its Medicare supplement plans that it actively markets~~ to any individual who resides in this Commonwealth, is younger than 65 years of age, is eligible for Medicare by reason of disability as defined by 42 USC § 426(b) or 42 USC § 426-1, and is enrolled in Medicare Part A and B, or will be so enrolled by the effective date of coverage in accordance with the provisions of § 38.2-3610 of the Code of Virginia, at least one of its Medicare supplement plans that it actively markets to individuals. An issuer that offers Medicare supplement policies on a group basis shall offer to issue a Medicare supplement certificate, for at least one of the Medicare supplement plans issued to the group, to any individual who resides in this Commonwealth, is younger than 65 years of age, is eligible for Medicare by reason of disability as defined by 42 USC § 426(b) or 42 USC § 426-1, is eligible for enrollment in the group policy, and is enrolled in Medicare Part A and B, or will be so enrolled by the effective date of coverage in accordance with the provisions of § 38.2-3610 of the Code of Virginia. The Medicare supplement policy or certificate offered shall be guaranteed renewable. Such Medicare supplement policy or certificate shall be offered and issued during the following enrollment periods:

1. Upon the request of the individual during the six-month period beginning with the first month in which the individual is eligible for Medicare by reason of a disability. For those persons who are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision; or

2. Upon the request of the individual during the 63-day period following voluntary or involuntary termination of coverage under a group health plan.

B. ~~An individual who met the eligibility requirements outlined in subsection A of this section prior to January 1, 2021, shall begin a six-month period to enroll in a Medicare supplement policy or certificate on January 1, 2021.~~ For an individual eligible for Medicare by reason of disability under 42 USC § 426-1, the initial enrollment period shall be in accordance with § 38.2-3610 of the Code of Virginia.

C. A Medicare supplement policy or certificate issued to an individual under subsection A of this section shall not exclude benefits based on a preexisting condition if the individual has a continuous period of creditable coverage of at least six months as of the effective date of coverage.

D. An issuer ~~may develop premium rates specific to the class of individuals described in subsection A of this section~~ shall not charge an individual who is younger than 65 years of age and eligible for Medicare by reason of disability as defined by 42 USC § 426(b) or 42 USC § 426-1 a premium rate for any Medicare supplement policy or certificate offered by the issuer that exceeds the premium rate charged for such plan to an individual who is 65 years of age. This requirement applies to

any Medicare supplement policy or certificate issued or renewed on or after January 1, 2024.

14VAC5-170-100. Open enrollment ages 65 years and older.

A. An issuer shall ~~not~~ neither (i) deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this Commonwealth~~,~~ nor (ii) discriminate in the pricing of such a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the ~~six-month~~ six-month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants who qualify under this subsection ~~without regard to age~~.

B. 1. If an applicant qualifies under subsection A of this section and submits an application during the time period referenced in subsection A and, as of the date of application, has had a continuous period of creditable coverage of at least six months, the issuer shall not exclude benefits based on a preexisting condition.

2. If the applicant qualifies under subsection A of this section and submits an application during the time period referenced in subsection A and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this subsection.

C. Except as provided in subsection B of this section, 14VAC5-170-105, and 14VAC5-170-210, subsection A of this section shall not be construed as preventing the exclusion of benefits under a policy, during the first six months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six months before the coverage became effective.

14VAC5-170-130. Filing and approval of policies and certificates and premium rates.

A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this Commonwealth unless the policy form or certificate form has been filed with and approved by the State Corporation Commission in accordance with filing requirements and procedures prescribed by the State Corporation Commission.

In addition, no rider, endorsement, or amendment, including any rider, endorsement, or amendment designed to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 USC § 1395w-101), shall be attached to or printed or stamped upon a policy or certificate form delivered or issued for delivery in this Commonwealth unless the form of the rider, endorsement, or amendment has been filed with and approved by the State Corporation Commission.

B. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the State Corporation Commission in accordance with the filing requirements and procedures prescribed by the State Corporation Commission.

The filing shall also include a certification by a qualified actuary that to the best of the actuary's knowledge and judgment, the following items are true with respect to the filing:

1. The assumptions present the actuary's best judgment as to the reasonable value for each assumption and are consistent with the issuer's business plan at the time of the filing;

2. The anticipated lifetime loss ratio, future loss ratios, and except for policies issued prior to July 30, 1992, third-year loss ratio all exceed the applicable ratio;

3. The filing was prepared based on the current standards or practices as promulgated by the Actuarial Standards Board including the data quality standard of practice as described at www.actuary.org;

4. The filing is in compliance with applicable laws and regulations in this Commonwealth; and

5. The premiums are reasonable in relation to the benefits provided.

C. 1. Except as provided in subdivision 2 of this subsection, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

2. An issuer may offer, with the approval of the State Corporation Commission, up to ~~four~~ three additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

a. The inclusion of new or innovative benefits;

b. The addition of either direct response or agent marketing methods;

c. The addition of either guaranteed issue or underwritten coverage~~;~~

~~d. The offering of coverage to individuals eligible for Medicare by reason of disability~~.

3. For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

D. 1. Except as provided in subdivision 1 a of this subsection, an issuer shall continue to make available for purchase any policy form or certificate form issued after July 30, 1992, that has been approved by the State Corporation Commission. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous 12 months.

a. An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the State Corporation Commission in writing its decision at least 30 days prior to discontinuing the availability of the form of the policy or certificate.

b. An issuer that discontinues the availability of a policy form or certificate form pursuant to subdivision 1 a of this subsection shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the State Corporation Commission of the discontinuance. The period of discontinuance may be reduced if the State Corporation Commission determines that a shorter period is appropriate.

2. The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

3. A change in the rating structure or methodology shall be considered a discontinuance under subdivision 1 of this subsection unless the issuer complies with the following requirements:

a. The issuer provides an actuarial memorandum, in a form and manner prescribed by the State Corporation Commission, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

b. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The State Corporation Commission may approve a change to the differential ~~which~~ that is in the public interest.

E. 1. Except as provided in subdivision 2 of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in 14VAC5-170-120.

2. Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

VA.R. Doc. No. R24-7716; Filed February 6, 2024, 3:22 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF LONG-TERM CARE ADMINISTRATORS

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

Titles of Regulations: **18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators.**

18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators.

Agency Contact: Erin Barrett, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

FORMS (18VAC95-20)

Checklist and Instructions for Nursing Home Administrator Application for Initial Licensure (rev. 3/2023)

Checklist and Instructions for Nursing Home Administrator Application by Endorsement (rev. 3/2023)

Nursing Home Administrator Reinstatement Application (rev. 1/2024)

Checklist and Instructions for Nursing Home Administrator-in-Training (rev. 3/2023)

Nursing Home Administrator-in-Training Notice of Change of Status or Discontinuance (rev. 7/2020)

~~Checklist and Instructions for Nursing Home Administrator Preceptor Application (rev. 3/2023)~~

~~Preceptor Reinstatement Application (rev. 3/2023)~~

~~Checklist and Instructions for Nursing Home Administrator Reinstatement Application (rev. 3/2023)~~

Nursing Home Administrator Preceptor Application (rev. 1/2024)

Preceptor Reinstatement Application (rev. 1/2024)

Monthly Report of Nursing Home Administrator-in-Training (rev. 12/2022)

Nursing Home Administrator-in-Training Documentation of Completion Form (rev. 12/2022)

Proposed Administrator-in-Training Program Training Plan Domains of Practice (rev. 12/2022)

Continuing Education Affidavit of Completion for Nursing Home Administrators (rev. 12/2022)

Continued Education (CE) Credit Form for Volunteer Practice (rev. 7/2020)

FORMS (18VAC95-30)

Checklist and Instructions for Assisted Living Facility Administrator Application for Licensure (rev. 3/2023)

Assisted Living Facility Administrators Education and Experience Matrix (rev. 12/2022)

Monthly Report of Assisted Living Facility Administrator-in-Training (rev. 12/2022)

Assisted Living Facility Administrator-in-Training Documentation of Completion Form (rev. 12/2022)

Assisted Living Facility Administrator-in-Training Notice of Change of Status or Discontinuance (rev. 7/2020)

~~Checklist and Instructions for Assisted Living Facility Administrator Preceptor Application (rev. 3/2023)~~

Assisted Living Facility Administrator Preceptor Application (rev. 1/2024)

Proposed AIT Program Training Plan Domains of Practice (rev. 12/2022)

~~Checklist and Instructions for Assisted Living Facility Administrator Reinstatement Application (rev. 3/2023)~~

~~Checklist and Instructions for Assisted Living Facility Administrator Preceptor Reinstatement Application (rev. 3/2023)~~

Assisted Living Facility Administrator Reinstatement Application (rev. 1/2024)

Preceptor Reinstatement Application (rev. 1/2024)

Checklist and Instructions for Assisted Living Facility Administrator-in-Training (rev. 3/2023)

Checklist and Instructions for Acting Assisted Living Facility Administrator-in-Training (rev. 3/2023)

Continuing Education Affidavit of Completion for Assisted Living Facility Administrators (rev. 12/2022)

Continuing Education (CE) Credit Form for Volunteer Practice (rev. 7/2020)

Name/Address Change Form (rev. 1/2021)

Request for Verification of Virginia Long-Term Care Administrators License (rev. 11/2019)

VA.R. Doc. No. R24-7797; Filed January 30, 2024, 2:35 p.m.

BOARD OF PHARMACY

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

Agency Contact: Erin Barrett, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

FORMS (18VAC110-20)

Application for a Pharmacy Permit (rev. 1/2024)

~~Application for a Non-resident Pharmacy Registration (rev. 10/2020)~~

Application for a Non-Resident Pharmacy Registration (rev. 1/2024)

Application for a Non-Resident Wholesale Distributor Registration (rev. 10/2020)

Application for Registration as Nonresident Manufacturer (rev. 10/2020)

Application for a Non-Resident Third Party Logistics Provider Registration (rev. 10/2020)

Application for Registration as a Nonresident Warehouser (rev. 10/2020)

Application for a Non-resident Outsourcing Facility Registration (rev. 10/2020)

Application for an Outsourcing Facility Permit (rev. 10/2020)

Application for a Medical Equipment Supplier Permit (rev. 10/2020)

Application for a Permit as a Restricted Manufacturer (rev. 10/2020)

Application for a Permit as a Non-Restricted Manufacturer (rev. 10/2020)

Application for a License as a Wholesale Distributor (rev. 10/2020)

Application for a Permit as Warehouser (rev. 10/2020)

Application for a Permit as a Third-Party Logistics Provider (rev. 10/2020)

Application for Registration as a Non-resident Medical Equipment Supplier (rev. 10/2020)

Application for a Controlled Substances Registration Certificate (rev. 10/2020)

Closing of a Pharmacy (rev. 5/2018)

Application for Approval of an Innovative (Pilot) Program (rev. 8/2023)

Registration for a Pharmacy to be a Collection Site for Donated Drugs (rev. 5/2018)

Application for Approval of a Repackaging Training Program (rev. 10/2020)

Registration for a Facility to be an Authorized Collector for Drug Disposal (rev. 5.2018)

Application for Re-inspection of a Facility (rev. 3/2023)

Notification of Distribution Cessation due to Suspicious Orders (rev. 5/2018)

VA.R. Doc. No. R24-7795; Filed January 29, 2024, 9:27 a.m.

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, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: Vocational Rehabilitation Policy and Procedure Manual- Selected Chapters 2.1, 4.01, 5, 8.16, and 14.3.

Public Comment Deadline: March 27, 2024.

Effective Date: March 28, 2024.

Agency Contact: Charlotte Arbogast, Senior Policy Analyst and Regulatory Coordinator, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, or email charlotte.arbogast@dars.virginia.gov.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Title of Document: The Individual and Family Support Funding Guidelines Fiscal Year 2023.

Public Comment Deadline: March 27, 2024.

Effective Date: March 28, 2024.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, or email ruthanne.walker@dbhds.virginia.gov.

VIRGINIA INFORMATION TECHNOLOGIES AGENCY

Title of Document: IT Procurement Manual - Buy IT - January 2024 Update.

Public Comment Deadline: March 27, 2024.

Effective Date: March 28, 2024.

Agency Contact: Joshua Heslinga, Policy Planning Manager II, Virginia Information Technologies Agency, 7325 Beaufont Springs Drive, Richmond, VA 23225, telephone (804) 551-2902, or email joshua.heslinga@vita.virginia.gov.

BOARD OF PHARMACY

Title of Document: Pharmacy Inspection Deficiency Monetary Penalty Guide.

Public Comment Deadline: March 27, 2024.

Effective Date: March 28, 2024.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, 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.

STATE WATER CONTROL BOARD

Title of Document: Virginia Runoff Reduction Method Compliance Spreadsheet User's Guide and Documentation Version 4.1, July 2024.

Virginia Stormwater Management Handbook, Version 1.0.

Public Comment Deadline: March 27, 2024.

Effective Date: March 28, 2024.

Agency Contact: Rebecca Rochet, Deputy Director, Water Permitting Division, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23219, telephone (804) 801-2950, or email swmguidance@deq.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Public Meeting and Opportunity for Public Comment for a Cleanup Plan for the Pigg River, Beaverdam Creek, Fryingpan Creek, and Poplar Branch in Franklin, Pittsylvania, and Bedford Counties

Purpose of notice: The Department of Environmental Quality (DEQ) seeks public comment on the development of a cleanup plan for impaired waters, also known as an implementation plan (IP), for the Pigg River, Beaverdam Creek, Fryingpan Creek, and Poplar Branch in Franklin, Pittsylvania, and Bedford Counties. These streams are listed as impaired since monitoring data indicates that the waters do not meet Virginia's water quality standards for bacteria and aquatic life (benthic). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia requires DEQ to develop cleanup studies to address pollutants responsible for causing waters to be on Virginia's § 303(d) list of impaired waters. Once a cleanup study is developed, § 62.1-44.19:7 of the Code of Virginia outlines the requirements needed in a cleanup plan to address the pollutants contained in the study.

DEQ is developing a cleanup plan to identify the actions necessary to address the water quality impairment in the Pigg River, Beaverdam Creek, Fryingpan Creek, and Poplar Branch area. DEQ will introduce the community to the process used to develop the plan and invites the public to contribute to the plan by participating in IP community engagement meetings. Persons interested in participating may notify the DEQ contact and provide name, address, telephone number, email address, and the organization being represented (if any). The proposed cleanup plan will explain the pollutant reductions needed to meet the targets contained in both the bacteria (2006) and benthic (2022) TMDL report prepared for the watershed. The plan will also recommend a specific set of voluntary best management practices (BMPs) for agricultural lands, residential septic systems, pet waste, and urban practices to reduce both bacteria and sediment from entering area streams. It will also include associated costs and a timeline of the expected achievement of water quality objectives.

Cleanup plan location: The cleanup plan addresses the following impaired stream segments: Pigg River, Beaverdam Creek, Fryingpan Creek, and Poplar Branch. The impaired section of the Pigg River is listed for a recreational use impairment (E. coli) in three different segments (1.48 mi, 1.01 mi, and 1.94 mi). The impairment for Beaverdam Creek has two segments of recreational use impairments (4.98 mi and 5.35 mi). Fryingpan Creek is impaired from its headwaters downstream to about 0.85 miles downstream of the Route 40 crossing. Approximately 2.56 miles on Fryingpan Creek are impaired for aquatic life use, and a downstream portion is also impaired for E. coli. Poplar Branch is also impaired for the recreational use standard (E. coli) from its headwaters downstream to about 2.56 miles.

Public meeting: Franklin County Public Library, 355 Franklin Street, Franklin County, Rocky Mount, Virginia 24151 on February 29, 2024, at 4:30 p.m. In the event of inclement weather, the meeting will be held on March 7, 2024, at the same time and location.

Public comment period: February 29, 2024, to April 1, 2024.

How to comment: DEQ accepts written comments by email or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization represented (if any), mailing addresses, and telephone numbers of the commenter or requestor.

Contact the DEQ staff member listed at the end of this notice for public comments, document requests, and additional information

Information about this plan will be posted throughout the development process at https://www.deq.virginia.gov/our-programs/water/water-uality/implementation/implementation-plans-under-development.

Contact Information: Kimberly Romero, Department of Environmental Quality, 901 Russell Drive, Salem, Virginia 24153, telephone (540) 759-9075, or email kimberly.romero@deq.virginia.gov.

Proposed Enforcement Action for Rajavi Enterprises, Inc.

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Rajavi Enterprises, Inc. for violations of State Water Control Law and regulations at the facility located in Williamsburg, Virginia. The proposed consent order is available from the DEQ contact listed or at https://www.deq.virginia.gov/permits/public-notices. The DEQ contact will accept written comments from February 26, 2024, to March 27, 2024.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, Virginia 23462, or email russell.deppe@deq.virginia.gov.

Public Availability of the 2024 Annual Water Quality Monitoring Plan

Purpose of Notice: The Virginia Department of Environmental Quality (DEQ) is announcing the availability of the 2024 Water Quality Monitoring Plan (Monitoring Plan). The 2024 Monitoring Plan is available on the agency's website at https://www.deq.virginia.gov/our-programs/water/water-quality/monitoring/water-quality-monitoring-plan. An interactive map of the 2024 monitoring plan stations will be posted in mid-February through DEQ's online GIS map viewer at https://apps.deq.virginia.gov/EDM/.

Background: Every year, DEQ staff from the agency's six regional offices collect water samples for testing from more

than 1,500 locations across the Commonwealth. The agency's various monitoring activities for each calendar year are outlined in the annual statewide monitoring plan.

2024 Monitoring Plan: The 2024 Monitoring Plan summarizes DEQ's water quality monitoring activities to be conducted January 1 through December 31, and is developed for the purpose of implementing the goals and objectives of DEQ's Water Quality Monitoring Strategy, available at https://www.deq.virginia.gov/our-programs/water/water-quality/monitoring. This water quality information is presented in compliance with the Virginia Water Quality Monitoring, Information and the Restoration Act (§ 62.1-44.19:5 of the Code of Virginia) to help ensure public awareness of water quality issues and conditions. The 2024 Monitoring Plan contains detailed information on DEQ's monitoring activities, including the station locations, specific conditions, frequency of monitoring, and costs.

Contacts for More Information: Requests for more information on the 2024 Monitoring Plan can be directed to the DEQ staff member listed at the end of this notice. Additional information is also available on DEQ's Water Quality Monitoring website at https://www.deq.virginia.gov/our-programs/water/water-quality/monitoring.

Citizen Nominations for the 2024 Monitoring Plan: Citizens can nominate portions of lakes, streams, and rivers of Virginia for water quality monitoring by DEQ. Nominations received on or before April 30, 2024, will be considered for inclusion in DEQ's 2025 Monitoring Plan. More information on the citizen nomination process is available on DEQ's Citizen Monitoring website at https://www.deq.virginia.gov/our-programs/water/water-quality/monitoring/citizen-monitoring. Contact Meighan Wisswell at telephone (571) 866-6494 or email citizenwater@deq.virginia.gov for more information about the 2025 Monitoring Plan.

Contact Information: Roger Stewart, Department of Environmental Quality, 1111 East Main Street, Richmond, Virginia 23219, telephone (804) 659-1384, or email roger.stewart@deq.virginia.gov.

DEPARTMENT OF GENERAL SERVICES

Request for Comments on Revision to Fees for Drinking Water Laboratory Certification

Purpose of notice and background information: The Division of Consolidated Laboratory Services (DCLS) is seeking comment on the revision to fees charged for certifying drinking water laboratories under 1VAC30-41-270.

1VAC30-41-270 I 2 requires DCLS to increase or decrease annually the fees charged for certifying drinking water laboratories using the Consumer Price Index-Urban percentage change, average-average for the previous calendar year published by the U.S. Bureau of Labor Statistics in January. The percentage change, average-average for 2023 is an additional 4.1%. See the table labeled "Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month" at https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202312.pdf. The revised fees are exempt from the requirements of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). The Budget of the Commonwealth of Virginia at Item 80 C 3.a of Chapter 1 of the 2023 Acts of Assembly, Special Session I requires DCLS to provide notice and an opportunity to submit written comments on the revised fees.

The notice of fees for May 1, 2024, through April 30, 2025, will be published on the DCLS drinking water laboratory certification webpage after consideration of submitted comments.

Public comment period: February 26, 2024, through March 27, 2024.

How to comment: DCLS 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 DCLS by the last day of the comment period. All materials received are part of the public record. Email comments should be sent to rhonda.bishton@dgs.virginia.gov. The number for faxed comments is (804) 371-8305. Written comments should be sent to Rhonda Bishton, Regulatory Coordinator, Department of General Services, Attn: DCLS DW Fee Comments, 1100 Bank Street, Richmond, VA, 23219.

Notice of Fees For May 1, 2024, through April 30, 2025

DCLS requests comments on the following revised fees:

TESTING CATEGORY		FEE ($)
Microbiological testing		
	1 - 2 methods	785
	3 - 5 methods	915
	6+ methods	1046
Inorganic chemistry, nonmetals testing		
	1 - 2 methods	849
	3 - 5 methods	1109
	6 - 8 methods	1373
	9+ methods	1632
Inorganic chemistry, metals testing		

	1 - 2 methods	1305
	3 - 5 methods	1568
	6+ methods	1826
Organic chemistry		
	1 - 2 methods	1373
	3 - 5 methods	1632
	6 - 8 methods	1894
	9+ methods	2156
Radiochemistry		
	1 - 2 methods	1437
	3 - 5 methods	1698
	6+ methods	1959
Asbestos		
	1 - 2 methods	1175
	3 - 5 methods	1437
	6+ methods	**1698**

How fees are calculated: DCLS calculates a laboratory's total fee by adding the fees for the number of test methods in each category in the fee table for which the laboratory is certified or applies to be certified. Contact lab_cert@dgs.virginia.gov for more information about the fee category for a specific method.

Additional fees apply when a laboratory:
Applies for modification of certification under 1VAC30-41-110.
Is moving its location when the move requires DCLS to perform an onsite assessment.
Requests reinstatement of certification when DCLS requires an onsite assessment.

Hourly review fee and calculation of total fee: The fee to be charged is the sum of the total hourly charges for all reviewers plus any onsite assessment costs incurred. The hourly charge per reviewer is $80. The charge per reviewer is determined by multiplying the number of hours expended in the review by $80.

Onsite review and travel expenses: If an onsite review is required, travel time and onsite review time will be charged at the same hourly rate of $80 and any travel expenses will be added.

When to pay: Payment is due when the initial application is processed or annually thereafter upon receipt of the invoice from DCLS. Annual billing precedes the expiration of the current certificate.

How to pay: Fees may be paid by check or credit card via an electronic payment portal provided by DCLS, or other payment arrangements may be made by contacting lab_cert@dgs.virginia.gov. All payments are made after an invoice is issued by DCLS, in accordance with instructions on the invoice or in accordance with special arrangements made by contacting DCLS.

Contact Information: Rhonda Bishton, Director's Executive Administrative Assistant, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email rhonda.bishton@dgs.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Public Comment Period - Renewal of Community Living Waiver

The Department of Medical Assistance Services (DMAS) and the Department of Behavioral Health and Developmental Services (DBHDS) welcome public comment regarding the renewal submission to the U.S. Centers for Medicare and Medicaid Services (CMS) for the § 1915(c) Home and Community Based Services (HCBS) Community Living (CL) Medicaid Waiver.

This notice serves to inform interested parties that a 30-day public comment period opens February 1, 2024, and closes March 1, 2024. The § 1915(c) HCBS Waiver renewal application is available at https://dmas.virginia.gov/media/6508/community-living-waiver-renewal-application-effective-july-1-2024.pdf

The Commonwealth must submit a renewal every five years for the continuation of home and community-based services. The significant changes being requested in this renewal application are the following:

1. Allowing telehealth as an appropriate method of delivery for certain activities for the following services: community coaching, group day services, group supported employment, in-home support services, individual supported employment, and workplace assistance.

2. Updating language to the state's performance measures for compliance and reporting purposes to CMS.

3. Updating language to service specifications to match current regulations and practices.

To submit a comment:

Submit electronically via the Virginia Regulatory Town Hall public comment forum at https://townhall.virginia.gov/L/Forums.cfm.

Or submit via U.S. postal mail to:

Department of Medical Assistance Services

ATTN: Andrew Greer/Senior Policy Analyst – Office of Community Living

Suite 1300

600 East Broad Street

Richmond, VA 23219

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

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: Mailing Address: Virginia Code Commission, General Assembly Building, 201 North Ninth Street, Fourth 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.