



VIRGINIA

REGISTER OF REGULATIONS

VOL. 37 ISS. 11

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

JANUARY 18, 2021

TABLE OF CONTENTS

Register Information Page	1065
Publication Schedule and Deadlines	1066
Petitions for Rulemaking	1067
Periodic Reviews and Small Business Impact Reviews	1068
Notices of Intended Regulatory Action	1075
Regulations	1076
9VAC25-630. Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management (Final)	1076
18VAC110-20. Regulations Governing the Practice of Pharmacy (Final)	1097
20VAC5-340. Rules Governing Shared Solar Program (Final)	1098
20VAC5-342. Rules Governing Multi-Family Shared Solar Program (Final)	1111
22VAC40-677. State Oversight of a Local Social Services Department (Proposed)	1122
Guidance Documents	1126
General Notices	1128
Errata	1131

THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

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

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

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

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*.

If the Governor finds that the final regulation contains changes made after publication of the proposed regulation that have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified,

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

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

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

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

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

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

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

February 2021 through February 2022

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
37:12	January 13, 2021	February 1, 2021
37:13	January 27, 2021	February 15, 2021
37:14	February 10, 2021	March 1, 2021
37:15	February 24, 2021	March 15, 2021
37:16	March 10, 2021	March 29, 2021
37:17	March 24, 2021	April 12, 2021
37:18	April 7, 2021	April 26, 2021
37:19	April 21, 2021	May 10, 2021
37:20	May 5, 2021	May 24, 2021
37:21	May 19, 2021	June 7, 2021
37:22	June 2, 2021	June 21, 2021
37:23	June 16, 2021	July 5, 2021
37:24	June 30, 2021	July 19, 2021
37:25	July 14, 2021	August 2, 2021
37:26	July 28, 2021	August 16, 2021
38:1	August 11, 2021	August 30, 2021
38:2	August 25, 2021	September 13, 2021
38:3	September 8, 2021	September 27, 2021
38:4	September 22, 2021	October 11, 2021
38:5	October 6, 2021	October 25, 2021
38:6	October 20, 2021	November 8, 2021
38:7	November 3, 2021	November 22, 2021
38:8	November 15, 2021 (Monday)	December 6, 2021
38:9	December 1, 2021	December 20, 2021
38:10	December 15, 2021	January 3, 2022
38:11	December 29, 2021	January 17, 2022
38:12	January 12, 2022	January 31, 2022
38:13	January 26, 2022	February 14, 2022

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF VETERINARY MEDICINE

Initial Agency Notice

Title of Regulation: 18VAC150-20. Regulations Governing the Practice of Veterinary Medicine.

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

Name of Petitioner: Mia Cary.

Nature of Petitioner's Request: To amend regulations to add a requirement for one hour of continuing education on the subjects of diversity, equity, and inclusion.

Agency Plan for Disposition of Request: The petition will be published on January 18, 2021, in the Virginia Register of Regulations and also posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment ending February 18, 2021.

Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its first meeting after the comment period, which is scheduled for March 11, 2021. The petitioner will be informed of its decision after that meeting.

Public Comment Deadline: February 18, 2021.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA, 23233, telephone (804) 597-4130, or email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. PFR21-16; Filed December 15, 2020, 9:43 a.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-210, Virginia Water Protection Permit Program Regulation**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated November 5, 2020, to support this decision.

This regulation is necessary for the protection of state waters and the uses of such waters; animal and aquatic life; and public health, safety, and welfare. This regulation establishes general procedures and requirements for the issuance of Virginia Water Protection (VWP) permits for the activities authorized by such permits in accordance with the provisions of State Water Control Law and the Clean Water Act. This regulation is clearly written and easily understandable.

The regulation is effective, continues to be needed, and is being retained. This regulation establishes procedures and requirements for the issuance of VWP permits. One comment was received during the periodic review supporting the current regulation. Comments were also submitted requesting the regulation be revised.

This regulation establishes procedures for applying for a VWP permit and permit coverage, criteria to be met as part of the permit and permit coverage, and the processes for issuing VWP permits and permit coverage. This regulation is clearly written and easily understandable. This regulation includes the joint application process, a process for obtaining corresponding permits from the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and local wetlands boards. This process assists the applicants with obtaining approvals needed for their project through a consolidated submission of information. This process does not conflict with state or federal law.

The Virginia Water Protection Permit Program regulation was last amended by the State Water Control Board in 2020 to conform to changes to state law. This regulation protects water quality in Virginia. This regulation does allow for some activities to occur under the provisions of individual permits, or general permits and general permit coverage. The use of general permits minimizes the impact the regulations have on a segment of the regulated community, which may potentially benefit small businesses.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-660, Virginia Water Protection General Permit for Impacts Less Than One-Half Acre**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated November 5, 2020, to support this decision.

This regulation is necessary for the protection of state waters and the uses of such waters; animal and aquatic life; and public health, safety, and welfare. This regulation establishes general procedures and requirements for the issuance of coverage under Virginia Water Protection (VWP) general permits for activities for impacts less than one half acre in accordance with the provisions of State Water Control Law and the federal Clean Water Act. This general permit regulation provides a streamlined permitting process for projects meeting certain requirements. This regulation is clearly written and easily understandable.

The regulation is effective, continues to be needed, and is being retained. This regulation issues the VWP general permit for impacts less than one-half acre. The regulation also establishes streamlined procedures and requirements for the issuance of coverage under this general permit. Without general permit regulations, the only option would be to seek authorization under an individual permit.

One comment was received during the periodic review supporting the current regulation. Comments were also submitted requesting the regulation be revised. This regulation establishes procedures for applying for VWP general permit coverage, criteria to be met as part of the permit and permit coverage, and the process for issuing VWP permit coverage. This regulation is clearly written and easily understandable.

The basis for this regulation is State Water Control Law, the Clean Water Act, and the Virginia Water Protection Permit Program regulation (9VAC25-210). The general permit is a streamlined permitting process for projects that would otherwise be required to obtain an individual permit under 9VAC25-210. This regulation includes the joint application process, a process for obtaining corresponding permits from the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and local wetlands boards. This process assists the applicants with obtaining approvals needed for their project through a consolidated submission of information. This process does not conflict with state or federal law.

The Virginia Water Protection General Permit for Impacts Less Than One-Half Acre was last amended by the State Water Control Board in 2020 to conform to changes in state law. This regulation protects water quality in Virginia. This regulation does allow for some activities to occur under the provisions of general permits and general permit coverage. The use of

Periodic Reviews and Small Business Impact Reviews

general permits minimizes the impact the regulations have on a segment of the regulated community, which may potentially benefit small businesses.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-670, 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**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated November 5, 2020, to support this decision.

This regulation is necessary for the protection of state waters and the uses of such waters; animal and aquatic life; and public health, safety, and welfare. This regulation establishes general procedures and requirements for the issuance of coverage under Virginia Water Protection (VWP) general permits for facilities and activities of utility and public service companies regulated by the Federal Energy Regulatory Commission (FERC) or the State Corporation Commission (SCC) and other utility line activities in accordance with the provisions of State Water Control Law and the federal Clean Water Act. This general permit regulation provides a streamlined permitting process for projects meeting certain requirements. This regulation is clearly written and easily understandable.

The regulation is effective, continues to be needed, and is being retained. This regulation issues the VWP general permit for facilities and activities of utility and public service companies regulated by the FERC or the SCC and other utility line activities. The regulation also establishes streamlined procedures and requirements for the issuance of coverage under this general permit. Without general permit regulations, the only option would be to seek authorization under an individual permit.

One comment was received during the periodic review supporting the current regulation. Comments were also submitted requesting the regulation be revised. This regulation establishes procedures for applying for VWP general permit coverage, criteria to be met as part of the permit and permit coverage, and the process for issuing VWP permit coverage. This regulation is clearly written and easily understandable.

The basis for this regulation is State Water Control Law, the Clean Water Act, and the Virginia Water Protection Permit Program regulation (9VAC25-210). The general permit is a streamlined permitting process for projects that would otherwise be required to obtain an individual permit under

9VAC25-210. This regulation includes the joint application process, a process for obtaining corresponding permits from the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and local wetlands boards. This process assists the applicants with obtaining approvals needed for their project through a consolidated submission of information. This process does not conflict with state or federal law.

The Virginia Water Protection General Permit for facilities and activities of utility and public service companies regulated by the FERC or the SCC and other utility line activities in 2020 to conform to changes in state law. This regulation protects water quality in Virginia. This regulation does allow for some activities to occur under the provisions of general permits and general permit coverage. The use of general permits minimizes the impact the regulations have on a segment of the regulated community, which may potentially benefit small businesses.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-680, Virginia Water Protection General Permit for Linear Transportation Projects**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated November 5, 2020, to support this decision.

This regulation is necessary for the protection of state waters and the uses of such waters; animal and aquatic life; and public health, safety, and welfare. This regulation establishes general procedures and requirements for the issuance of coverage under Virginia Water Protection (VWP) general permits for linear transportation projects in accordance with the provisions of State Water Control Law and the Clean Water Act. This general permit regulation provides a streamlined permitting process for projects meeting certain requirements. This regulation is clearly written and easily understandable.

The regulation is effective, continues to be needed, and is being retained. This regulation issues the VWP general permit for linear transportation projects. The regulation also establishes streamlined procedures and requirements for the issuance of coverage under this general permit. Without general permit regulations, the only option would be to seek authorization under an individual permit.

One comment was received during the periodic review supporting the current regulation. Comments were also submitted requesting the regulation be revised. This regulation establishes procedures for applying for VWP general permit coverage, criteria to be met as part of the permit and permit

Periodic Reviews and Small Business Impact Reviews

coverage, and the process for issuing VWP permit coverage. This regulation is clearly written and easily understandable.

The basis for this regulation is State Water Control Law, the Clean Water Act, and the Virginia Water Protection Permit Program regulation (9VAC25-210). The general permit is a streamlined permitting process for projects that would otherwise be required to obtain an individual permit under 9VAC25-210. This regulation includes the joint application process, a process for obtaining corresponding permits from the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and local wetlands boards. This process assists the applicants with obtaining approvals needed for their project through a consolidated submission of information. This process does not conflict with state or federal law.

The Virginia Water Protection General Permit for Linear Transportation Projects was last amended in 2020 to conform to changes in state law. This regulation protects water quality in Virginia. This regulation does allow for some activities to occur under the provisions of general permits and general permit coverage. The use of general permits minimizes the impact the regulations have on a segment of the regulated community, which may potentially benefit small businesses.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-690, Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated November 5, 2020, to support this decision.

This regulation is necessary for the protection of state waters and the uses of such waters; animal and aquatic life; and public health, safety, and welfare. This regulation establishes general procedures and requirements for the issuance of coverage under Virginia Water Protection (VWP) general permits for impacts from development and certain mining activities in accordance with the provisions of State Water Control Law and the federal Clean Water Act. This general permit regulation provides a streamlined permitting process for projects meeting certain requirements. This regulation is clearly written and easily understandable.

The regulation is effective, continues to be needed, and is being retained. This regulation issues the VWP general permit for impacts from development and certain mining activities. The regulation also establishes streamlined procedures and requirements for the issuance of coverage under this general

permit. Without general permit regulations, the only option would be to seek authorization under an individual permit.

One comment was received during the periodic review supporting the current regulation. Comments were also submitted requesting the regulation be revised. This regulation establishes procedures for applying for VWP general permit coverage, criteria to be met as part of the permit and permit coverage, and the process for issuing VWP permit coverage. This regulation is clearly written and easily understandable.

The basis for this regulation is State Water Control Law, the Clean Water Act, and the Virginia Water Protection Permit Program regulation (9VAC25-210). The general permit is a streamlined permitting process for projects that would otherwise be required to obtain an individual permit under 9VAC25-210. This regulation includes the joint application process, a process for obtaining corresponding permits from the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and local wetlands boards. This process assists the applicants with obtaining approvals needed for their project through a consolidated submission of information. This process does not conflict with state or federal law.

The Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities was last amended by the State Water Control Board in 2020 to conform to changes in state law. This regulation protects water quality in Virginia. This regulation does allow for some activities to occur under the provisions of general permits and general permit coverage. The use of general permits minimizes the impact the regulations have on a segment of the regulated community, which may potentially benefit small businesses.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238.



TITLE 17. LIBRARIES AND CULTURAL RESOURCES

BOARD OF HISTORIC RESOURCES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Historic Resources conducted a periodic review and a small business impact review of **17VAC5-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated September 22, 2020, to support this decision.

Periodic Reviews and Small Business Impact Reviews

This regulation meets the criteria set out in Executive Order 14, as amended, July 16, 2018, as it is necessary for the protection of public health, safety, and welfare and is clearly written and easily understandable. This regulation satisfies the provisions of the law and legally binding state requirements and is effective in meeting its goals. The regulation is, therefore, being retained without amendment.

This regulation continues to be needed to meet the requirements of state law and regulations concerning public participation guidelines. No complaints or comments have been received concerning the content of the regulation or its complexity. The regulation sets out the state requirements for public participation and does not overlap, duplicate, or conflict with other state laws or regulations.

Contact Information: Jennifer Pullen, Executive Assistant, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6085.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Historic Resources conducted a periodic review and a small business impact review of **17VAC5-20, Regulations Governing Permits for the Archaeological Removal of Human Remains**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated September 22, 2020, to support this decision.

This regulation meets the criteria set out in Executive Order 14, as amended, July 16, 2018, as it is necessary for the protection of public health, safety, and welfare and is clearly written and easily understandable. This regulation satisfies the provisions of the law and legally binding state requirements and is effective in meeting its goals. The regulation is, therefore, being retained without amendment.

This regulation continues to be needed to meet the requirements of state law and regulations concerning the regulations governing permits for the archaeological removal of human remains. No complaints or comments have been received concerning the content of the regulation or its complexity. The regulation sets out the state requirements for issuing permits for the archaeological removal of human remains and does not overlap, duplicate, or conflict with other state laws or regulations.

Contact Information: Jennifer Pullen, Executive Assistant, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6085.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Historic Resources conducted a periodic review and a small business impact review of **17VAC5-30, Evaluation Criteria and Procedures for Designations by**

the Board of Historic Resources, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated September 22, 2020, to support this decision.

This regulation meets the criteria set out in Executive Order 14, as amended, July 16, 2018, as it is necessary for the protection of public health, safety, and welfare and is clearly written and easily understandable. This regulation satisfies the provisions of the law and legally binding state requirements and is effective in meeting its goals. The regulation is, therefore, being retained without amendment.

This regulation continues to be needed to meet the requirements of state law and regulations concerning the evaluation criteria and procedures for designations by the Board of Historic Resources. No complaints or comments have been received concerning the content of the regulation or its complexity. The regulation sets out the state requirements for evaluating criteria and procedures and does not overlap, duplicate, or conflict with other state laws or regulations.

Contact Information: Jennifer Pullen, Executive Assistant, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6085.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board (CTB) conducted a periodic review and a small business impact review of **24VAC30-61, Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated September 18, 2020, to support this decision.

This regulation meets the criteria set out in Executive Order 14. The regulation is necessary for the protection of the public health, safety, and welfare. A hazardous material spill in a bridge-tunnel facility can be particularly difficult to clean up and can cause significant damage, especially when the facility is in an urban area or near water. The regulation is clearly written and easily understandable.

The CTB is proposing to retain the regulation as is. The regulation provides restrictions on the transport of hazardous materials over state-owned bridge-tunnel facilities (four urban, water-proximate facilities in the Hampton Roads District, and two rural, distanced-from water facilities in the Bristol

Periodic Reviews and Small Business Impact Reviews

District). The Commonwealth Transportation Board believes the existing regulation is the least burdensome means for addressing the purpose of the regulation. There is a continued need for this regulation as it provides safety guidelines and rules for transporting hazardous materials through bridge-tunnel facilities. The CTB has received no complaints concerning this regulation. There is no overlap, duplication, or conflict with federal or state law or regulation. Only members of the trucking industry traveling on specific facilities are affected by this regulation, so it is limited in the number of affected parties as well as the location of the routes. The regulation was last reviewed in 2010.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board (CTB) conducted a periodic review and a small business impact review of **24VAC30-315, Standards for Use of Traffic Control Devices to Classify, Designate, Regulate, and Mark State Highways**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated September 20, 2020, to support this decision.

The CTB recommends retaining the regulation as is. The regulation is required by federal law and promotes the health, safety and welfare of the travelling public. The regulation is necessary for the protection of public health, safety, and welfare. Uniform standards for traffic control devices (signs, roadway markings, traffic signals, work zone devices, and highway/rail grade crossing devices) promote safe, orderly, and efficient use of the highways for all road users. The regulation is clearly written and easily understandable.

The regulation remains needed. The CTB has received no complaints concerning the regulation, and although long and detailed, the regulation is not complex. The regulation adopts federal standards as required by federal law and does not conflict with that federal law. The regulation was adopted in 2012 pursuant to a CTB resolution dated December 7, 2011, and has not been amended since.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board (CTB) conducted a periodic review and a small business impact review of **24VAC30-340, Debarment or Suspension of Contractors**, and determined that this regulation should be

repealed. The board is publishing its report of findings dated September 21, 2020, to support this decision.

Although the regulation is clearly written and easily understandable, the regulation is not necessary for the protection of public health, safety, and welfare because it merely provides guidance to CTB in making future determinations on debarment, which ensure that the Virginia Department of Transportation does not conduct business with a person or firm that has an unsatisfactory record of integrity and business ethics. Because the Department of General Services (DGS) has adopted procedures for debarment that apply to all state agencies, the regulation is not necessary.

The CTB recommends repeal of 24VAC30-340, Debarment or Suspension of Contractors and recommends further that Virginia Department of Transportation review the current policy to ensure that it continues to satisfy requirements of Virginia law and federal rules. There is not a continuing need for the regulation. Because DGS has adopted procedures for debarment that apply to all state agencies, the regulation is not necessary. CTB has received no complaints concerning the regulation. The regulation is not overly complex. The regulation is not necessary in light of the procedures for debarment adopted by DGS. The decision to repeal the regulation will have no impact on small business given that CTB may follow the procedures adopted by another state agency. The policy was last updated in 1995.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and a small business impact review of **24VAC30-390, Virginia Scenic Highways and Byways**, and determined that this regulation should be repealed. The board is publishing its report of findings dated September 8, 2020, to support this decision.

The regulation is intended to preserve highway corridors with high aesthetic or cultural values leading to or within areas of historical, natural, or recreational values, and to preserve and enhance the natural beauty and cultural value of lands through which state highways traverse. More than 3,500 miles of highway in the Commonwealth have received such a designation. Although the regulation is clearly written and easily understandable, it is not necessary for the protection of the public health, safety, and welfare, because the purpose for which the regulation was adopted can be accomplished through other means.

The CTB is proposing that this regulation be repealed. Section 33.2-405 of the Code of Virginia allows the CTB cooperate with the Department of Conservation and Recreation (DCR) to designate Scenic Highways and Byways. The CTB adopted a

Periodic Reviews and Small Business Impact Reviews

policy in 1973 on making such designations and entered into a memorandum of agreement (MOA) with DCR in 1995. The adopted policy and MOA were amended in 2018. The current regulation just provides guidance to the CTB when it makes future decisions on designating Scenic Highways and Byways and therefore is not necessary as a regulation. The purpose of the regulation can be accomplished through the written goals and policies adopted by the CTB and by the MOA with DCR. Repealing this regulation does not impact small businesses. The Commonwealth Transportation Board has received no complaints concerning this regulation. The regulation is not complex, and is consistent with federal and state law. The regulation was reviewed in 2006 and again in 2018.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board (CTB) conducted a periodic review and a small business impact review of **24VAC30-490, Roads in the Grounds of State Institutions**, and determined that this regulation should be repealed. The board is publishing its report of findings dated September 1, 2020, to support this decision.

This regulation consists of internal Virginia Department of Transportation (VDOT) documents, specifically a department memorandum and CTB policy regarding roads in the grounds of state institutions. These internal documents facilitate VDOT's ability to fulfill its mission which is clearly related to public safety and welfare; however VDOT does not believe that these documents should continue to be a regulation, as no regulation is statutorily required and the purpose of the regulation can be met by CTB policy and departmental memorandum.

The regulation is not required by federal law or regulations or by state law. The regulation is also duplicative of internal VDOT documents designed to carry out the CTB policy on the standards for roads in the grounds of state institutions to be accepted into the primary state highway system. VDOT believes that the purpose of the regulation can be met by the CTB policy and departmental memorandum, therefore VDOT recommends repeal of this regulation. There is no continued need for this regulation. VDOT has received no complaints concerning the regulation. The regulation is not complex and does not conflict with state or federal law. The regulation was last reviewed in 2001. Repealing this regulation does not impact small businesses, as CTB policy and internal VDOT department memorandum regarding roads in the grounds of state institutions will remain in place at VDOT.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division,

Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board (CTB) conducted a periodic review and a small business impact review of **24VAC30-500, Roads in the Grounds of State Parks**, and determined that this regulation should be repealed. The board is publishing its report of findings dated September 3, 2020, to support this decision.

Although the regulation is clearly written and easily understandable, it is not necessary for the protection of the public health, safety, and welfare. The regulation gives discretionary guidance to the CTB and Commissioner of Highways concerning future actions of the CTB or Commissioner of Highways. The purpose of the regulation therefore can be accomplished through the Virginia Department of Transportation's (VDOT's) existing guidance document, CTB's policy, and the Commissioner of Highways' department memorandum on the subject.

VDOT recommends repeal of the regulation because the regulation gives discretionary guidance to the CTB and Commissioner of Highways concerning future actions of the CTB or Commissioner of Highways. The purpose of the regulation therefore can be accomplished through existing VDOT guidance and CTB policy and the Commissioner of Highways' department memorandum on the subject. Repealing this regulation does not impact small businesses because the regulation concerns the responsibility for maintenance of roads on state-owned park grounds and the purpose of the regulation can be accomplished by existing internal documents, such as a guidance document, CTB policy, and department memorandum. Therefore, VDOT has determined that there is no continued need for the regulation. VDOT has received no complaints concerning the regulation. The regulation is not complex and does not conflict with federal or state law. The regulation has not been amended.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

DEPARTMENT OF TRANSPORTATION

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Transportation (VDOT) conducted a periodic review and a small business impact review of **24VAC30-540, Conveyance of Land and Disposal of Improvements**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated September 23, 2020, to support this decision.

Periodic Reviews and Small Business Impact Reviews

The regulation sets forth policy and procedures for the Commissioner of Highways to recommend transfer or conveyance of residue and surplus land that had been acquired in contemplation of a highway construction project based upon highest and best use. The regulation is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

VDOT recommends retaining the regulation as is. The regulation is an effective mechanism in helping to ensure that the agency's resources are used effectively, and it clearly articulates policy and protocol for the transfer or conveyance of residue and surplus land with an emphasis on highest and best use. A periodic review of this regulation was last performed in September 2001 and the regulation was amended effective June 2001. This regulation helps to ensure effective use of highway resources by setting forth the policy and procedures for the conveyance of land no longer needed by VDOT. Typically, the original landowner is offered right of first refusal, with exceptions to that policy clearly articulated in the regulation. The regulation also emphasizes the importance of conveying surplus VDOT right of way based on its highest and best use.

This regulation is clearly written and easily understandable. VDOT is unaware of any undue burden placed on small business due to the regulation. VDOT has received no complaints concerning the regulation and the regulation is not overly complex. The regulation is consistent with federal and state law.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 1. ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of General Services intends to consider amending **1VAC30-100, Regulations for Capitol Square**. The purpose of the proposed action is to establish standards for the use of Capitol Square, including processes for acceptance, processing, review, and disposition of permit applications for events on Capitol Square.

The agency does not intend to hold a public hearing at the proposed stage.

Statutory Authority: § 2.2-1144 of the Code of Virginia.

Public Comment Deadline: February 17, 2021.

Agency Contact: Rhonda Bishton, Executive Administrative Assistant to the Director, 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.

VA.R. Doc. No. R21-6493; Filed December 14, 2020, 2:19 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 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 14 of the Code of Virginia, which exempts adoption, amendment, or repeal of wasteload allocations by the State Water Control Board pursuant to State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) if the board (i) provides public notice in the Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period, forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary response to written comments; and (iv) conducts at least one public meeting.

Title of Regulation: 9VAC25-630. Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management (amending 9VAC25-630-10 through 9VAC25-630-80; adding 9VAC25-630-90).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1.1 of the Code of Virginia.

Effective Date: February 17, 2021.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, FAX (804) 698-4032, or email betsy.bowles@deq.virginia.gov.

Summary:

The amendments update, for the purpose of reissuing, the existing Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management (9VAC25-630) to continue the general permit coverage of nearly 1,000 confined poultry feeding operations. The Virginia Pollution Abatement (VPA) general permit governs the management of poultry feeding operations that confine 200 or more animal units (20,000 chickens or 11,000 turkeys) and establishes the utilization, storage, tracking, and accounting requirements related to poultry waste. Changes to the proposed regulation include updating a citation, clarifying the requirements allowing an administrative continuance of the general permit, and adjusting tracking and accounting requirements in response to public comment. The VPA expired on November 30, 2020.

9VAC25-630-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Permit Regulation (9VAC25-32) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Agricultural storm water discharge" means a precipitation-related discharge of manure, litter, or process wastewater that has been applied on land areas under the control of an animal feeding operation or under the control of a poultry waste end-user or poultry waste broker in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

"Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where both of the following conditions are met:

1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purpose of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Commercial poultry processor" or "processor" means any animal food manufacturer, as defined in § 3.2-5400 of the Code of Virginia, that contracts with poultry growers for the raising of poultry.

"Confined animal feeding operation," for the purposes of this regulation, has the same meaning as an "animal feeding operation."

"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys, regardless of animal age or sex.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or ~~his~~ the director's designee.

"Fact sheet" means the document prepared by the department that summarizes the requirements set forth in this chapter regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers.

"General permit" means 9VAC25-630-50.

"Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment, and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; except that for a poultry waste end-user or poultry waste broker who is not subject to the general permit, the requirements of 9VAC25-630-80 constitute the NMP.

"Organic source" means any nutrient source including, but not limited to, manures, biosolids, compost, and waste or sludges from animals, humans, or industrial processes, but for the purposes of this regulation it excludes waste from wildlife.

"Permittee" means the poultry grower, poultry waste end-user, or poultry waste broker whose poultry waste management activities are covered under the general permit.

"Poultry grower" or "grower" means any person who owns or operates a confined poultry feeding operation.

"Poultry waste" means dry poultry litter and composted dead poultry.

"Poultry waste broker" or "broker" means a person who possesses or controls poultry waste that is not generated on an animal feeding operation under his operational control and who transfers or hauls poultry waste to other persons. If the entity is defined as a broker they cannot be defined as a hauler for the purposes of this regulation.

"Poultry waste end-user" or "end-user" means any recipient of transferred poultry waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end use for an operation under his control.

"Poultry waste hauler" or "hauler" means a person who provides transportation of transferred poultry waste from one entity to another, and is not otherwise involved in the transfer or transaction of the waste, nor responsible for determining the recipient of the waste. The responsibility of the recordkeeping and reporting remains with the entities to which the service was provided: grower, broker, and end-user.

"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.

"Standard rate" means a land application rate for poultry waste approved by the board as specified in this regulation.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

9VAC25-630-20. Purpose; delegation of authority; effective date of permit.

A. This regulation governs the management of poultry waste at confined poultry feeding operations not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit and poultry waste utilized or stored by poultry waste end-users or poultry waste brokers. It establishes requirements for proper nutrient management, waste storage, and waste tracking and accounting of poultry waste.

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

C. This general permit will become effective on [~~December 1~~ February 17], 2010 [~~2020~~ 2021]. This general permit will expire 10 years from the effective date.

9VAC25-630-25. Duty to comply.

A. Any person who manages or proposes to manage pollutants regulated by 9VAC25-630 shall comply with the applicable requirements of this chapter.

B. In order to manage pollutants from a confined poultry feeding operation, the poultry grower shall be required to obtain coverage under the Virginia Pollution Abatement (VPA) general permit or an individual VPA permit provided that the poultry grower has not been required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit. The poultry grower shall comply with the requirements of this chapter and the permit.

C. Any poultry waste end-user or poultry waste broker shall comply with the technical requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80. Any poultry waste end-user or poultry waste broker who does not comply with the technical requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 may be required to obtain coverage under the general permit.

D. Any poultry waste end-user or poultry waste broker who is required by the board to obtain coverage under the Virginia Pollution Abatement general permit shall obtain coverage and comply with the requirements of this chapter.

E. Any commercial poultry processor shall comply with the requirements outlined in 9VAC25-630-90.

Regulations

9VAC25-630-30. Authorization to manage pollutants.

A. Poultry grower. Any poultry grower governed by this general permit is hereby authorized to manage pollutants at confined poultry feeding operations provided that the poultry grower files the registration statement of 9VAC25-630-40, complies with the requirements of 9VAC25-630-50, and:

1. The poultry grower has not been required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit or an individual permit according to 9VAC25-32-260 B;

2. The activities of the confined poultry feeding operation shall not contravene the Water Quality Standards (9VAC25-260), as ~~amended and~~ adopted and amended by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;

3. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit by a permittee for routine disposal of daily poultry mortalities shall be a violation of this permit. This prohibition shall not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia;

4. The poultry grower shall obtain Department of Conservation and Recreation approval of a nutrient management plan for the confined poultry feeding operation prior to the submittal of the registration statement. The poultry grower shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan that was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The poultry grower shall implement the approved nutrient management plan;

5. Adjoining property notification.

a. Prior to filing a general permit registration statement for a confined poultry feeding operation that proposes construction of poultry growing houses after December 1, 2000, the poultry grower shall give notice to all owners or residents of property that adjoins the property on which the proposed confined poultry feeding operation will be located. Such notice shall include (i) the types and maximum number of poultry ~~which~~ that will be maintained at the facility and (ii) the address and phone

number of the appropriate department regional office to which comments relevant to the permit may be submitted.

b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the general permit, the director shall require the owner to obtain an individual permit for the operation. Any such determination by the director shall be made in writing and received by the poultry grower not more than 45 days after the filing of the registration statement or, if in the director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement; and

6. Each poultry grower covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry growers shall complete a training program at least once every five years.

B. Poultry waste end-user, poultry waste broker. Any poultry waste end-user or poultry waste broker shall comply with the requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 or the general permit as applicable.

1. Any poultry waste end-user or poultry waste broker who does not comply with the requirements of 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 may be required to obtain coverage under the general permit.

2. Any poultry waste end-user or poultry waste broker governed by this general permit is hereby authorized to manage pollutants relating to the utilization and storage of poultry waste provided that the poultry waste end-user or poultry waste broker files the registration statement of 9VAC25-630-40, complies with the requirements of 9VAC25-630-50, and:

a. The poultry waste end-user or poultry waste broker has not been required to obtain a Virginia Pollution Abatement individual permit according to subdivision 2 b of 9VAC25-32-260;

b. The activities of the poultry waste end-user or poultry waste broker shall not contravene the Water Quality Standards (9VAC25-260), as ~~amended and~~ adopted and amended by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;

c. The poultry waste end-user or poultry waste broker shall obtain Department of Conservation and Recreation approval of a nutrient management plan for land application sites where poultry waste will be utilized or stored and managed prior to the submittal of the registration statement. The poultry waste end-user or the poultry waste broker shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan that was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The poultry waste end-user or the poultry waste broker shall implement the approved nutrient management plan; and

d. Each poultry waste end-user or poultry waste broker covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry waste end-users or permitted poultry waste brokers shall complete a training program at least once every five years.

C. Receipt of this general permit does not relieve any poultry grower, poultry waste end-user, or poultry waste broker of the responsibility to comply with any other applicable federal, state or local statute, ordinance, or regulation.

D. Continuation of permit coverage.

1. [In any case where the board, through no fault of the owner or permittee, does not issue the next consecutive general permit with an effective date on or before the expiration date of the expiring general permit, the following applies:

a.] Any owner that was authorized to manage pollutants under the general permit ~~issued in 2000~~, and that submits a complete registration statement [in accordance with 9VAC25-630-40] on or before ~~November 30, 2010~~ the expiration date [of the expiring general permit coverage], is authorized to continue to manage pollutants under the terms of the ~~2000~~ [previously issued] general permit [The conditions of the expiring general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive general permit and] until such time as the board either:

[~~a.~~ b.] Issues coverage to the owner under [~~this~~ the next consecutive] general permit; or

[~~b.~~ c.] Notifies the owner that coverage under [~~this~~ the next consecutive general] permit is denied.

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

a. Initiate enforcement action based upon the existing or expired general permit;

b. Issue a notice of intent to deny coverage under the ~~amended~~ reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the activities authorized by the ~~continued existing or expired~~ general permit or be subject to enforcement action for operating without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions set forth in the VPA Permit Regulation (9VAC25-32).

9VAC25-630-40. Registration statement.

A. Poultry growers. In order to be covered under the general permit, the poultry grower shall file a complete VPA General Permit Registration Statement. The registration statement shall contain the following information:

1. The poultry grower's name, mailing address, email address (~~if available~~), and telephone number;

2. The farm name (if applicable) and location of the confined poultry feeding operation;

3. The name, email address (~~if available~~), and telephone number of a contact person or operator other than the poultry grower, if necessary;

4. The best time of day and day of the week to contact the poultry grower or contact person;

5. If the facility has an existing VPA permit, the permit number;

6. Indicate whether the poultry are grown under contract with a commercial poultry processor or poultry integrator and give the name of the processor or integrator (if applicable);

7. The types of poultry and the maximum numbers of each type to be grown at the facility at any one time;

8. Identification of the method of dead bird disposal;

9. An indication of whether new poultry growing houses are under construction or planned for construction;

10. A copy of the nutrient management plan approved by the Department of Conservation and Recreation;

11. A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

12. The following certification: "I certify that for any confined poultry feeding operation that proposes construction of new poultry growing houses, notice of the registration statement has been given to all owners or

Regulations

residents of property that adjoins the property on which the confined poultry feeding operation will be located. This notice included the types and numbers of poultry which will be grown at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. I certify under penalty of law that all the requirements of the board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

B. Poultry waste end-users or poultry waste brokers. In order to be covered under the general permit, the poultry waste end-user or poultry waste broker shall file a complete VPA General Permit Registration Statement. The registration statement shall contain the following information:

1. The poultry waste end-user's or poultry waste broker's name, mailing address, email address (~~if available~~), and telephone number;
2. The location of the operation where the poultry waste will be utilized, stored, or managed;
3. The best time of day and day of the week to contact the poultry waste end-user or poultry waste broker;
4. If the facility has an existing VPA permit, the permit number;
5. If confined poultry are located at the facility, indicate the number of confined poultry and give the name of the processor or integrator (if applicable);
6. A copy of the nutrient management plan approved by the Department of Conservation and Recreation;
7. A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and
8. The following certification: "I certify under penalty of law that all the requirements of the board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible

for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with [~~9VAC25-32-50~~ 9VAC25-32-70].

9VAC25-630-50. Contents of the general permit.

Any poultry grower, poultry waste end-user, or poultry waste broker whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPA Permit Regulation, 9VAC25-32.

General Permit No. VPG2

Effective Date: [~~December 1~~ February 17], 2010 [~~2020~~ 2021]

Expiration Date: [~~November 30~~ February 16], 2020 [~~2030~~ 2031]

GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia) and State Water Control Board regulations adopted pursuant thereto, owners of confined poultry feeding operations having 200 or more animal units, poultry waste end-users, and poultry waste brokers are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement and supporting documents submitted to the Department of Environmental Quality, this cover page, and Part I—Pollutant Management and Monitoring Requirements for Confined Poultry Feeding Operations and Part II—Conditions Applicable to All VPA Permits and Part III—Pollutant Management and Monitoring Requirements for Poultry Waste End-Users and Poultry Waste Brokers, as set forth herein.

Part I

Pollutant Management and Monitoring Requirements for Confined Poultry Feeding Operations

A. Pollutant management authorization and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the

registration statement and the facility's approved nutrient management plan.

2. If poultry waste is land applied, it shall be applied at the rates specified in the facility's approved nutrient management plan.

3. Soil at the land application sites shall be monitored as specified ~~below~~ in the following table. Additional soils monitoring may be required in the facility's approved nutrient management plan.

SOILS MONITORING				
PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite *
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite *
Potash	NL	ppm or lbs/ac	1/3 years	Composite *
Calcium	NL	ppm or lbs/ac	1/3 years	Composite *
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite *
NL = No limit, this is a monitoring requirement only.				
SU = Standard Units				
*Specific sampling requirements are found in the facility's approved nutrient management plan.				

4. Poultry waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.

WASTE MONITORING				
PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/3 years	Composite
Ammonia Nitrogen	NL	*	1/3 years	Composite
Total Phosphorus	NL	*	1/3 years	Composite
Total Potassium	NL	*	1/3 years	Composite
Moisture Content	NL	%	1/3 years	Composite
NL = No limit, this is a monitoring requirement only.				
*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.				

5. Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.

6. All monitoring data required by Part I A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

~~B. Other Site design, storage, and operation requirements or special conditions.~~

1. The confined poultry feeding operation shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and

Regulations

periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Poultry waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored poultry waste;

c. A minimum of two feet of separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot of separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10⁻⁶ centimeters per second); and

d. For poultry waste that is not stored under roof, the storage site must be at least:

(1) 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs; and

(2) 200 feet from any occupied dwellings not on the permittee's property, unless the occupant of the dwelling signs a waiver of the storage site.

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless the poultry grower has no land outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. New, expanded, or replacement poultry growing houses that are constructed after December 1, 2000, shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures. For the purposes of determining the

100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

~~4. Poultry waste may be transferred from a permitted poultry grower to another person without identifying the fields where such waste will be utilized in the permitted poultry grower's approved nutrient management plan if the following conditions are met:~~

~~a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person with:~~

~~(1) Grower name, address, and permit number;~~

~~(2) A copy of the most recent nutrient analysis of the poultry waste; and~~

~~(3) A fact sheet.~~

~~b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:~~

~~(1) The recipient name and address;~~

~~(2) The amount of poultry waste received by the person;~~

~~(3) The date of the transaction;~~

~~(4) The nutrient analysis of the waste; and~~

~~(5) The signed waste transfer records form acknowledging the receipt of the following:~~

~~(a) The waste;~~

~~(b) The nutrient analysis of the waste; and~~

~~(c) A fact sheet.~~

~~c. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, and the recipient of the waste is someone other than a broker, the poultry grower shall keep a record of the following:~~

~~(1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code); and~~

~~(2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site.~~

~~d. Poultry growers shall maintain the records required by Part I B 4 a, b, and c for at least three years after the transaction and shall make them available to department personnel upon request.~~

~~e. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.~~

The permittee shall operate and manage the facility so that impervious surfaces such as concrete end pads or load-out

pads and surrounding areas and ventilation outlets are kept clean of poultry waste.

5. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

C. Poultry waste transfer and utilization requirements.

1. Poultry waste may be transferred from a permitted poultry grower to another person without identifying the fields where such waste will be utilized in the permitted poultry grower's approved nutrient management plan if the following conditions are met:

a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person with:

- (1) Grower name, address, and permit number;
- (2) A copy of the most recent nutrient analysis of the poultry waste; and
- (3) A fact sheet.

b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:

- (1) The recipient name and address;
- (2) The amount of poultry waste received by the person;
- (3) The date of the transaction;
- (4) The nutrient analysis of the waste; and
- (5) The signed waste transfer records form acknowledging the receipt of the following:
 - (a) The waste;
 - (b) The nutrient analysis of the waste; and
 - (c) A fact sheet.

c. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, and the recipient of the waste is someone other than a broker, the poultry grower shall keep a record of the following:

- (1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city, county, and zip code); and
- (2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site.

2. Poultry growers shall maintain the records required by Part I C 1 for at least three years after the transaction and shall make them available to department personnel upon request.

3. Transfer records reporting requirements. The grower shall submit the records required by Part I C 1 in accordance with the timing outlined in Part I C 3 a and b.

a. Beginning [~~(insert the date one year after the effective date of this permit)~~ February 17, 2022], upon request by the department, the grower shall submit the records in a format and method determined by the department.

b. Beginning [~~(insert the date two years after the effective date of this permit)~~ February 17, 2023], the grower shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.

4. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

6. ~~5.~~ The poultry grower shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. The terms of the NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

- a. Site map indicating the location of the waste storage facilities and the fields where waste generated by this facility will be applied by the poultry grower. The location of fields as identified in ~~Part I B 4 e~~ Part I C 4 shall also be included;
- b. Site evaluation and assessment of soil types and potential productivities;
- c. Nutrient management sampling including soil and waste monitoring;
- d. Storage and land area requirements for the grower's poultry waste management activities;
- e. Calculation of waste application rates; and

Regulations

f. Waste application schedules.

~~7. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.~~

~~8. 6.~~ Nitrogen application rates contained in the NMP shall be established in accordance with ~~4VAC5-15-150 A 2~~ 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

~~9. 7.~~ Phosphorus application rates contained in the NMP shall be established in accordance with ~~4VAC5-15-150 A 2~~ 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

~~10. 8.~~ The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

- a. Slopes are not greater than 6.0%;
- b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;
- c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and
- d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

~~9. In cases where poultry waste storage is threatened by emergencies such as fire or flood or where these conditions are imminent, poultry waste can be land applied outside of the spreading schedule outlined in the grower's NMP. If this occurs, the poultry grower shall document the land application information in accordance with Part I C 11 and notify the department in accordance with Part II H.~~

~~11. 10.~~ Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists).

Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

~~12. 11.~~ The following records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

D. Other special conditions.

~~13. 1.~~ Each poultry grower covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry growers shall complete a training program at least once every five years.

2. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

Part II

Conditions Applicable to all VPA Permits

A. Monitoring.

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

2. Monitoring shall be conducted according to procedures listed under 40 CFR Part 136 unless ~~other procedures have been~~ otherwise specified in this permit.

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

B. Records.

1. Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The name of the ~~individual(s)~~ individuals who performed the sampling or measurements;
- c. The ~~date(s)~~ dates analyses were performed;
- d. The name of the ~~individual(s)~~ individuals who performed the analyses;
- e. The analytical techniques or methods used, with supporting information such as observations, readings, calculations and bench data; and
- f. The results of such analyses.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit for a period of at least three years from the date of the sample, measurement, report or application. This period of retention may be extended by request of the board at any time.

C. Reporting monitoring results. If reporting is required by Part I or Part III of this general permit, the permittee shall follow the requirements of this subsection.

- 1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after the monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.
- 2. Monitoring results shall be reported on forms provided or specified by the department.
- 3. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant more frequently than required by the permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.
- 4. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant that is not required to be monitored by the

permit, and uses approved analytical methods, the permittee shall report the results with the monitoring report.

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

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee. Plans, specifications, maps, conceptual reports, and other relevant information shall be submitted as requested by the director prior to commencing construction.

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

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

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

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part II F₂ or (ii) a discharge that may reasonably be expected to enter state waters in violation of Part II F shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

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

Regulations

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

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

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

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

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

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:
 - a. Any unanticipated bypass; and
 - b. Any upset which causes a discharge to surface waters.
2. A written report shall be submitted within five days and shall contain:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
 - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

NOTE: The immediate (within 24 hours) reports required in ~~Parts~~ Part II F, G, and H may be made to the department's regional office. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency ~~Services~~ Management maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the design or operation of the pollutant management activity.
2. The permittee shall give at least 10 days advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Applications. All permit applications shall be signed as follows:
 - a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar ~~policy-~~ policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 - c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency; or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

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

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

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

c. The written authorization is submitted to the department.

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

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this general permit and 9VAC25-630. Any noncompliance with the general permit or 9VAC25-630 constitutes a violation of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least 30 days before the expiration date of the existing permit unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

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

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as provided in permit conditions on bypassing (Part II U), and upset (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

Q. Proper operation and maintenance. The permittee shall be responsible for the proper operation and maintenance of all treatment works, systems and controls which are installed or used to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures.

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

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any pollutant management activity in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

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

U. Bypass.

1. Prohibition. "Bypass" means intentional diversion of waste streams from any portion of a treatment works. A bypass of the treatment works is prohibited except as provided herein.

2. Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall notify the department promptly at least 10 days prior to the bypass. After

Regulations

considering its adverse effects, the board may approve an anticipated bypass if:

a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities ~~which~~ that causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. "Severe property damage" does not mean economic loss caused by delays in production; and

b. There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in ~~paragraphs~~ Part II U 2 a and b and in light of the information reasonably available to the permittee at the time of the bypass.

V. Upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;
2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;
3. That the 24-hour reporting requirements to the department were met; and
4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the permit.

W. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any ~~permittee's~~ public or private property, ~~public or private~~ on which the pollutant management

activities that are governed by this permit are located and have access to records required by this permit;

2. Have access to, inspect and copy any records that must be kept as part of permit conditions;

3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the permit; and

4. Sample or monitor any substances or parameters at any locations for the purpose of assuring permit compliance or as otherwise authorized by the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

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

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause upon the request of the permittee or interested persons, or upon the board's initiative. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VPA permit.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such other requirements as may be necessary. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new owner or operator.

2. As an alternative to transfers under Part II Y 1, this permit shall be automatically transferred to a new permittee if:

- a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not, within the 30-day time period, notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If the board notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable and, if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

Part III

Pollutant Management and Monitoring Requirements for Poultry Waste End-Users and Poultry Brokers

A. Pollutant management authorization and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's

expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the permittee's approved nutrient management plan.

2. If poultry waste is land applied on land under the permittee's operational control, it shall be applied at the rates specified in the permittee's approved nutrient management plan.

3. Soil at the land application sites shall be monitored as specified below in the following table. Additional soils monitoring may be required in the permittee's approved nutrient management plan.

SOILS MONITORING				
PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite *
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite *
Potash	NL	ppm or lbs/ac	1/3 years	Composite *
Calcium	NL	ppm or lbs/ac	1/3 years	Composite *
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite *
NL = No limit, this is a monitoring requirement only.				
SU = Standard Units				
*Specific sampling requirements are outlined in the permittee's approved nutrient management plan.				

4. Poultry waste shall be monitored as specified below in the following table. Additional waste monitoring may be required in the permittee's approved nutrient management plan.

WASTE MONITORING				
PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/3 years	Composite
Ammonia Nitrogen	NL	*	1/3 years	Composite
Total Phosphorus	NL	*	1/3 years	Composite
Total Potassium	NL	*	1/3 years	Composite
Moisture Content	NL	%	1/3 years	Composite
NL = No limit, this is a monitoring requirement only.				
*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.				

Regulations

5. If waste from two or more poultry waste sources is commingled or stored then a sample that best represents the waste shall be used to calculate the nutrients available in the poultry waste for land application and shall be provided to the end-user of the waste.

6. Analysis of soil and waste shall be according to methods specified in the permittee's approved nutrient management plan.

7. All monitoring data required by Part III A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. ~~Other~~ Site design, storage, and operation requirements or special conditions.

1. Poultry waste storage facilities shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the approved nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

- a. Poultry waste shall be covered to protect it from precipitation and wind;
- b. Storm water shall not run onto or under the stored poultry waste;
- c. A minimum of two feet of separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot of separation between the seasonal high water table and the impermeable barrier. "~~Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.~~ Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity

that has a minimum permeability rating of 0.0014 inches per hour (1×10^{-6} centimeters per second); and

d. For poultry waste that is not stored under roof, the storage site must be at least:

(1) 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs; and

(2) 200 feet from any occupied dwellings not on the permittee's property (unless the occupant of the dwelling signs a waiver of the storage site).

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless there is no land available outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

4. The permittee shall operate and manage the facility so that impervious surfaces such as concrete end pads or load-out pads and surrounding areas and ventilation outlets are kept clean of poultry waste.

5. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

C. Poultry waste transfer and utilization requirements.

4. 1. When a poultry waste end-user or poultry waste broker receives, possesses, or has control over more than 10 tons of transferred poultry waste in any 365-day period, he shall provide the person from whom he received the poultry waste with:

- a. The end-user or broker name, address, and permit number;
- b. If the recipient of the poultry waste is an end-user, then he shall also provide the person from whom he received the poultry waste the following information:

- (1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city, county and zip code);
- (2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site; and
- c. Written acknowledgement of receipt of:
 - (1) The waste;
 - (2) The nutrient analysis of the waste; and
 - (3) The fact sheet.

If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.

~~5.~~ 2. When a poultry waste broker transfers or hauls poultry waste to other persons, he shall provide the person who received the poultry waste with:

- a. Broker name, address, and permit number;
- b. The nutrient analysis of the waste; and
- c. A fact sheet.

~~6.~~ 3. When a poultry waste end-user or poultry waste broker is a recipient of more than 10 tons of transferred poultry waste in any 365-day period, the poultry waste end-user or poultry waste broker shall keep a record regarding the transferred poultry waste:

- a. The following items shall be recorded regarding the source of the transferred poultry waste:
 - (1) The source name and address;
 - (2) The amount of poultry waste received from the source; and
 - (3) The date the poultry waste was acquired.
- b. The following items shall be recorded regarding the recipient of the transferred poultry waste:
 - (1) The recipient name and address;
 - (2) The amount of poultry waste received by the person;
 - (3) The date of the transaction;
 - (4) The nutrient content of the waste;
 - (5) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city, county, and zip code);
 - (6) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site; and
 - (7) The signed waste transfer records form acknowledging the receipt of the following:
 - (a) The waste;
 - (b) The nutrient analysis of the waste; and
 - (c) A fact sheet.

~~7.~~ 4. End-users or brokers shall maintain the records required by ~~Part III B-6~~ Part III C 3 for at least three years after the transaction and make them available to department personnel upon request.

5. Transfer records reporting requirements. The end-users and brokers shall submit the records required by Part III C 3 in accordance with the timing outlined in Part III C 5 a and 5 b.

a. Beginning [~~(insert the date one year after the effective date of this permit)~~ February 17, 2022], upon request by the department, the end-users and brokers shall submit the records in a format and method determined by the department.

b. Beginning [~~(insert the date two years after the effective date of this permit)~~ February 17, 2023], the end-users and brokers shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.

~~8.~~ 6. If poultry waste is also generated by this facility it shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the permittee's approved nutrient management plan.

~~9. Poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.~~

~~10.~~ 7. The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. The terms of the NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

- a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied by the permittee. The location of fields as identified in ~~Part III B~~ & Part III C 6 shall also be included;
- b. Site evaluation and assessment of soil types and potential productivities;
- c. Nutrient management sampling including soil and waste monitoring;
- d. Storage and land area requirements for the permittee's poultry waste management activities;
- e. Calculation of waste application rates; and

Regulations

f. Waste application schedules.

~~11. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.~~

~~12. 8.~~ Nitrogen application rates contained in the NMP shall be established in accordance with ~~4VAC5-15-150 A 2~~ 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

~~13. 9.~~ Phosphorus application rates contained in the NMP shall be established in accordance with ~~4VAC5-15-150 A 2~~ 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

~~14. 10.~~ The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

- a. Slopes are not greater than 6.0%;
- b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;
- c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and
- d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

~~11. In cases where poultry waste storage is threatened by emergencies such as fire or flood or where these conditions are imminent, poultry waste can be land applied outside of the spreading schedule outlined in the permittee's NMP. If this occurs, the permittee shall document the land application information in accordance with Part III C 13 and notify the department in accordance with Part II H.~~

~~15. 12.~~ Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

- a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);
- b. Distance from water supply wells or springs: 100 feet;
- c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;
- d. Distance from rock outcropping (except limestone): 25 feet;
- e. Distance from limestone outcroppings: 50 feet; and
- f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

~~16. 13.~~ The following records shall be maintained:

- a. The identification of the land application field sites where the waste is utilized or stored;
- b. The application rate;
- c. The application dates; and
- d. What crops have been planted.

These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

D. Other special conditions.

~~17. 1.~~ Each poultry waste end-user or poultry waste broker covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry waste end-users or permitted poultry waste brokers shall complete a training program at least once every five years.

2. Poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

9VAC25-630-60. Tracking and accounting requirements for poultry waste brokers.

A. Poultry waste brokers shall register with the department by providing their name and address on a form ~~approved~~ provided by the department prior to transferring poultry waste.

B. When a poultry waste broker transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry waste broker shall provide information regarding the

transfer of poultry waste to both the source and recipient of the waste.

1. The broker name and address shall be provided to the source of the transferred poultry waste:
2. The following items shall be provided to the recipient of the transferred poultry waste:
 - a. The broker name and address;
 - b. The most recent nutrient analysis of the poultry waste; and
 - c. A fact sheet.

C. When a poultry waste broker transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry waste broker shall keep records regarding the transferred poultry waste.

1. The following items shall be recorded regarding the source of the transferred poultry waste:
 - a. The source name and address;
 - b. The amount of the poultry waste received from the source; and
 - c. The date the poultry waste was acquired.
2. The following items shall be recorded regarding the recipient of the transferred poultry waste:
 - a. The recipient name and address;
 - b. The amount of poultry waste received by the person;
 - c. The date of the transaction;
 - d. The nutrient content of the waste;
 - e. The locality in which the recipient intends to utilize the waste (i.e., nearest town or city, county, and zip code);
 - f. The name of the stream ~~of or~~ waterbody if known to the recipient that is nearest to the waste utilization or storage site; and
 - g. The signed waste transfer records form acknowledging the receipt of the following:
 - (1) The waste;
 - (2) The nutrient analysis of the waste; and
 - (3) A fact sheet.

D. Poultry waste brokers shall submit ~~copies of~~ the records required by subsection C of this section, to the department annually ~~using a form approved in a format and method determined by the department.~~ Records for the preceding ~~calendar state fiscal~~ year (July 1 through June 30) shall be submitted to the department ~~not no~~ later than ~~February 15~~ September 15. Poultry waste brokers shall maintain the records required by ~~subsection~~ subsections C and E of this section for at least three years and make them available to department personnel upon request.

E. If waste from two or more poultry waste sources is commingled or stored then a sample that best represents the

waste shall be used to calculate the nutrients available in the poultry waste for land application and shall be provided to the end-user of the waste. The original sources of the waste shall also be recorded and provided to the department with the annual transfer records submittal.

F. If the poultry waste broker land applies the poultry waste for the end-user then the broker shall provide the end-user with the records regarding land application as required by 9VAC25-630-70.

G. Poultry waste brokers shall complete a training program offered or approved by the department within one year of registering with the department. Poultry waste brokers shall complete a training program at least once every five years.

H. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

9VAC25-630-70. Tracking and accounting requirements for poultry waste end-users.

A. When a poultry waste end-user is the recipient of more than 10 tons of poultry waste in any 365-day period, the end-user shall maintain records regarding the transfer and land application of poultry waste.

1. The poultry waste end-user shall provide the permitted poultry grower or poultry waste broker with the following items:
 - a. End-user name and address;
 - b. The locality in which the end-user intends to utilize the waste (i.e., nearest town or city, county, and zip code);
 - c. The name of the stream or waterbody if known to the end-user that is nearest to the waste utilization or storage site; and
 - d. Written acknowledgement of receipt of:
 - (1) The waste;
 - (2) The nutrient analysis of the waste; and
 - (3) A fact sheet.

2. The poultry waste end-user shall record the following items regarding the waste transfer:
 - a. The source name, address, and permit number (if applicable);
 - b. The amount of poultry waste that was received;
 - c. The date of the transaction;
 - d. The final use of the poultry waste;
 - e. The locality in which the waste was utilized (i.e., nearest town or city, county, and zip code); ~~and~~]

Regulations

f. The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site [; and

g. The method used to determine the land application rates (i.e., phosphorus crop removal, standard rate, soil test recommendations, or a nutrient management plan)].

~~Records regarding poultry waste transfers~~ End-users shall be maintained ~~maintain the records required by subdivisions A 1 and A 2 of this section~~ maintain the records required by subdivisions A 1 and A 2 of this section on site for a period of three years after the transaction. All records shall be made available to department personnel upon request.

3. [Reporting requirements. End-users shall submit the records required by subdivisions A 1 and A 2 of this section in accordance with the timing outlined in subdivisions 3 a and 3 b of this subsection.

a. Beginning February 17, 2022, and continuing through February 17, 2023, upon request by the department, the end-user shall submit the records in a format and method determined by the department; and

b. Beginning February 17, 2024, the end-user shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.

4.] If waste is land applied, the poultry waste end-user shall keep a record of the following items regarding the land application of the waste:

- a. The nutrient analysis of the waste;
- b. Maps indicating the poultry waste land application fields and storage sites;
- c. The land application rate;
- d. The land application dates;
- e. What crops were planted;
- f. Soil test results, if obtained; [and]
- g. NMP, if applicable [; and
- ~~h. The method used to determine the land application rates (i.e., phosphorus crop removal, standard rate, soil test recommendations, or a nutrient management plan)]~~.

~~Records regarding land application of poultry waste~~ End-users shall be maintained ~~maintain the records required by this subdivision [3 4]~~ maintain the records required by this subdivision [3 4] on site for a period of three years after the recorded application is made. All records shall be made available to department personnel upon request.

[4. Reporting requirements. End users shall submit the records required by subdivisions A 1, A 2, and A 3 of this section in accordance with the timing outlined in subdivisions 4 a and 4 b of this subsection.

a. Beginning (insert the date one year after the effective date of this regulation) and continuing through (insert the date two years after the effective date of this regulation), upon request by the department, the end-user shall submit

~~the records in a format and method determined by the department; and~~

b. Beginning (insert the date three years after the effective date of this regulation), the end-user shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.]

B. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

9VAC25-630-80. Utilization and storage requirements for transferred poultry waste.

A. Any poultry waste end-user or poultry waste broker who receives poultry waste shall comply with the requirements outlined in the following sections.

B. Storage requirements. Any poultry waste end-user or poultry waste broker who receives poultry waste shall comply with the requirements outlined in this section regarding storage of poultry waste in their possession or under their control.

1. Poultry waste shall be stored in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

- a. Poultry waste shall be covered to protect it from precipitation and wind;
- b. Storm water shall not run onto or under the stored poultry waste;

c. A minimum of two feet of separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot of separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10⁻⁶ centimeters per second); and

d. For poultry waste that is not stored under roof, the storage site must be at least;

- (1) 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs; and
- (2) 200 feet from any occupied dwellings not on the end-user's or broker's property, unless the occupant of the dwelling signs a waiver of the storage site.

2. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless there is no land available outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

C. Land application requirements. Any poultry waste end-user or poultry waste broker who (i) receives ~~five~~ 10 or more tons of poultry waste in any 365-day period and (ii) land applies poultry waste shall follow appropriate land application requirements as outlined in this section. The application of poultry waste shall be managed to minimize adverse water quality impacts.

1. The maximum application rates can be established by the following methods:

a. Phosphorus crop removal application rates can be used when:

(1) Soil test phosphorus levels do not exceed the values listed in the following table below:

Region	Soil test P (ppm) VPI & SU Soil test (Mehlich I) *
Eastern Shore and Lower Coastal Plain	135
Middle and Upper Coastal Plain and Piedmont	136
Ridge and Valley	162

* If results are from another laboratory [] the Department of Conservation and Recreation approved conversion factors must be used.

(2) The phosphorus crop removal application rates are set forth by regulations promulgated by the Department of Conservation and Recreation in accordance with § 10.1-104.2 of the Code of Virginia.

b. Poultry waste may be applied to any crop at the standard rate of 1.5 tons per acre once every three years when:

(1) In the absence of current soil sample analyses and recommendations; and

(2) Nutrients have not been supplied by an organic source, other than pastured animals, to the proposed land application sites within the previous three years of the proposed land application date of poultry waste.

c. Soil test recommendations can be used when:

(1) Accompanied by analysis results for soil tests that have been obtained from the proposed field or fields in the last three years;

(2) The analytical results are from procedures in accordance with ~~4VAC5-15-150~~ 4VAC50-85-140 A 2 f; and

(3) Nutrients from the waste application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops. The recommendations shall be in accordance with ~~4VAC5-15-150~~ 4VAC50-85-140 A 2 a.

d. A nutrient management plan developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

2. The timing of land application of poultry waste shall be appropriate for the crop, and in accordance with ~~4VAC5-15-150~~ 4VAC50-85-140 A 4, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground under the following conditions:

a. Slopes are not greater than 6.0%;

b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;

c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and

d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

3. Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

Regulations

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

4. In cases where poultry waste storage is threatened by emergencies such as fire or flood or where these conditions are imminent, poultry waste can be land applied outside of the spreading schedule outlined in the Fact Sheet. If this occurs, the end-user or broker shall document the land application information in accordance with 9VAC25-630-70 A 3.

D. Poultry waste end-users and poultry waste brokers shall maintain the records demonstrating compliance with the requirements of subsections B and C for at least three years and make them available to department personnel upon request.

E. The activities of the poultry waste end-user or poultry waste broker shall not contravene the Water Quality Standards (9VAC25-260), as ~~amended and~~ adopted and amended by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

F. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

9VAC25-630-90. Commercial poultry processor activities.

A. Any commercial poultry processor who contracts with a poultry grower shall comply with the requirements outlined in this section.

B. For the purpose of this section, the commercial poultry processor's hired staff, contract or company employed haulers, poultry catching crews, and feed truck operators are also considered the commercial poultry processor.

C. A commercial poultry processor that conducts typical farming activities on the contract poultry grower's farm shall be responsible for cleaning up after such farming activities.

1. Typical farming activities include the following:

- a. Releasing poultry into the poultry growing houses;
- b. Catching poultry for transport; and
- c. Filling feed bins.

2. Typical farming activities do not include the routine washing of trucks owned, operated, or contracted by the commercial poultry processor.

3. The introduction of water into the process of the typical farming activities is prohibited, except in the following cases:

- a. When used for cooling the birds during the releasing and catching process; and

b. When there is a disease outbreak or poultry health risk that requires clean up and disinfection of the vehicles and catching equipment prior to entering and leaving the farm.

When water is introduced into the process, it should be done in a manner that does not produce process wastewater.

D. The commercial poultry processor shall clean up and properly dispose of, in a prompt and efficient manner, any of the following materials that have been deposited or released by the commercial poultry processor:

1. Poultry waste;
2. Feed; and
3. Hydraulic fluids, fuels, and oils used in machinery.

E. Farming activities such as those listed in subsection C of this section shall be conducted on impervious surfaces, where available, to facilitate the cleanup efforts.

F. The commercial poultry processor shall submit an operation and maintenance manual that outlines proper procedures to be used by the commercial poultry processor while commencing with typical farming activities, as listed in subsection C of this section, on the contract grower's farm.

1. The manual shall at a minimum cover the following items:

- a. The processor's procedures to carry out the typical farming activities;
- b. Proper clean up and disposal of materials deposited or released during such activities; and
- c. Any additional information to ensure compliance with this section or determined to be relevant by the department.

2. The manual shall be submitted to the department for approval by [~~(insert date 60 days after the effective date of this section)~~ April 18, 2021].

3. Subsequent revisions to the manual shall be submitted to the department for approval 30 days prior to making changes to the procedures outlined in the manual.

4. An individual commercial poultry processor may submit one manual to cover multiple processing plants or complexes, where all procedures used are identical.

G. The activities of the commercial poultry processor shall not contravene the Water Quality Standards (9VAC25-260), as adopted and amended by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

H. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

NOTICE: 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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (9VAC25-630)

~~Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Growers, RS VPG2 (rev. 07/10)~~

~~Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Waste End-Users and Poultry Waste Brokers, RS End Users/Brokers VPG2 (rev. 07/10)~~

~~Fact Sheet, Requirements for Poultry Litter Use and Storage (rev. 12/10)~~

~~[Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Growers, RS VPG2 (eff. 12/2020)~~

~~Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Waste End-Users and Poultry Waste Brokers, RS End Users/Brokers VPG2 (eff. 12/2020)~~

~~Fact Sheet, Requirements for Poultry Litter Use and Storage (eff. 12/2020)~~

[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 \(eff. 2/2021\)](#)

VA.R. Doc. No. R19-5666; Filed December 28, 2020, 5:08 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia,

which exempts amendments to regulations of the board to schedule a substance pursuant to subsection E of § 54.1-3443 of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-323).

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: February 17, 2021

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Summary:

The amendment deschedules the drug epidiolex in the Virginia Drug Control Act in accordance with actions of the U.S. Drug Enforcement Act.

18VAC110-20-323. Scheduling for conformity with federal law or rule.

Pursuant to subsection E of § 54.1-3443 of the Code of Virginia and in order to conform the Drug Control Act to recent scheduling changes enacted in federal law or rule, the board:

1. Adds MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine) to Schedule I;
2. Adds Dronabinol ((-)-delta-9-trans tetrahydrocannabinol) in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration to Schedule II;
3. Deletes naldemedine from Schedule II;
4. ~~Adds a drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1% (w/w) residual tetrahydrocannabinols to Schedule V;~~
5. Adds methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate (other name: MDMB-CHMICA, MMB-CHMINACA), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in Schedule I;
6. ~~5.~~ Adds solriamfetol (2-amino-3-phenylpropyl carbamate), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, to Schedule IV;
7. ~~6.~~ Adds noroxymorphone, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, to Schedule II;

Regulations

~~8.~~ 7. Adds lasmiditan [2,4,6-trifluoro-N-(6-(1-methylpiperidine-4-carbonyl)pyridine-2-yl)-benzamide], including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, to Schedule V;

~~9.~~ 8. Adds brexanolone (3 α -hydroxy-5 α -pregnan-20-one), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in Schedule IV;

~~10.~~ 9. Deletes naloxegol and 6 β -naltrexol from Schedule II;

~~11.~~ 10. Replaces 4-anilino-N-phenethyl-4-piperidine (CASRN 21409-26-7) in Schedule II with 4-anilino-N-phenethylpiperidine (ANPP);

~~12.~~ 11. Adds ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (other name: 5F-EDMB-PINACA), methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate (other name: 5F-MDMB-PICA), and 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (other name: 5F-CUMYL-PINACA), and their optical, positional, and geometric isomers, salts, and salts of isomers to Schedule I; and

~~13.~~ 12. Adds other name 5F-APINACA to N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (other name: FUB-AKB48) which is currently placed in Schedule I.

VA.R. Doc. No. R21-6584; Filed December 16, 2020, 11:37 a.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

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: 20VAC5-340. Rules Governing Shared Solar Program (adding 20VAC5-340-10 through 20VAC5-340-110).

Statutory Authority: §§ 12.1-13 and 56-594.3 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: David Eichenlaub, Deputy Director, Public Utilities Regulation Division, State Corporation Commission,

P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9050, FAX (804) 371-9350, or email david.eichenlaub@scc.virginia.gov.

Summary:

The action implements the provisions of Chapters 1238 and 1264 of the 2020 Acts of Assembly and establishes Rules Governing Shared Solar Program (20VAC5-340), a program that affords customers of a Phase II Utility the opportunity to participate in shared solar projects. The new regulation governs the development of shared solar facilities and participation in the shared solar program and contains requirements for licensing, registration, marketing and enrollment, billing and payment, annual proceeding, disputes, and recordkeeping and reporting. Changes to the proposed regulation provide an exemption process for the licensing of certain subscriber organizations and clarify certain provisions regarding the commission's establishing the minimum bill for the shared solar program.

AT RICHMOND, DECEMBER 23, 2020

COMMONWEALTH OF VIRGINIA, ex rel:

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00125

Ex Parte: In the matter of establishing regulations for a shared solar program pursuant to § 56-594.3 of the Code of Virginia

ORDER ADOPTING RULES

During its 2020 Session, the Virginia General Assembly enacted Chapters 1238 (HB 1634) and 1264 (SB 629) of the 2020 Virginia Acts of Assembly. These Acts of Assembly amend the Code of Virginia ("Code") by adding a section numbered 56-594.3, effective July 1, 2020. Code § 56-594.3 requires that by January 1, 2021, the State Corporation Commission ("Commission") establish by regulation a program affording customers of Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion") the opportunity to participate in shared solar projects. Code § 56-594.3 B 7 states: "All environmental attributes associated with a shared solar facility, including renewable energy certificates, shall be considered property of the subscriber organization. At the subscriber organization's discretion, such environmental attributes may be distributed to the subscribers, sold to load-serving entities with compliance obligations or other buyers, accumulated, or retired."

On July 1, 2020, the Commission entered an Order Directing Comment in this proceeding that sought comments on the shared solar program and associated regulations. The Commission's Order Directing Comment directed Dominion, and invited interested persons or entities, to file comments. The Order Directing Comment also permitted commenters to propose specific regulations.

The following parties filed comments: the Coalition for Community Solar Access and the Maryland-DC-Delaware-Virginia Solar Energy Industries Association (collectively, "CCSA/MDV-SEIA"); the Virginia Department of Mines, Minerals and Energy ("DMME"); Health E Community Enterprises of Virginia, Inc.; the Virginia Clean Energy Advisory Board ("VCEA Board"); the Sierra Club; the Southern Environmental Law Center and Appalachian Voices (collectively, "Environmental Advocates"); Dominion; GRID Alternatives Mid-Atlantic; Vote Solar and Solar United Neighbors; Arcadia; Senator Scott A. Surovell; Virginia Advanced Energy Economy; and SynerGen Solar. Dominion and CCSA/MDV-SEIA filed proposed regulations.

On September 21, 2020, the Commission entered an Order for Notice and Comment ("Procedural Order") in this docket that included proposed rules ("Proposed Rules") to be considered for adoption, which had been prepared by the Commission's Staff ("Staff"). The Commission's Procedural Order provided an opportunity for interested persons to file comments on the Proposed Rules, along with hearing requests and proposals. The Commission's Procedural Order also directed Staff to file a report ("Staff Report" or "Report") on, or a response to, any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules. The Procedural Order further directed that a copy of the Proposed Rules be sent to the Registrar of Regulations for publication in the Virginia Register of Regulations.¹

In response to the Commission's Procedural Order, comments were received from the following entities: VCEA Board; Sierra Club; Environmental Advocates; CCSA/MDV-SEIA; DMME; and Dominion. Comments were also received jointly from the following members of the Virginia General Assembly: Senator Jennifer McClellan, Senator Scott Surovell, Delegate Rip Sullivan, Delegate Jay Jones, Delegate Mark Keam, and Delegate Alfonso Lopez ("GA Members"). Additionally, 38 public comments were submitted via the Commission's website. Four requests for hearing were received by the due date.²

On November 12, 2020, Staff filed a Motion for One-week Extension to File Staff Report, for Waiver of Rule 230, and for Expedited Treatment ("Motion"). Through its Motion, Staff requested that the Commission extend the deadline for filing the Staff Report by one week. Staff indicated that numerous stakeholders had requested a meeting with Staff prior to the filing of the Staff Report. On November 13, 2020, the Commission issued its Order Granting Motion accepting the Staff's request.

On November 16, 2020, with the assistance of DMME, Staff conducted a virtual stakeholder meeting that invited all those providing comments and all stakeholders who had indicated interest in such a meeting with Staff. Staff represented that this virtual meeting included 62 participants.

Staff filed its Report on November 23, 2020, which included certain revisions to the Proposed Rules based on Staff's review of both written and oral comments provided through filings and the virtual stakeholder meeting.

NOW THE COMMISSION, upon consideration of this matter, finds that we should adopt the rules ("Rules") appended hereto as Attachment A effective January 1, 2021. As an initial matter, the Commission expresses appreciation to those who have submitted written comments for our consideration and have otherwise participated in this proceeding. We have carefully reviewed and considered all comments filed in this matter. The Rules adopted today are intended to support the objectives of Code § 56-594.3, while also protecting the electric system and Virginia consumers. As experience is gained and lessons are learned, the Commission anticipates that these Rules may be updated and revised accordingly. In this regard, we further note that the Rules, as adopted herein, permit requests for waiver.³

The Rules we adopt herein contain modifications to those that were first proposed by Staff and published in the Virginia Register of Regulations on October 12, 2020. These modifications follow our consideration of further proposed changes made by the Staff in its Staff Report and the comments filed in this proceeding. Although we will not comment on each modification in detail, there are several issues that we will address further herein.

20 VAC 5-340-10

Various commenters expressed concerns that under the Proposed Rules, subscriber organization licensing and project registration may not begin until the program is implemented in 2023.⁴ Staff agreed that the statute envisions customers having the ability to enroll or receive benefits by the earlier of July 1, 2023, or Dominion's implementation of its new customer information system and that any pre-development preparation may begin as soon as practicable.⁵ We adopt Staff's revisions to the Proposed Rules to clarify that subscriber organizations may apply for licenses, register projects, interact with potential customers, and otherwise develop shared solar projects beginning in 2021.

20 VAC 5-340-30

In its Report, Staff noted that some commenters viewed the subscriber organization licensing requirements as unnecessarily onerous, particularly for small projects owned by residents, property owners, non-profit entities, or small companies.⁶ While Staff anticipates that the shared solar program will attract larger business entities, it suggested that the Commission could distinguish between these different types of entities in the licensing requirements.⁷ We find that doing so is appropriate and have therefore added 20 VAC 5-340-110, which creates an exemption process for entities that provide less than a total of 500 kilowatts alternating current at any one location or multiple locations. Rather than licensing,

Regulations

such entities must provide notice to the Commission's Division of Public Utility Regulation prior to commencing business operations. We note that each project, however, regardless of size, must register with the utility.

As part of the licensing process for subscriber organizations, the Proposed Rules contained a bonding requirement for purposes of demonstrating financial fitness. That requirement has been removed from the Rules. Such financial security may, however, be required by the Commission as a condition of licensure and prescribed through the Commission's order granting a license to the subscriber organization. The Staff will evaluate each applicant's financial fitness and recommend that the Commission require financial security as appropriate. This modification allows applicants to be evaluated on an individual basis and for the Commission to consider nonprofit status or other facts relevant to financial fitness when granting a license.

Many commenters proposed that the Commission exclude Dominion and its affiliates from participating in the shared solar program.⁸ Staff indicated that it believes nothing in the statute precludes utility participation but believes that as a practical matter, allowing affiliate participation, rather than utility participation, would better serve the program.⁹ We agree with Staff's analysis and have added language to clarify that a utility may not participate as a subscriber organization. We find that the Proposed Rules otherwise provided adequate protections for addressing utility affiliate participation and that those provisions will be adopted as proposed.¹⁰

20 VAC 5-340-50

Many commenters pointed out that the Proposed Rules do not address how customer status as low-income will be verified.¹¹ According to Staff, numerous stakeholders asserted that including low-income verification methods in the Rules would offer a clear process and flexibility to ensure that the verification process does not deter low-income participation in the program.¹² Staff suggests that the issue of low-income verification could be more fully developed with the assistance of the low-income stakeholder working group that the Commission must create pursuant to legislative directive.¹³ Given the limited time for adopting these Rules and the collective expertise of the low-income stakeholder group, we agree and task that group with addressing low-income verification methods.

Similarly, commenters agree that a standardized consumer disclosure form, as required by Code § 56-594.3 F 8, should be provided to each prospective customer before subscribing to a shared solar facility.¹⁴ Staff prefers that this form be developed with the assistance of the low-income stakeholder working group.¹⁵ For the same reasons as discussed above concerning low-income verification, we agree with Staff's recommendation and direct the working group to develop the disclosure forms to be adopted by the Commission for both the shared solar program and the multi-family shared solar program.¹⁶

20 VAC 5-340-60

Staff noted in its Report that various commenters requested clarity on the ability of bill credits to roll over to future months when those credits exceed a customer's current monthly bill.¹⁷ For example, the VCEA Board argued that bill credits for the shared solar program should function the same as they do for net metering¹⁸ in Virginia in that they should be carried over and applied to the next month's bill for a 12-month period.¹⁹ Staff agreed and made a revision to the Proposed Rules to clarify that bill credits may roll over until satisfied or up to 12 months.²⁰ We find this revision appropriate and incorporate it into the Rules.

20 VAC 5-340-80

Section 80 addresses future Commission proceedings to determine the monthly administrative charge, the components of the minimum bill, and the calculation of subscriber bill credits. Some commenters asserted that an annual proceeding would not be necessary to make these determinations, as called for in the Proposed Rules.²¹ CCSA/MDV-SEIA further argued that the Commission should not prescribe cost categories for the minimum bill in the Rules but should instead address those issues through a hearing to be convened after adoption of the Rules.²² Similarly, the Commission received comments asserting that the applicable bill credit rate does not require a proceeding; rather, in December of each year, the Commission could calculate an annual bill credit based on publicly available information and thereafter publish or post its calculation.²³ Staff revised the Proposed Rules to accommodate these requests. We adopt Staff's revisions and direct Dominion to file a proposal for the minimum bill as set forth in this section of the Rules no later than March 1, 2021. Dominion shall file this minimum bill proposal in this docket.

20 VAC 5-340-100

The Commission received several comments emphasizing the importance of a low-income stakeholder working group,²⁴ as required by Code § 56-594.3 F 3.²⁵ We likewise recognize the importance of establishing that group, and in accordance with that statutory directive, we have added 20 VAC 5-340-100, which requires the Commission, upon adoption of the rules, to initiate a stakeholder process that includes low-income community representatives and community solar providers to facilitate low-income customer and low-income service organization participation in the program. Moreover, we find that many of the issues raised by the commenters in this proceeding should be further addressed and evaluated by this stakeholder working group, as described below, given the limited timeframe for finalization of the Rules.

To initiate this process, we direct the Staff to convene a stakeholder working group in accordance with the terms of Code § 56-594.3 F 3 and 20 VAC 5-340-100. The Commission expects this group to meet initially no later than March 1, 2021.

Staff shall thereafter convene the stakeholder group on an ad hoc basis at its discretion.

The stakeholder working group shall develop standardized consumer disclosure forms to be adopted by the Commission.²⁶ The group also shall address the components of low-income subscription plans, methods for low-income verification, and methods for measuring low-income participation. We further expect the group to consider any other issues pertinent to facilitating low-income customer and low-income service organization participation in the program. Finally, to the extent that any issues before the working group are relevant to, or overlap with, the multi-family shared solar program, we expect the group to consider those issues in the context of both programs.²⁷

20 VAC 5-340-110

As previously discussed, the Commission has adopted this section of the Rules to create an exemption process for certain subscriber organization's licensing. We find that adding this section to the Rules addresses the concerns of many commenters that the licensing process as proposed would be too onerous for smaller subscriber organizations.²⁸ We nevertheless recognize the importance of certain protections that the licensing process contains and have incorporated those protections into the exemption process for smaller organizations. Specifically, instead of submitting to a full licensure process with the Commission, subscriber organizations that provide less than 500 kilowatts alternating current of solar energy at one location, or multiple locations, must instead provide a notice, as prescribed by Rule 110, to the Commission's Division of Public Utility Regulation and subject to review and approval prior to commencing business operations.

Other matters

We note that Code § 56-594.3 F 12 requires a program implementation schedule. To that end, the Commission will begin receiving applications for subscriber organization licensing and exemptions beginning on July 1, 2021. By June 1, 2021, Dominion shall file with the Commission, and publish on its website, any materials needed for project registration. On July 1, 2021, Dominion shall begin accepting applications for registration. Within 60 days of Dominion's implementation of its customer information platform or by July 1, 2023, whichever occurs first, Dominion shall file any remaining tariffs, agreements, or forms necessary for the program. As discussed further above, we expect the Staff to convene a stakeholder working group by March 1, 2021, and we order Dominion to file its proposal for the minimum bill by March 1, 2021.

Accordingly, IT IS ORDERED THAT:

(1) The Rules Governing Shared Solar Program, 20 VAC 5-340-10 et seq., as shown in Attachment A to this Order, are hereby adopted and are effective as of January 1, 2021.

(2) The Commission's Division of Information Resources shall forward a copy of this Order, with Attachment A, to the Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(3) An electronic copy of this Order with Attachment A shall be made available on the Division of Public Utility Regulation's section of the Commission's website: scc.virginia.gov/pages/Rulemaking.

(4) By June 1, 2021, Dominion shall file with the Commission, and publish on its website, any materials needed for project registration.

(5) On July 1, 2021, Dominion shall begin accepting applications for registration.

(6) Within 60 days of Dominion's implementation of its customer information platform or by July 1, 2023, whichever occurs first, Dominion shall file any remaining tariffs, agreements, or forms necessary for the program with the Clerk of the Commission and shall submit the same to the Commission's Division of Public Utility Regulation and Division of Utility Accounting and Finance. The Clerk shall retain such filings for public inspection on the Commission's website: scc.virginia.gov/pages/Case-Information.

(7) For purposes of establishing the minimum bill pursuant to 20 VAC 5-340-80, Dominion shall file a proposal for the minimum bill by March 1, 2021, in this docket.

(8) By March 1, 2021, the Staff shall convene the first meeting of the stakeholder working group established herein and shall convene additional meetings on an ad hoc basis thereafter. Within thirty (30) days of the end of each meeting, the working group shall provide an update to the Commission on the issues discussed and any recommendations for the Commission to implement concerning the shared solar program and the multi-family shared solar program.

(9) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

¹The Proposed Rules appeared in the October 12, 2020 issue of the Virginia Register of Regulations.

²These requests for hearing shall be fulfilled by the proceeding on the minimum bill, pursuant to 20 VAC 5-340-80, that will take place after adoption of the Final Rules. Staff has represented that those requesting a hearing would be satisfied by this relief.

³20 VAC 5-340-10 G.

⁴See, e.g., GA Members Comments at 3; CCSA/MDV-SEIA Comments at 6-9.

⁵Staff Report at 6.

⁶Id. at 7-8.

Regulations

⁷Id. at 7.

⁸ See, e.g., CCSA/MDV-SEIA Comments at 21; DMME Comments at 3.

⁹Staff Report at 7.

¹⁰As always, contracts and/or arrangements between utilities and their affiliates are subject to the Affiliates Act, Code § 56-76 et seq.

¹¹See, e.g., VCEA Board Comments at 2-3; DMME Comments at 1-2. Low-income status is a relevant consideration since Code § 56-594.3 E requires the Commission to "approve a shared solar facility program of 150 megawatts with a minimum requirement of 30 percent low-income customers."

¹²Staff Report at 11-12.

¹³Id. at 12. See also Code § 56-594.3 F 3.

¹⁴See Staff Report at 12.

¹⁵Id.

¹⁶The multi-family shared solar program must be established pursuant to Code § 56-585.1:12 and is being considered in Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of establishing regulations for a multi-family shared solar program pursuant to § 56-585.1:12 of the Code of Virginia, Case No. PUR-2020-00124.

¹⁷Staff Report at 13.

¹⁸See Code § 56-594.

¹⁹VCEA Board Comments at 5.

²⁰See Staff Report at 13.

²¹See, e.g., Environmental Advocates Comments at 4; DMME Comments at 2.

²²CCSA/MDV-SEIA Comments at 22.

²³See Staff Report at 13-14.

²⁴See, e.g., VCEA Board Comments at 3; Sierra Club Comments at 3; DMME Comments at 1-2.

²⁵Code § 56-594.3 F 3 reads: "The Commission shall . . . [c]reate a stakeholder working group including low-income community representatives and community solar providers to facilitate low-income customer and low-income service organization participation in the program."

²⁶See Code § 56-594.3 F 8.

²⁷ Understanding the importance of consumer protection in these programs, we invite the Office of the Attorney General to participate in the stakeholder group.

²⁸Staff Report at 7-8.

Chapter 340

Rules Governing Shared Solar Program

20VAC5-340-10. Applicability.

A. This chapter is promulgated pursuant to § 56-594.3 of the Code of Virginia. The provisions of this chapter apply to Phase II Utilities, subscriber organizations, and subscribers. The provisions of this chapter govern the development of shared solar facilities and participation in the shared solar program.

B. The maximum cumulative size of the shared solar program initially shall not exceed 150 megawatts, at least 30% of which must be comprised of low-income customers. [The program shall be expanded by 50 megawatts upon qualification of satisfying the 30% requirement of low-income participation.]

C. Any shared solar facility may colocate on the same parcel of land as another shared solar facility only if such facilities are owned by the same entity and do not exceed an accumulative maximum capacity of 5,000 kilowatts among all such facilities. Such facilities will also be responsible for any special interconnection arrangements with the utility.

D. Customers participating in this program shall remain in their present customer class but may not participate in the multi-family solar program, pursuant to Chapters 1187, 1188, 1189, and 1239 of the 2020 Acts of Assembly, or the net metering program, pursuant to 20VAC5-315, while participating in this program.

E. [~~Implementation of the shared solar program shall not commence until the earlier of July 1, 2023, or within 60 days of the Phase II Utility's full implementation of a new customer information platform~~ Each utility must file any tariffs, agreements, or forms necessary for implementation of the program within 60 days of the utility's full implementation of a new customer information platform or by July 1, 2023, whichever occurs first, to process customer subscriptions. Subscriber organizations may apply for licenses, register projects, interact with potential customers, and otherwise develop shared solar projects beginning in 2021].

F. The provisions of this chapter shall be deemed not to prohibit the Phase II Utility, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The commission, upon a claim of inappropriate action or its own motion, may investigate and take such corrective actions as may be appropriate.

G. A request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis and may be granted upon such terms and conditions as the State Corporation Commission may impose.

20VAC5-340-20. Definitions.

The following terms [when used in this chapter] shall have the following meanings, unless the context clearly indicates otherwise:

["Affordable housing provider" means any multi-family residential housing project that is one or more of the following:

1. A federal, state, or local financing program requiring that the real estate remains subject to land use restriction and rental housing affordability covenants that limit allowable rents charged to individuals or families;
2. A federal low-income housing tax credit project, as defined in § 42 of the Internal Revenue Code of 1986;
3. A project funded with federal grants made to states for low-income housing tax credits under § 1602 of the American Recovery and Reinvestment Act of 2009;

4. A rental assistance demonstration public housing conversion under the federal Consolidated and Further Continuing Appropriations Act of 2020; or

5. Affordable housing meeting the applicable requirements of another federal, state, or local program.]

"Applicable bill credit rate" means the dollar-per-kilowatt-hour rate used to calculate the subscriber's bill credit.

"Bill credit" means the monetary value of the electricity, in kilowatt-hours, generated by the shared solar facility allocated to a subscriber to offset that subscriber's electricity bill.

"Low-income customer" means any person or household whose income is no more than 80% of the median income of the locality in which the customer resides. The median income of the locality is determined by the U.S. Department of Housing and Urban Development.

"Low-income service organization" means a nonresidential customer of an investor-owned utility whose primary purpose is to serve low-income individuals and households.

"Low-income shared solar facility" means a shared solar facility at least 30% of the capacity of which is subscribed by low-income customers or low-income service organizations.

["Low-income subscription plan" means a plan submitted to the commission by an applicant providing a commitment for low-income subscription and demonstrating the ability to subscribe low-income customers.]

"Minimum bill" means [~~an~~ a dollar per month] amount determined by the commission [~~as described in 20VAC 340-80~~ under § 56-594.3 D of the Code of Virginia] that subscribers are required to [~~at a minimum,~~] pay [, at a minimum,] on their utility bill each month after accounting for any bill credits.

["Non-ministerial permit" means all necessary governmental permits and approvals to construct the project (other than ministerial permits, such as electrical and building permits), notwithstanding any pending legal challenges to one or more permits or approvals.]

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality.

"Phase II Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Shared solar facility" means a facility that:

1. Generates electricity by means of a solar photovoltaic device with a nameplate capacity rating that does not exceed 5,000 kilowatts of alternating current;

2. Is located in the service territory of an investor-owned electric utility;

3. Is connected to the electric distribution grid serving the Commonwealth;

4. Has at least three subscribers;

5. Has at least 40% of its capacity subscribed by customers with subscriptions of 25 kilowatts or less; and

6. Is located on a single parcel of land.

"Shared solar program" or "program" means the program created through this chapter to allow for the development of shared solar facilities.

"Subscriber" means a retail customer of a utility that (i) owns one or more subscriptions of a shared solar facility that is interconnected with the utility and (ii) receives service in the service territory of the same utility in whose service territory the shared solar facility is located.

"Subscriber organization" means any for-profit or nonprofit entity that owns or operates one or more shared solar facilities. A subscriber organization shall not be considered a utility solely as a result of its ownership or operation of a shared solar facility. [A Phase II Utility shall not be a subscriber organization.]

"Subscription" means a contract or other agreement between a subscriber and the owner of a shared solar facility. A subscription shall be sized such that the estimated bill credits do not exceed the subscriber's average annual bill for the customer account to which the subscription is attributed.

"Utility" means a Phase II Utility.

20VAC5-340-30. Licensing of subscriber organizations.

A. [~~Other than a utility, each~~ Each] entity seeking to conduct business as a subscriber organization [, unless otherwise exempt or granted a waiver,] shall obtain a license from the commission prior to commencing business operations. Each entity applying for a license to conduct business as a subscriber organization shall file an application with the clerk of the commission and contemporaneously provide a copy of the application to the utility. [Applications for licensure shall be filed by the legal entity with control of, or prospective control of, shared solar projects rather than each individual project needing a separate license.] If the applicant becomes aware of any material changes to any information while the application is still pending, the applicant shall inform the commission within 10 calendar days. Applications shall include the following information:

1. Legal name of the applicant, as well as any trade names.

2. Physical business addresses and telephone numbers of the applicant's principal office and all offices in Virginia.

3. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the associated date (e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state

Regulations

issuing the certificate of organization and the date of issuance).

4. Name and business address of all principal corporate officers and directors, partners, and limited liability company (LLC) members, as appropriate.

5. If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the commission or if a domestic corporation, a copy of the certificate of incorporation from the commission.

6. A list of the states in which the applicant and the applicant's affiliates conduct business related to participation in a shared solar program, the names under which such business is conducted, and a description of the business conducted.

7. The applicant shall disclose if it is an affiliate of the incumbent utility. If it is, it shall further provide a description of internal controls the applicant has designed to ensure that it and its employees, contractors, and agents that are engaged in the (i) merchant, operations, transmission, or reliability functions of the electric generation systems; or (ii) customer service, sales, marketing, metering, accounting, or billing functions, do not receive information from the utility or from entities that provide similar functions for or on behalf of the utility as would give the affiliated subscriber organization an undue advantage over nonaffiliated subscriber organizations.

8. Name, title, and address of the applicant's registered agent in Virginia for service of process.

9. Name, title, address, telephone number, and email address of the applicant's liaison with the commission.

10. Sufficient information to demonstrate, for purposes of licensure with the commission, financial fitness commensurate with the services proposed to be provided. Applicant shall submit the following information related to general financial fitness:

a. [~~Proof~~ If available, proof] of a minimum bond rating or other senior debt of at least "BBB-" or an equivalent rating by a major rating agency, or a guarantee with a guarantor possessing a credit rating of "BBB-" or higher from a major rating agency. If not available, other evidence that will demonstrate the applicant's financial responsibility [~~is~~]

b. [~~The~~ If available, the] applicant's audited balance sheet, income and cash flow statements for the most recent fiscal year, or published financial information such as the most recent Securities and Exchange Commission forms 10-K and 10-Q. If not available, other financial information for the applicant or any other entity that provide financial resources to the applicant may be provided [~~is~~].

c. [~~A continuous or renewable performance or surety bond, an irrevocable letter of credit, or an irrevocable guaranty from a creditworthy corporate parent of the applicant in a minimum amount of \$50,000 in a form to be prescribed by the commission staff. A certified copy of the bond, letter of credit, or guaranty shall be provided to the State Corporation Commission's Division of Utility Accounting and Finance within 30 days of the issuance of a license to the applicant by the commission. If applicable, information to demonstrate that the applicant is a bona fide nonprofit entity. The information provided shall establish that the applicant (i) has the status of a tax-exempt organization under § 501(C)(3) of the Internal Revenue Code of 1986; (ii) conducts its activities in a manner that serves public or charitable purposes rather than commercial purposes; (iii) will apply for qualification of projects that serve primarily or exclusively low-income customers; and (iv) was not created for the purpose of avoiding the financial fitness requirements or otherwise under the control of a for profit entity.]~~

11. Sufficient information to demonstrate technical fitness commensurate with the service to be provided, to include:

a. A description of the applicant's experience developing solar facilities and engaging as a subscriber organization or other relevant services. Provide a discussion of the applicant's qualifications, including a summary of other projects developed and managed by the applicant with location, status, and operational history.

b. The names and a description of the managerial and technical experience of each principal officer and appropriate senior management person with direct responsibility for the business operations conducted in Virginia. Include a description of their experience related to developing solar facilities and providing shared solar services.

c. Billing service options the applicant intends to offer and a description of the applicant's billing capability including a description of any related experience.

12. A copy of the applicant's dispute resolution procedure, including the toll-free number for the customer service department.

13. A copy of the applicant's proposed standard agreement it plans to use with prospective subscribers.

14. A \$250 registration fee payable to the commission.

15. [~~An attestation that at least 30% of the shared solar facility's capacity will serve low income customers. 16.] The following information related to the applicant's fitness to operate as a subscriber organization:~~

a. Disclosure of any (i) civil, criminal, or regulatory sanctions or penalties imposed or in place within the previous five years against the applicant, any of its affiliates, or any officer, director, partner, or member of an

LLC or any of its affiliates, pursuant to any state or federal law or regulation; and (ii) felony convictions within the previous five years that relate to the business of the company or to an affiliate thereof, of any officer, director, partner, or member of an LLC.

b. Disclosure of whether any application for license or authority to conduct a similar type of business as it proposes to offer in Virginia has ever been denied, and whether any license or authority issued to it or an affiliate has ever been suspended or revoked and whether other sanctions have been imposed.

[16. A copy of the applicant's low-income subscription plan, as applicable.]

B. An officer with appropriate authority shall attest that all information supplied on the application for licensure is true and correct and that, if a license is granted, the applicant will abide by all applicable laws of the Commonwealth and regulations of the commission.

C. Any application that fails to provide all required information in this section shall be regarded as incomplete. No action shall be taken on any application until deemed complete and filed.

D. Upon receipt of an application for a license to conduct business as a subscriber organization, the commission shall enter an order providing notice to appropriate persons and an opportunity for comments on the application. The commission shall issue a license to conduct business as a subscriber organization upon finding the applicant satisfies the requirements established by this chapter.

E. A license granted pursuant to this chapter is valid until revoked or suspended by the commission after providing due notice and an opportunity for a hearing, or until the subscriber organization abandons its license.

F. Commission approval is required for transfer or assignment of a license issued under this section to any third party. The commission may condition its approval on any terms it determines appropriate to protect customers.

20VAC5-340-40. Registration with the utility.

A. [~~Licensed subscriber~~ Subscriber] organizations [, licensed or otherwise,] shall register [each proposed shared solar facility] with the utility by entering into an agreement containing information as prescribed in this section.

B. A subscriber organization shall provide proof of licensure by the commission [, as applicable].

C. A subscriber organization shall submit to the utility the full name of the subscriber organization, address, and type of entity (e.g. partnership, corporation, etc.).

D. Subscriber organizations shall provide the identity of the shared solar facility participating in the shared solar program, including an address of record and a copy of the executed

interconnection agreement for the shared solar facility. [Subscriber organizations also shall state the amount of capacity for the facility, meeting or exceeding the minimum of 30%, that will be subscribed by low-income subscribers and provide proof that non-ministerial permits have been obtained for the shared solar facility.]

E. [For a low-income shared solar facility, the subscriber organization shall provide a copy of its low-income subscription plan, as applicable.

F.] Subscriber organizations and the utility shall exchange the names, telephone numbers, and email addresses of appropriate internal points of contact to address operational, business coordination, and customer account issues, and the names and addresses of their registered agents in Virginia.

[~~F. G.] In the event a license granted under 20VAC5-340-30 is transferred to another entity with approval from the commission, the subscriber organization must notify the utility within five business days of approval by the commission.~~

[~~G. H.] The utility may require reasonable financial security from the subscriber organization to safeguard the utility and its customers from the reasonably expected net financial impact due to the nonperformance of the subscriber organization. The amount of such financial security shall be commensurate with the level of risk assumed by the utility. Such financial security may include a letter of credit, a deposit in an escrow account, a prepayment arrangement, a surety bond, or other arrangements that may be mutually agreed upon by the utility and the subscriber organization.~~

[~~H. I.] The utility shall notify the subscriber organization within 30 days [of the commission's issuance of a subscriber organization's licensure after the subscriber organization submits a shared solar facility registration to the utility] whether the shared solar facility has been awarded capacity in the program queue or placed on a waiting list. When awarded capacity in the program queue, the subscriber organization shall pay to the utility a security deposit in the amount of \$50 per kilowatt (kW) of alternating-current rated capacity of the shared solar facility within 10 days. This deposit shall be held by the utility in an interest-bearing account. Deposits shall be returned in full, including interest, upon commercial operation of the shared solar facility [and demonstration that low-income subscription requirements have been met. As program capacity is awarded, the utility shall ensure that the cumulative capacity of such projects meets or exceeds 30% of project capacity (or savings equivalent) for low-income customers as demonstrated by approved low-income subscription plans. Subscriber organizations deemed bona fide nonprofits shall be exempt from the \$50 per kW alternating current (AC) utility deposit].~~

[~~I. J.] If a project fails to reach mechanical completion within 24 months of the date it was awarded capacity, the utility shall remove the project from the program queue unless the subscriber organization of the project provides to the utility an~~

Regulations

additional deposit of \$25 per kW to maintain its position within the program queue. If, after paying the additional deposit, the project still fails to reach mechanical completion within an additional 12 months, the utility shall remove the project from the program queue.

[~~J. K.~~] The utility shall maintain, on a publicly available website, a list of projects accepted into the program queue and those projects that are on the wait list. This project list shall rank projects primarily by the date of the awarded capacity and secondarily by the date of a fully executed interconnection agreement. The utility shall update the list within two business days of any change to the projects in the program queue. The list shall include project applicant name, project location, the alternating current capacity rating of the project, the date the application was accepted into the program queue, and whether the project is a low-income shared solar facility.

[~~K. L.~~] Any project on the wait list that is moved off the wait list and receives a capacity award in the program queue shall have 10 business days to make the required deposit of \$50 per kW of alternating-current rated capacity to retain the project's award.

[~~L. M.~~] As part of its public program queue, the utility shall monitor and report the amount of capacity that has been allocated to low-income customers [, which also shall be published on the utility's website]. Upon qualification of 45 megawatts (MW) of alternating current (AC) of capacity committed to low-income subscribers as demonstrated by the approved low-income subscription plans of projects that have secured capacity in the program, the utility shall submit a request to the commission to release an additional 50 MW of capacity for the program [~~and address how the expansion shall be allocated, which shall be released without undue delay and allocated first to projects on the wait list and, if capacity remains, to new applicants on a first-come, first-served basis following the registration requirements and process set forth in this section]~~.

20VAC5-340-50. Marketing and enrollment.

A. A subscriber organization shall not conduct any marketing activities related to participation in the shared solar program until after the subscriber organization (i) receives a license [, exemption, or waiver] from the commission [~~; and~~] (ii) has begun [~~the interconnection process with the utility pursuant to Regulations Governing Interconnection of Small Electrical Generators (20VAC5-314); and (iii) completed~~] registration with the utility, as set forth in 20VAC5-340-40.

B. A subscriber organization shall not enroll [~~customers subscribers~~] until after [~~the~~ the earlier of when the utility's customer information system is operating or July 1, 2023, and the project] receives the executed Small Generator Interconnection Agreement pursuant to 20VAC5-314-40 through 20VAC5-314-70 and any other applicable local and state permits for the shared solar facility.

C. A subscriber organization shall not use credit checks as a means to establish the eligibility of a residential customer to become a subscriber.

D. A subscriber organization shall maintain adequate records allowing it to verify the customer's enrollment authorization. Authorization shall be in the form of a written contract with affirmed written signature, electronic signature, or recorded verbal affirmation. The subscriber organization shall maintain a copy of the contract for at least one year after the date of expiration. Such enrollment contracts shall be provided within five business days to the customer, the utility, or the commission staff upon request.

E. A subscriber organization shall provide accurate and understandable information in any advertisements, solicitations, marketing materials, or customer service contracts. All such materials shall, in a manner that is not misleading, include a statement that price for the subscription does not include charges to be billed by the utility.

F. A subscriber organization shall provide to prospective subscribers, prior to executing a written contract, [consumer disclosure information and] a description of how the shared solar program will function. Such description shall include explanations of the respective roles of the subscriber organization and the utility, and a detailed description of how customers will be billed.

G. Subscriber contracts shall include, at a minimum, the following information:

1. Contract price expressed in per kilowatt-hour, or if price is not easily specified, an explanation of how the subscription price will be calculated.
2. Size of the subscriber subscription [~~in kilowatt hours~~]. The contract must address modification of subscriptions in the event a shared solar facility underperforms during a period.
3. Length of the contract.
4. Provisions for terminating the contract, including any termination fees.
5. Location of the shared solar facility.
6. Size of the shared solar facility.
7. Description of billing terms and conditions.
8. List of applicable fees, including start up fees, cancellation fees, late payment fees, and fees for returned payments for insufficient funds.
9. Clear descriptions of the responsibilities of the subscriber organization and the utility, consistent with this chapter.
10. Toll-free number and address for complaints and inquiries.

11. A clear statement that (i) the maximum size of the subscriber's subscription shall not exceed their estimated annual usage; (ii) each customer may only participate in one shared solar facility or one multi-family solar facility; and (iii) a net metering customer may not participate in this program.

12. In a conspicuous location, confirmation of the customer's authorization for the utility and subscriber organization to exchange, at a minimum, the following billing information:

- a. Customer name;
- b. Billing address and premise address;
- c. Utility account number; and
- d. Share solar subscription information, including, at a minimum:
 - (1) Pricing;
 - (2) Subscription size;
 - (3) Contract start date and length; and
 - (4) Terms of subscription.

13. In a conspicuous location, signatures confirming the customer's request to enroll and the approximate date the enrollment will be effective.

H. Upon a [~~customer's~~ subscriber's] request, the subscriber organization may [~~reenroll a subscriber at transfer the subscription to~~] a new address under the existing contract without [~~the need to acquire a new authorization record, but the restriction provided the new address is also located in the utility's service territory. The~~] subscriber organization must provide the utility with updated billing information set forth in subdivision F 12 of this section.

I. [~~At least 60 days prior to the commercial operation of a shared solar facility, the~~ The] subscriber organization shall provide to the utility, in a format acceptable to the utility, [~~a~~ an initial] list of subscribers enrolled in the shared solar facility and their subscription information [~~at least 60 days prior to the shared solar facility supplying service to any customer~~].

J. In the event multiple enrollment requests are submitted for the same customer, the utility shall process the request with the earliest dated contract and shall notify the customer within five business days of receipt of the enrollment request of such enrollment. The utility shall only terminate enrollment with sufficient proof of termination presented by either the customer or the subscriber organization.

K. At least 60 days prior to the termination or abandonment of a shared solar facility, a subscriber organization must provide advanced written notice to the customer, the utility, and the commission.

L. A subscriber organization shall safeguard adequately all customer information and shall not disclose such information unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain.

This provision, however, shall not restrict the disclosure of credit and payment information as permitted currently or required by federal and state statutes.

[M. A subscriber may remain subscribed to the program even if the subscriber moves to another location within the utility's territory and may transfer the subscription to a new subscriber so long as the new subscriber meets applicable requirements established by the utility and subscriber organizations that exist at the time of transfer.]

20VAC5-340-60. Billing and payment.

A. Subscriber organizations shall provide subscriber information to the utility as follows:

1. Subscriber organizations must provide, on a monthly basis and in a standard electronic format and pursuant to this chapter, a subscriber list indicating the kilowatt-hours of generation attributable to each of the subscribers participating in a shared solar facility in accordance with the subscriber's portion of the output of the shared solar facility.

2. Subscriber lists [~~must~~ may] be updated monthly to reflect canceling subscribers and to add new subscribers.

3. Monthly information must be provided by the fifth business day of the month.

4. Data transfer protocols for exchange of data between the subscriber organization and the utility shall be established to include:

- a. Data components;
- b. Data format;
- c. Timing of monthly data exchanges;
- d. Encryption level; and
- e. Channel of data submission.

B. A subscriber organization may offer separate billing or consolidated billing service (net crediting) in which the utility will be the billing party to the customer.

1. Where a subscriber organization chooses to use consolidated billing, the subscriber organization's marketing materials and contracts must identify clearly that the utility may charge a net crediting fee not to exceed 1.0% of the bill credit value.

2. Where a subscriber organization chooses to use net crediting, any shared solar subscription fees charged via the net crediting model shall be set to ensure that subscribers do not pay more in subscription fees than they receive in bill credits.

3. All billing of the customer shall occur and comply with the utility's normal billing and credit cycles.

C. Credits to subscriber's bills shall occur within two billing cycles following the cycle during which energy was generated by the shared solar facility.

Regulations

D. Each utility shall, on a monthly basis and in a standardized electronic format, provide the subscriber organization a report indicating the total value of bill credits generated by the shared solar facility in the prior month, as well as the amount of the bill credit applied to each subscriber.

E. Failure of subscriber to pay any regulated charges shall subject the subscriber to the same credit consequences set forth in the utility's commission-approved terms and conditions of service, including the potential requirement to post a security or disconnection of service. The utility shall advise the subscriber directly of any pending disconnection action for nonpayment consistent with current practice, separate from the customer bill. Such notice shall identify clearly the amount that must be paid and the date by which such amount must be received and provide instructions for direct payment to the utility to avoid disconnection. A subscriber may not be disconnected for nonpayment of unregulated service charges.

F. Bill credits.

1. Bill credits shall be for a particular calendar month, regardless of the billing period or billing cycle of the individual customer's account.

2. Bill credits shall be calculated by multiplying the subscriber's portion of the kilowatt-hour electricity production from the shared solar facility by the applicable bill credit rate for the subscriber. Any portion of a bill credit that exceeds the subscriber's monthly bill, minus the minimum bill, shall be carried over and applied to [the next month's bill. Such carry over plus the next month's credit cannot exceed the next month's bill, minus the minimum bill subsequent bills until the earlier of when the credit is satisfied or up to 12 months].

3. In the event that all of the electricity generated by a shared solar facility is not allocated to subscribers in a given month, a subscriber organization may accumulate bill credits. The subscriber organization shall provide the utility allocation instructions for distributing excess bill credits to subscribers on an annual basis.

4. [In an annual proceeding, the The] commission shall [set establish] the [yearly] applicable bill credit [based upon rate for] the subscriber's [class of either] residential, commercial, or industrial [rate class].

5. The utility shall provide bill credits to a shared solar facility's subscribers for not less than 25 years from the date the shared solar facility becomes commercially operational.

6. The bill credits associated with the shared solar program shall be applied through the utility's fuel factor.

G. Minimum bill.

1. In [an annual a] proceeding, as prescribed in 20VAC5-340-80, the commission will [set a determine the specific

costs and formula to determine the] minimum bill for program participants.

2. Low-income customers shall be exempt from the minimum bill. Costs associated with such customers' participation shall be recovered by the utility in a manner to be determined by the commission in the [annual] proceeding set forth in 20VAC5-340-80.

H. Net crediting.

1. Net crediting functionality shall be part of any new customer information platform approved by the commission.

2. Under net crediting, the utility shall include the shared solar subscription fee on the customer's utility bill and provide the customer with a net credit equivalent to the total bill credit value for that generation period minus the shared solar subscription fee as set by the subscriber organization.

3. The net crediting fee shall not exceed 1.0% of the bill credit value.

4. Net crediting shall be optional for subscriber organizations, and any shared solar subscription fees charged via the net crediting model shall be set to ensure that subscribers do not pay more in subscription fees than they receive in bill credits.

I. Shared solar facility requirements. [~~1. Regardless of whether a subscriber organization uses net crediting, a utility may bill the subscriber organization a monthly administrative charge, as approved by the commission in the annual proceeding set forth in 20VAC5 340 80, for the costs attributed to the interconnection of the shared solar facility to the utility grid to cover the costs of providing electric services to the facility.~~ 2.] A shared solar facility must have a utility-provided meter capable of measuring output of the facility on a 30-minute interval basis.

[~~a. 1.] The shared solar facility's meter shall not be located behind another utility customer account.~~

[~~b. 2.] Costs of installation, maintenance, and reading of the meter shall be [part of the administrative costs of the shared solar program] billed to the subscriber organization.~~

20VAC5-340-70. Disputes.

A. The parties agree to attempt to resolve all disputes arising out of the shared solar program process according to the provisions of this section.

B. A subscriber organization shall establish an explicit dispute resolution procedure that identifies clearly the process that shall be followed when resolving customer disputes. A copy of such dispute resolution procedure shall be provided to a customer or the commission upon request.

C. If the dispute remains unresolved, either party may petition the commission to handle the dispute as a formal complaint or

may exercise whatever rights and remedies it may have in equity or law.

D. A subscriber organization shall furnish to customers an address and 24-hour toll-free telephone number for customer inquiries and complaints regarding services provided by the subscriber organization. The 24-hour toll-free telephone number shall be stated on all customer-billing statements and shall provide customers the opportunity to speak to a customer representative during normal business hours. Outside of normal business hours, a recorded message shall direct customers how to obtain customer assistance.

E. A subscriber organization shall direct a customer to contact the utility immediately if the customer has a service emergency. Such direction may be given either by a customer service representative or by a recorded message on its 24-hour toll-free telephone number.

F. A subscriber organization shall retain customer billing and account records and complaint records for at least three years and provide copies of such records to a customer or the commission upon request.

G. In the event that a customer has been referred to the utility by a subscriber organization, or to a subscriber organization by the utility, for response to an inquiry or a complaint, the party that is contacted second shall (i) resolve the inquiry or complaint in a timely fashion or (ii) contact the other party to determine responsibility for resolving the inquiry or complaint.

H. In the event a subscriber organization and customer cannot resolve a dispute, the subscriber organization shall provide the customer with the toll-free number and address of the commission.

20VAC5-340-80. [~~Annual proceeding~~ Minimum bill composition].

A. The commission shall convene a proceeding [annually] to determine [~~the any~~] monthly administrative charge [~~to subscriber organizations, and the components of~~] the minimum bill [~~components and the calculation of each customer class's applicable bill credit rate for the following year~~].

With respect to the minimum bill:

1. Each subscriber shall pay a minimum monthly bill, which shall, as approved by the commission, include the costs of all utility infrastructure and services used to provide electric service and administrative costs of the shared solar program. The commission may modify the minimum bill over time. In establishing the minimum bill, the commission shall (i) consider further costs the commission deems relevant to ensure subscribing customers pay a fair share of the costs of providing electric services to the subscribers, and (ii) minimize the costs shifted to customers not in a shared solar program.

2. The minimum bill [components] established [annually] as set forth in subdivision 1 of this subsection [~~must include, at a minimum, the following four general categories of costs, to be demonstrated by the utility and updated as deemed necessary by the commission shall be limited to such costs as determined by the commission to be just and reasonable based on evidence provided by the parties to the evidentiary hearing process. Such costs must reflect incremental costs of the shared solar program and not otherwise recovered by the utility from participating subscribers. The following factors shall be considered by the commission in determining whether costs proposed by the utility are incremental to the shared solar program and eligible for inclusion in the minimum bill~~]:

a. [~~Transmission and distribution costs~~ The extent to which the costs are utility infrastructure and services used to provide electric service for the shared solar program]:

b. [~~Standby generation and balancing costs~~ The extent to which the costs are administrative costs of the shared solar program]:

c. [~~Non bypassable charges established by the commission or otherwise by law; and Whether including the cost in the minimum bill is necessary to ensure subscribing customers pay a fair share of the costs of providing electric services to the subscribers;~~]

d. [~~Administrative costs~~ Whether including the cost in the minimum bill will minimize the costs shifted to customers not in a shared solar program; and

e. Whether including the cost in the minimum bill is otherwise consistent with the requirements of § 56-594.3 of the Code of Virginia].

3. [~~As part of the annual proceeding, the~~ The] commission shall also [~~determine~~ consider] how the utility will recover the minimum bill charges for exempt low-income customers.

[~~4. Certain of these costs, including transmission and distribution costs, as well as non bypassable charges, shall be determined by reference to rates approved in parallel rate proceedings before the commission and shall be updated automatically for shared solar customers when those rates are adjusted for the broader customer population. Other charges, including those in the standby generation and balancing costs category and the administrative costs category, shall be evaluated and determined by the commission in the annual proceeding convened pursuant to this section.~~]

B. The bill credit shall be calculated in accordance with 20VAC5-340-60 F [and § 56-594.3 C of the Code of Virginia].

Regulations

20VAC5-340-90. Recordkeeping and reporting requirements.

A. Subscriber organizations. Prior to commercial operation of any shared solar facility, each subscriber organization shall report to the commission and the applicable utility its achievement of contracting with low-income customers. Thereafter, this report shall be updated and filed semi-annually with the commission by January 31 and July 31, respectively, of each calendar year for the previous calendar year, commencing in 2024. When making the annual report, the subscriber organization shall provide the following information:

1. Total number of subscribers and the amount of kilowatts subscribed to by each subscriber;
2. Total number of low-income customers and the amount of kilowatts subscribed to by each low-income customer;
3. Detailed plan for meeting its low-income customer target in the upcoming year if the target was not met for the annual period covered by the report; and
4. Certification that there is no subscriber whose subscription size exceeds the subscriber's average annual bill over the past 12 months for the customer account to which the subscription is attributed.

The utility shall maintain a consolidated list of active subscriber organizations, including the number of low-income customers for each organization.

Each subscriber organization shall retain a record of all disclosure forms, low-income customer proof of eligibility, and subscriber allocation lists for a period of at least three years. Each subscriber organization shall retain copies of subscriber contracts for a period of at least one year from the date of their expiration. Each of these documents must be made available immediately upon request from the commission or commission staff.

A subscriber organization shall retain customer billing and account records and complaint records for at least three years.

B. Affordable housing providers. Affordable housing providers subscribing on behalf of their low-income tenants shall annually, on or before January 31, commencing in 2024, submit a written report for the shared solar program to the commission staff describing how bill savings or other tangible benefits were provided to the tenants in the last year. The report shall include a detailed accounting and expense report for the bill savings achieved.

C. Utility. [~~In accordance~~ The utility shall maintain conformance] with the commission's Regulations Governing Interconnection of Small Electric Generators (20VAC5-314), and specifically, 20VAC5-314-130 [~~§~~.]

- [~~1. The utility shall maintain, subject to audit, records for three years of (i) all interconnection requests received~~

pursuant to this chapter, (ii) the times required to complete interconnection request approvals and disapprovals, and (iii) justification for the actions taken on the interconnection requests.

2. Each utility shall annually, on or before January 31, submit a written report to the commission staff that includes the utility's shared solar facility queue and a listing of those facilities interconnected during the preceding calendar year. This report shall include the following data for each shared solar facility:

- a. Queue number;
- b. The physical address or geographic coordinates (latitude and longitude) of the shared solar facility;
- c. The capacity of the shared solar facility in terms of megawatts;
- d. The substation and transformer to which the project will be interconnected;
- e. The feeder or circuit to which the project will be interconnected;
- f. The date of submission of final completed Interconnection Request Form, as provided in 20VAC5-314-170;
- g. Interdependency status (e.g., Project A or Project B);
- h. Status of the request in the interconnection process (e.g., interconnection agreement executed, connected, canceled);
- i. The date of final completed signed interconnection agreement.]

[20VAC5-340-100. Low-income participation stakeholder process.

The Commission shall initiate a stakeholder process including low-income community representatives and community solar providers to facilitate low-income customer and low-income service organization participation in the program.

20VAC5-340-110. Licensing exemption process for subscriber organizations.

A. Each entity seeking to conduct business as a subscriber organization that provides less than a total of 500 kW AC solar at any one location or multiple locations shall provide notice to the commission prior to commencing any business operations. Each entity must notify the commission by electronic mail to PURUtilityReports@scc.virginia.gov and contemporaneously provide a copy of the information to the investor-owned utility. If the applicant becomes aware of any material changes to any information within the application, the applicant shall inform the commission within 10 calendar days. Notices shall include the following information:

1. Legal name of the applicant, as well as any trade names.

2. Physical business addresses and telephone numbers of the applicant's principal office and all offices in Virginia.

3. A description of the applicant's authorized business structure.

4. Name and business address of all principal entity officers and directors.

5. If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the commission or if a domestic corporation, a copy of the certificate of incorporation from the commission.

6. A list of the states, if any, in which the applicant and the applicant's affiliates conduct business related to participation in a multi-family shared solar program, the names under which such business is conducted, and a description of the business conducted.

7. Name, title, and address of the applicant's registered agent in Virginia for service of process.

8. Name, title, address, telephone number, and email address of the applicant's liaison with the commission.

9. Sufficient information to demonstrate viability to provide said service to its subscribers. (i.e., location and size of the solar installation, expected number of subscribers, expected in-service date, identity of solar developer and operator, contract term, facility maintenance agreement, revenue source, description of facility financing, nonprofit certification, etc.)

10. A copy of the applicant's dispute resolution procedure, including a telephone number.

11. A copy of the applicant's proposed standard agreement it plans to use with prospective subscribers.

12. A \$100 notice fee payable to the commission.

13. Disclosure of any (i) civil, criminal, or regulatory sanctions or penalties imposed or in place within the previous five years against the applicant.

14. An affidavit from an appropriate officer of the applicant certifying that the applicant will indemnify and hold harmless any and all subscribers from and against claim, damage, loss, and expense arising out of the applicant's negligence or misconduct.

15. A copy of the applicant's low-income subscription plan, as applicable.

B. An officer with appropriate authority shall attest that all information supplied on the notice is true and correct and that the applicant will abide by all applicable laws of the Commonwealth and regulations of the commission.

C. Notification to the commission is required for transfer or assignment of said services to any third party.

D. The commission may impose conditions on any terms it determines are appropriate.]

VA.R. Doc. No. R21-6400; Filed December 23, 2020, 3:09 p.m.

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: 20VAC5-342. Rules Governing Multi-Family Shared Solar Program (adding 20VAC5-342-10 through 20VAC5-342-100).

Statutory Authority: §§ 12.1-13 and 56-585.1:12 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: David Eichenlaub, Deputy Director, Public Utility Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9050, FAX (804) 371-9350, or email david.eichenlaub@scc.virginia.gov.

Summary:

The action implements Chapters 1187, 1188, 1189, and 1239 of the 2020 Acts of Assembly, which require the State Corporation Commission to establish a program that affords eligible multi-family customers of investor-owned utilities the opportunity to participate in shared solar projects. The regulation governs the development of shared solar facilities and participation in the multi-family shared solar program and contains licensing, registration, marketing and enrollment, billing and payment, annual proceeding, disputes, and recordkeeping and reporting requirements. Changes to the proposed regulation provide an exemption process for the licensing of certain subscriber organizations and clarify certain provisions regarding the commission's determination of any appropriate administrative charge.

AT RICHMOND, DECEMBER 23, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00124

Ex Parte: In the matter of establishing regulations for a multi-family shared solar program pursuant to § 56-585.1:12 of the Code of Virginia

ORDER ADOPTING RULES

During its 2020 Session, the Virginia General Assembly enacted Chapters 1188 (HB 572), 1189 (HB 1184), 1239 (HB 1647), and 1187 (SB 710) of the 2020 Virginia Acts of

Regulations

Assembly. These Acts of Assembly amend the Code of Virginia ("Code") by adding a section numbered 56-585.1:12,¹ effective July 1, 2020. Code § 56-585.1:12 requires that by January 1, 2021, the State Corporation Commission ("Commission") establish by regulation a program affording eligible multi-family customers of Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion") and Kentucky Utilities Company d/b/a Old Dominion Power Company ("ODP") the opportunity to participate in shared solar projects. Code § 56-585.1:12 C 7 states: "All environmental attributes associated with a shared solar facility, including renewable energy certificates, shall be considered property of the subscriber organization. At the subscriber organization's discretion, those attributes may be distributed to subscribers, sold to investor-owned utilities or other buyers, accumulated, or retired."

On July 1, 2020, the Commission entered an Order Directing Comment in this proceeding that sought comments on the multi-family shared solar program and associated regulations. The Commission's Order Directing Comment directed Dominion and ODP, and invited interested persons or entities, to file comments. The Order Directing Comment also permitted commenters to propose specific regulations.

The following parties filed comments: the Coalition for Community Solar Access and the Maryland-DC-Delaware-Virginia Solar Energy Industries Association (collectively, "CCSA/MDV-SEIA"); the Virginia Department of Mines, Minerals and Energy ("DMME"); the Virginia Clean Energy Advisory Board ("VCEA Board"); the Sierra Club; the Southern Environmental Law Center and Appalachian Voices (collectively, "Environmental Advocates"); Dominion; ODP; and GRID Alternatives Mid-Atlantic. On August 14, 2020, Dominion and CCSA/MDV-SEIA filed proposed regulations.

On September 21, 2020, the Commission entered an Order for Notice and Comment ("Procedural Order") in this docket that included proposed rules ("Proposed Rules") to be considered for adoption, which had been prepared by the Commission's Staff ("Staff"). The Commission's Procedural Order provided an opportunity for interested persons to file comments on the Proposed Rules, along with hearing requests and proposals. The Commission's Procedural Order also directed Staff to file a report ("Staff Report" or "Report") on, or a response to, any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules. The Procedural Order further directed that a copy of the Proposed Rules be sent to the Registrar of Regulations for publication in the Virginia Register of Regulations.²

In response to the Commission's Procedural Order, comments were received from the following entities: VCEA Board; Sierra Club; Environmental Advocates; CCSA/MDV-SEIA; DMME; ODP; and Dominion. Comments were also received jointly from the following members of the Virginia General Assembly: Senator Jennifer McClellan, Senator Scott Surovell,

Delegate Rip Sullivan, Delegate Jay Jones, Delegate Mark Keam, and Delegate Alfonso Lopez. Additionally, 38 public comments were submitted via the Commission's website. One request for hearing was received by the due date.³

On November 12, 2020, Staff filed a Motion for One-week Extension to File Staff Report, for Waiver of Rule 230, and for Expedited Treatment ("Motion"). Through its Motion, Staff requested that the Commission extend the deadline for filing the Staff Report by one week. Staff indicated that numerous stakeholders had requested a meeting with Staff prior to the filing of the Staff Report. On November 13, 2020, the Commission issued its Order Granting Motion accepting the Staff's request.

On November 16, 2020, with the assistance of DMME, Staff conducted a virtual stakeholder meeting that invited all those providing comments and all stakeholders who had indicated interest in such a meeting with Staff. Staff represented that this virtual meeting included 62 participants.

Staff filed its Report on November 23, 2020, which included certain revisions to the Proposed Rules based on Staff's review of both written and oral comments provided through filings and the virtual stakeholder meeting.

NOW THE COMMISSION, upon consideration of this matter, finds that we should adopt the rules ("Rules") appended hereto as Attachment A effective January 1, 2021. As an initial matter, the Commission expresses appreciation to those who have submitted written comments for our consideration and have otherwise participated in this proceeding. We have carefully reviewed and considered all comments filed in this matter. The Rules adopted today are intended to support the objectives of Code § 56-585.1:12, while also protecting the electric system and Virginia consumers. As experience is gained and lessons are learned, the Commission anticipates that these Rules may be updated and revised accordingly. In this regard, we further note that the Rules, as adopted herein, permit requests for waiver.⁴

The Rules we adopt herein contain modifications to those that were first proposed by Staff and published in the Virginia Register of Regulations on October 12, 2020. These modifications follow our consideration of further proposed changes made by the Staff in its Staff Report and the comments filed in this proceeding. Although we will not comment on each modification in detail, there are several issues that we will address further herein.

20 VAC 5-342-10

Various commenters expressed concerns that the Proposed Rules, as written, would not apply to ODP.⁵ Staff revised the Proposed Rules to clarify their applicability to both Dominion and ODP. We agree that Code § 56-585.1:12 applies to ODP, and we have adopted revisions to clarify that point in the Rules.

20 VAC-342-20

Staff noted concerns that the definition of "multi-family customer" may not allow for customers in duplex-style homes.⁶ Staff revised the Proposed Rules to address these concerns. We adopt a definition that includes utility customers of duplex-style homes with at least three subscribers to the shared solar facility, as is required by the definition of "shared solar facility" in Code § 56-585.1:12 A.

20 VAC 5-342-30

In its Report, Staff noted that some commenters viewed the subscriber organization requirements for licensing with the Commission as unnecessarily onerous, particularly for small projects owned by residents, property owners, non-profit entities, or small companies.⁷ While asserting that most projects would likely be much smaller than the three megawatt size cap, Staff believes that licensing should be required for corporate entities in the business of solar development or applicants with projects greater than 500 kilowatts.⁸ Staff suggested that the Commission could differentiate between these different types of entities in the licensing requirements.⁹ We find that doing so is appropriate and have therefore added 20 VAC 5-342-100, which creates an exemption process for entities that provide less than a total of 500 kilowatts alternating current at any one location or multiple locations. Rather than licensing, such entities must provide notice to the Commission's Division of Public Utility Regulation prior to commencing business operations. We note, however, that each project, regardless of size, must register with the utility.

As part of the licensing process for subscriber organizations, the Proposed Rules contained a bonding requirement for purposes of demonstrating of financial fitness. That requirement has been removed from the Rules. Such financial security may, however, be required by the Commission as a condition of licensure and prescribed through the Commission's order granting a license to a subscriber organization. The Staff will evaluate each applicant's financial fitness and recommend that the Commission require financial security as appropriate. This modification allows applicants to be evaluated on an individual basis and for the Commission to consider nonprofit status or other facts relevant to financial fitness when granting a license.

Many commenters proposed that the Commission exclude the utilities and their affiliates from participating in the multi-family shared solar program.¹⁰ Staff indicated that it believes nothing in the statute precludes utility participation but believes that as a practical matter, allowing affiliate participation, rather than utility participation, would better serve the program.¹¹ We agree with Staff's analysis and have added language to clarify that a utility may not participate as a subscriber organization. We find that the Proposed Rules otherwise provided adequate protections for addressing utility affiliate participation and that those provisions will be adopted as proposed.¹²

20 VAC 5-342-50

As drafted, subsection A of Section 50 of the Proposed Rules prohibits marketing activities until after, among other things, the subscriber organization has started the interconnection process with the utility pursuant to the Commission's Regulations Governing Interconnection of Small Electrical Generators and Storage, 20 VAC 5-314-10 et seq. ("Interconnection Rules"). Most comments received by the Commission agreed that the marketing requirements in Section 50 of the Proposed Rules need to be changed to align with how multi-family projects would be developed in practice.¹³ Specifically, in the context of the multi-family shared solar program where the project must be located on the customers' site, a developer could not establish control over a site, as required by the Interconnection Rules,¹⁴ without advertising to and communicating with potential customers.¹⁵ As the Proposed Rules currently are structured, however, such marketing by a developer could not occur until after interconnection with the utility has begun. To eliminate this double bind, Staff deleted subsection A of Rule 50.¹⁶ We find Staff's deletion appropriate in this context and adopt it in the Rules.

Many commenters agree that a standardized consumer disclosure form, as required by Code § 56-585.1:12 E 6, needs to be provided to each prospective customer before subscribing to a multi-family shared solar facility.¹⁷ Staff prefers that this form be developed with the assistance of the low-income stakeholder working group to be established under the non-multi-family shared solar program being developed pursuant to different statute, specifically Code § 56-594.3.¹⁸ Given the limited time for adopting these Rules and the collective expertise of the low-income stakeholder group, we agree with Staff and direct the working group to develop the disclosure form(s) to be adopted by the Commission for the multi-family shared solar program.¹⁹

20 VAC 5-342-60

Staff noted in its Report that non-utility commenters asserted that bill credits should roll over, in perpetuity, to future months when those credits exceed a customer's current monthly bill, in keeping with the language of Code § 56-585.1:12 C 1.²⁰ This Code provision reads, in pertinent part, "Any amount of the bill credit that exceeds the subscriber's monthly bill shall be carried over and applied to the next month's bill in perpetuity."²¹ In its Report, Staff suggested a revision to the Proposed Rules to mirror this Code requirement.²² We find Staff's revision appropriate and incorporate it into the Rules.

20 VAC 5-342-80

Section 80 addresses future Commission proceedings to determine the utility administrative charge and the calculation of subscriber bill credits. Many commenters stated that the administrative charge, as defined in the Proposed Rules, is inappropriate because it has the same cost components as the

Regulations

proposed minimum bill for the non-multi-family shared solar program.²³ For that program, Code § 56-594.3 requires subscribers to pay a minimum monthly bill, to be established by the Commission, to allow the utility to recover certain program-related costs. Code § 56-585.1:12 contains no such minimum bill provision for the multi-family shared solar program.²⁴ Thus, the need for and amount of any administrative charge is a determination made by the Commission in its discretion. The Staff proposed changes to Section 80 to incorporate this discretion, and we adopt these revisions.

The Commission also received comments asserting that the applicable bill credit rate does not require a proceeding; rather, in December of each year, the Commission could calculate an annual bill credit based on publicly available data and thereafter publish or post its calculation.²⁵ Staff revised the Proposed Rules to provide flexibility in this area. We adopt Staff's revisions and will calculate and publish the applicable bill credit rate accordingly.

20 VAC 5-342-100

As previously discussed, the Commission has adopted this section of the Rules to create an exemption process for subscriber organization licensing. We find that adding this section to the Rules addresses the concerns of many commenters that the licensing process as proposed would be too onerous for smaller subscriber organizations.²⁶ We nevertheless recognize the importance of certain protections that the licensing process contains and have incorporated those protections into the exemption process for smaller organizations. Specifically, instead of submitting to a full licensure process with the Commission, subscriber organizations that provide less than 500 kilowatts alternating current of solar energy at one location, or multiple locations, must instead provide a notice, as prescribed by Rule 100, to the Commission's Division of Public Utility Regulation and subject to review and approval prior to commencing business operations.

Other matters

We also note that Code § 56-585.1:12 E 10 requires a program implementation schedule. To that end, the Commission will begin receiving applications for subscriber organization licensing and exemptions beginning on July 1, 2021. We also require that, by June 1, 2021, Dominion and ODP shall file with the Commission, and publish on their websites, any materials needed for project registration. On July 1, 2021, Dominion and ODP shall begin accepting applications for registration. By June 30, 2021, Dominion and ODP shall file any remaining tariffs, agreements, or forms necessary for the program.

Accordingly, IT IS ORDERED THAT:

(1) The Rules Governing Multi-Family Shared Solar Program, 20 VAC 5-342-10 et seq., as shown in Attachment A

to this Order, are hereby adopted and are effective as of January 1, 2021.

(2) The Commission's Division of Information Resources shall forward a copy of this Order, with Attachment A, to the Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(3) An electronic copy of this Order with Attachment A shall be made available on the Division of Public Utility Regulation's section of the Commission's website: scc.virginia.gov/pages/Rulemaking.

(4) By June 1, 2021, Dominion and ODP shall file with the Commission, and publish on their websites, any materials needed for project registration.

(5) By June 30, 2021, Dominion and ODP shall file any remaining tariffs, agreements, or forms necessary for the program with the Clerk of the Commission and shall submit the same to the Commission's Division of Public Utility Regulation and Division of Utility Accounting and Finance. The Clerk shall retain such filings for public inspection on the Commission's website: scc.virginia.gov/pages/Case-Information.

(6) Dominion and ODP shall begin accepting applications for registration on July 1, 2021.

(7) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

¹This section was added as § 56-585.1:11 but was renumbered pursuant to the direction of the Virginia Code Commission.

²The Proposed Rules appeared in the October 12, 2020 issue of the Virginia Register of Regulations.

³Staff has represented that the party requesting a hearing accepted the stakeholder meeting conducted on November 16, 2020, in lieu of any formal hearing.

⁴20 VAC 5-342-10 E.

⁵See, e.g., Environmental Advocates Comments at 9; DMME Comments at 1-2.

⁶Staff Report at 5.

⁷Id. at 6-7.

⁸Id. at 7-8.

⁹Id. at 8-9.

¹⁰See, e.g., CCSA/MDV-SEIA Comments at 6-7; DMME Comments at 3.

¹¹Staff Report at 6.

¹²As always, contracts and/or arrangements between utilities and their affiliates are subject to the Affiliates Act, Code § 56-76 et seq.

¹³Staff Report at 11.

¹⁴See 20 VAC 5-314-170, Schedule 1, § 5.

¹⁵Staff Report at 11.

¹⁶Id.

¹⁷Id. at 12.

¹⁸Id.

¹⁹This working group is being created pursuant to Code § 56-594.3 F 3 in Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of establishing regulations for a shared solar program pursuant to § 56-594.3 of the Code of Virginia, Case No. PUR-2020-00125.

²⁰Staff Report at 12-13.

²¹Code § 56-585.1:12 C 1.

²²See Staff Report at 13.

²³See id. at 12.

²⁴Id.

²⁵See id. at 14.

²⁶See id. at 6-7.

Chapter 342

Rules Governing Multi-Family Shared Solar Program

20VAC5-342-10. Applicability.

A. This chapter is promulgated pursuant to the provisions of § 56-585.1:12 of the Code of Virginia. The provisions of this chapter apply to [~~Phase II Utilities, including, notwithstanding subsection G of § 56-580 of the Code of Virginia, any investor-owned utility whose service territory assigned to it by the commission is located entirely within the Counties of Dickenson, Lee, Russell, Scott, and Wise~~ investor-owned utilities as defined in 20VAC5-342-20], subscriber organizations, and subscribers and govern the development of shared solar facilities and participation in the multi-family shared solar program.

B. Customers participating in this program shall remain in their present customer class but may not participate in the shared solar program, pursuant to Chapters 1238 and 1264 of the 2020 Acts of Assembly, or the net metering program, pursuant to 20VAC5-315-10, while participating in this program.

C. Any shared solar facility may collocate on the same parcel of land as another shared solar facility only if such facilities are owned by the same entity and do not exceed an accumulative maximum capacity of 5,000 kW alternating current in the aggregate. Such facilities will also be responsible for any special interconnection arrangements with the utility.

D. The provisions of this chapter shall not be deemed to prohibit the utility, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The commission, upon a claim of inappropriate action or its own motion, may investigate and take such corrective actions as may be appropriate.

E. Any request for a waiver of any provision in this chapter shall be considered by the commission on a case-by-case basis and may be granted upon such terms and conditions as the commission may impose.

20VAC5-342-20. Definitions.

The following terms shall have the following meanings, unless the context clearly indicates otherwise:

"Administrative charge" is the [~~total~~ reasonable incremental] cost to the investor-owned utility to administer the program [~~that is assessed to the subscriber organization as determined by the commission~~].

"Applicable bill credit rate" means the dollar-per-kilowatt-hour rate (effective retail rate of the customer's rate class, expressed in dollars or cents per kilowatt-hour) inclusive of all supply charges, delivery charges, demand charges, fixed charges, and any applicable riders or other charges to the customer. The applicable bill credit rate shall be set such that the shared solar program results in robust project development and shared solar program access for all customer classes.

"Bill credit" means the monetary value of the electricity, in kilowatt-hours, generated by the shared solar facility allocated to a subscriber to offset that subscriber's electricity bill.

"Investor-owned utility" or "utility" means each investor-owned utility in the Commonwealth including, notwithstanding subsection G of § 56-580 of the Code of Virginia, any investor-owned utility whose service territory assigned to it by the commission is located entirely within the Counties of Dickenson, Lee, Russell, Scott, and Wise. "Investor-owned utility" does not include a Phase I Utility, as that term is defined in subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Multi-family customer" means an investor-owned utility customer residing in an apartment [~~or~~] condominium [, or duplex] complex with [~~at least three~~] individually metered residences [and at least three subscribers to the shared solar facility].

"Multi-family shared solar program" or "program" means the program created through this chapter to allow for the development of shared solar facilities described in subsection C of § 56-585.1:12 of the Code of Virginia.

"Shared solar facility" means a facility that:

1. Generates electricity by means of a solar photovoltaic device with a nameplate capacity rating that does not exceed 3,000 kW alternating current at any single location or that does not exceed 5,000 kW alternating current at contiguous locations owned by the same entity or affiliated entities;

2. Is operated pursuant to a program whereby at least three subscribers receive a bill credit for the electricity generated from the facility in proportion to the size of their subscription;

Regulations

3. Is located in the service territory of an investor-owned utility;

4. Is connected to the electric distribution grid serving the Commonwealth; and

5. Is located on a parcel of land on the premises of the multi-family utility customer or adjacent thereto.

"Subscriber" means a multi-family customer of an investor-owned electric utility that owns one or more subscriptions of a shared solar facility that is interconnected with the utility.

"Subscriber organization" means any for-profit or nonprofit entity that owns or operates one or more shared solar facilities. A "subscriber organization" shall not be considered a utility solely as a result of its ownership or operation of a shared solar facility. [An investor-owned utility shall not be a subscriber organization.]

"Subscription" means a contract or other agreement between a subscriber and the owner of a shared solar facility. A subscription shall be sized such that the estimated bill credits do not exceed the subscriber's average annual bill over the past 12 months for the customer account to which the subscription is attributed.

20VAC5-342-30. Licensing of subscriber organizations.

A. [~~Other than an investor-owned utility, each~~ Each] entity seeking to conduct business as a subscriber organization [, unless otherwise exempt or granted a waiver,] shall obtain a license from the commission prior to commencing business operations. Each entity applying for a license to conduct business as a subscriber organization shall file an application with the clerk of the commission and contemporaneously provide a copy of the application to the investor-owned utility. If the applicant becomes aware of any material changes to any information within the application, the applicant shall inform the commission within 10 calendar days. Applications shall include the following information:

1. Legal name of the applicant, as well as any trade names.
2. Physical business addresses and telephone numbers of the applicant's principal office and all offices in Virginia.
3. A description of the applicant's authorized business structure, identifying the state authorizing such structure and date (e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date of issuance).
4. Name and business address of all principal corporate officers and directors, partners, and limited liability company (LLC) members, as appropriate.
5. If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the commission or if a domestic corporation, a copy of the certificate of incorporation from the commission.

6. A list of the states in which the applicant and the applicant's affiliates conduct business related to participation in a shared solar program, the names under which such business is conducted, and a description of the business conducted.

7. The applicant shall disclose if it is an affiliate of the incumbent utility. If it is, it shall further provide a description of internal controls the applicant has designed to ensure that the applicant and the applicant's employees, contractors, and agents that are engaged in the (i) merchant, operations, transmission, or reliability functions of the electric generation systems; or (ii) customer service, sales, marketing, metering, accounting, or billing functions do not receive information from the utility or from entities that provide similar functions for or on behalf of the utility as would give the affiliated subscriber organization an undue advantage over nonaffiliated subscriber organizations.

8. Name, title, and address of the applicant's registered agent in Virginia for service of process.

9. Name, title, address, telephone number, and email address of the applicant's liaison with the commission.

10. [Description of the project to include the physical location and size (in kW AC) of the solar facility, expected in-service date, the identity of the complex being served, the expected number of subscribers to be served and any other pertinent information, as applicable.

11.] Sufficient information to demonstrate, for purposes of licensure with the commission, financial fitness commensurate with the services proposed to be provided. Applicant shall submit the following information related to general financial fitness:

a. [~~Proof~~ If available, proof] of a minimum bond rating or other senior debt of "BBB-" or an equivalent rating by a major rating agency, or a guarantee with a guarantor possessing a credit rating of "BBB-" or higher from a major rating agency. If not available, other evidence that will demonstrate the applicant's financial responsibility [~~is~~.]

b. [~~The~~ If available, the] applicant's audited balance sheet, income, and cash flow statements for the most recent fiscal year or published financial information such as the most recent Securities and Exchange commission forms 10-K and 10-Q. If not available, other financial information for the applicant or any other entity that provides financial resources to the applicant may be provided [~~is~~.]

c. [~~A continuous or renewable performance or surety bond, an irrevocable letter of credit, or an irrevocable guaranty from a creditworthy corporate parent of the applicant in a minimum amount of \$50,000 in a form to be prescribed by the commission staff. A certified copy of the bond, letter of credit, or guaranty shall be provided to the~~

~~State Corporation Commission's Division of Utility Accounting and Finance within 30 days of the issuance of a license to the applicant by the commission~~ If applicable, information to demonstrate that the applicant is a bona fide nonprofit entity. The information provided shall establish that the applicant (i) has the status of a tax-exempt organization under § 501(C)(3) of the Internal Revenue Code of 1986; (ii) conducts its activities in a manner that serves public or charitable purposes rather than commercial purposes; (iii) will apply for qualification of projects that serve primarily or exclusively low-income customers; and (iv) was not created for the purpose of avoiding the financial fitness requirements or otherwise under the control of a for profit entity].

[~~11~~. 12.] Sufficient information to demonstrate technical fitness commensurate with the service to be provided, to include:

- a. A description of the applicant's experience developing solar facilities and engaging as a subscriber organization or other relevant services. Provide a discussion of the applicant's qualifications, including a summary of other projects developed and managed by the applicant with location, status, and operational history.
- b. The names and a description of the managerial and technical experience of each principal officer and appropriate senior management person with direct responsibility for the business operations conducted in Virginia. Include a description of their experience related to developing solar facilities and providing shared solar services.
- c. Billing service options [supported by the utility of which] the applicant intends to offer and a description of the applicant's billing capability including a description of any related experience.

[~~12~~. 13.] A copy of the applicant's dispute resolution procedure, including the [~~toll-free~~ telephone] number for the customer service department.

[~~13~~. 14.] A copy of the applicant's proposed standard agreement it plans to use with prospective subscribers.

[~~14~~. 15.] A \$250 registration fee payable to the commission.

[~~15~~. 16.] The following information related to the applicant's fitness to operate as a subscriber organization:

- a. Disclosure of any (i) civil, criminal, or regulatory sanctions or penalties imposed or in place within the previous five years against the applicant, any of its affiliates, or any officer, director, partner, or member of an LLC or any of its affiliates, pursuant to any state or federal consumer protection law or regulation and (ii) felony convictions within the previous five years that relate to the business of the company or to an affiliate thereof, of any officer, director, partner, or member of an LLC.

b. Disclosure of whether any application for license or authority to conduct a similar type of business as it proposes to offer in Virginia has ever been denied, whether any license or authority issued to it or an affiliate has ever been suspended or revoked, and whether other sanctions have been imposed.

B. An officer with appropriate authority shall attest that all information supplied on the application for licensure is true and correct and that, if a license is granted, the applicant will abide by all applicable laws of the Commonwealth and regulations of the commission.

C. Any application that fails to provide all required information in this section [~~2~~] shall be regarded as incomplete. No action shall be taken on any application until deemed complete and filed.

D. Upon receipt of an application for a license to conduct business as a subscriber organization, the commission shall enter an order providing notice to appropriate persons and an opportunity for comments on the application. The commission shall issue a license to conduct business as a subscriber organization upon finding the applicant satisfies the requirements established by this chapter.

E. A license granted pursuant to this chapter is valid until revoked or suspended by the commission or until the subscriber organization abandons its license.

F. Commission approval is required for transfer or assignment of a license issued under this section to any third party. The commission may condition its approval on any terms it determines are appropriate to protect customers.

20VAC5-342-40. Registration with the utility.

A. [~~Licensed Each~~] subscriber [~~organizations~~ organization, licensed or otherwise,] shall register [each proposed shared solar facility] with the utility by entering into an agreement containing information as prescribed in this section.

B. A subscriber organization shall provide proof of licensure by the commission [, as applicable].

C. A subscriber organization shall submit to the utility the full name of the subscriber organization, address, and type of entity (e.g., partnership, corporation, etc.).

D. Subscriber organizations shall provide the identity of the shared solar facility participating in the multi-family shared solar program, including an address of record and a copy of the executed interconnection agreement for the shared solar facility.

E. Subscriber organizations and the utility shall exchange the names, telephone numbers, and email addresses of appropriate internal points of contact to address operational, business coordination, and customer account issues, and the names and addresses of their registered agents in Virginia.

Regulations

F. In the event a license granted under 20VAC5-342-30 is transferred to another entity with approval from the commission, the subscriber organization must notify the utility within five business days of approval by the commission.

G. The utility may require reasonable financial security from the subscriber organization to safeguard the utility and its customers from the reasonably expected net financial impact due to the nonperformance of the subscriber organization. The amount of such financial security shall be commensurate with the level of risk assumed by the utility. Such financial security may include a letter of credit, a deposit in an escrow account, a prepayment arrangement, a surety bond, or other arrangements that may be mutually agreed upon by the utility and the subscriber organization. [Nonprofit subscriber organizations shall not be required to post a bond, letter of credit, or parental guarantee for the first 500 kilowatts of shared solar project capacity.]

20VAC5-342-50. Marketing and enrollment.

[~~A. A subscriber organization shall not conduct any marketing activities related to participation in the multi-family shared solar program until after the subscriber organization (i) receives a license from the commission; (ii) has begun the interconnection process with the utility pursuant to Regulations Governing Interconnection of Small Electrical Generators (20VAC5 314); and (iii) completed registration with the utility, as set forth in 20VAC5-342-40.~~

~~B. A.] A subscriber organization shall not enroll customers until after it receives the executed Small Generator Interconnection Agreement pursuant to 20VAC5-314-40 through 20VAC5-314-70, and any other applicable local and state permits for the shared solar facility.~~

[~~C. B.] A subscriber organization shall maintain adequate records allowing it to verify the customer's enrollment authorization. Authorization shall be in the form of a written contract with affirmed written signature, electronic signature, or recorded verbal affirmation. The subscriber organization shall maintain a copy of the contract for at least one year after the date of expiration. Such enrollment contracts shall be provided within five business days to the customer, the utility, or the commission staff upon request.~~

[~~D. C.] A subscriber organization shall provide accurate and understandable information in any advertisements, solicitations, marketing materials, or customer service contracts. All such materials shall, in a manner that is not misleading, include a statement that the price for the subscription does not include charges to be billed by the utility.~~

[~~E. D.] A subscriber organization shall provide to prospective subscribers, prior to executing a written contract, [consumer disclosure information and] a description of how the multi-family shared solar program will function. Such description shall include explanations of the respective roles of~~

the subscriber organization and the utility, and a detailed description of how customers will be billed.

[~~F. E.] Subscriber contracts shall include, at a minimum, the following information:~~

1. Contract price expressed in per-kilowatt-hours, or if price is not easily specified, an explanation of how the subscription price will be calculated.

2. Size of the subscriber subscription [~~in kilowatt-hours~~]. The contract must address modification of subscriptions in the event a shared solar facility underperforms during a period.

3. Length of the contract.

4. Provisions for terminating the contract, including any termination fees.

5. Location of the shared solar facility.

6. Size of the shared solar facility.

7. Description of billing terms and conditions.

8. List of applicable fees, including start up fees, cancellation fees, late payment fees, and fees for returned payments for insufficient funds.

9. Clear descriptions of the responsibilities of the subscriber organization and the utility, consistent with this chapter.

10. [~~Toll-free number and address~~ Contact information] for complaints and inquiries.

11. A clear statement that (i) the maximum size of the subscriber's subscription shall not exceed their estimated annual usage, (ii) each customer may only participate in one shared solar facility or one multi-family solar facility, and (iii) a net metering customer may not participate in this program.

12. In a conspicuous location, confirmation of the customer's authorization for the utility and subscriber organization to exchange, at a minimum, the following billing information:

a. Customer name;

b. Billing address and premise address;

c. Utility account number; and

d. Share solar subscription information, including, at a minimum:

(1) Pricing;

(2) Subscription size;

(3) Contract start date and length; and

(4) Terms of subscription.

13. In a conspicuous location, signatures confirming the customer's request to enroll and the approximate date the enrollment will be effective.

[~~G. F.~~] Upon a customer's request, the subscriber organization may ~~reenroll~~ transfer] a [~~subscriber at~~ subscriber's subscription to] a new address under the existing contract without ~~[the need to acquire a new authorization record, but the~~ restriction provided that the new address is also in the utility's service territory. The] subscriber organization must provide the utility with updated billing information set forth in subdivision ~~[~~F E~~] 12~~ of this section.

[~~H. At least 60 days prior to the commercial operation of a shared solar facility, the~~ G. The] subscriber organization shall provide to the utility, in a format acceptable to the utility, [~~a~~ an initial] list of subscribers enrolled in the shared solar facility and their subscription information [~~at least 60 days prior to the shared solar facility supplying service to any customer~~].

[~~I. H.~~] In the event multiple enrollment requests are submitted for the same customer, the utility shall process the request with the earliest dated contract and shall send notification to the customer within five business days of receipt of the enrollment request of such enrollment. The utility shall terminate enrollment only with sufficient proof of termination presented by either the customer or the subscriber organization.

[~~J. I.~~] At least 60 days prior to the termination or abandonment of a shared solar facility, a subscriber organization must provide advanced written notice to the customer, the utility, and the commission.

[~~K. J.~~] A subscriber organization shall safeguard adequately all customer information and shall not disclose such information unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as currently permitted by federal and state statutes.

20VAC5-342-60. Billing and payment.

A. Subscriber organizations shall provide subscriber information to the utility as follows:

1. Subscriber organizations must provide, on a monthly basis and in a standard electronic format and pursuant to this chapter, a subscriber list indicating the kilowatt-hours of generation attributable to each of the subscribers participating in a shared solar facility in accordance with the subscriber's portion of the output of the shared solar facility.

2. Subscriber lists [~~must~~ may] be updated monthly to reflect canceling subscribers and to add new subscribers.

3. Monthly information must be provided by the fifth business day of the month.

4. Data transfer protocols for exchange of data between the subscriber organization and the utility shall be established to include:

a. Data components;

b. Data format;

c. Timing of monthly data exchanges;

d. Encryption level; and

e. Channel of data submission.

B. A subscriber organization may offer separate billing or consolidated billing service (net crediting) in which the utility will be the billing party to the customer.

1. Where a subscriber organization chooses to use consolidated billing, the subscriber organization's marketing materials and contracts must identify clearly that the utility may charge a net crediting fee not to exceed 1.0% of the bill credit value.

2. Where a subscriber organization chooses to use net crediting, any shared solar subscription fees charged via the net crediting model shall be set to ensure that subscribers do not pay more in subscription fees than they receive in bill credits.

3. All billing of the customer shall occur and comply with the utility's normal billing and credit cycles.

C. Credits to subscriber's bills [~~generated within a monthly billing cycle that exceed the month's bill~~] shall [~~occur within one billing cycle following the cycle during which energy was generated by the shared solar facility~~ be applied to subsequent bills without restriction].

D. Each utility shall, on a monthly basis and in a standardized electronic format, provide the subscriber organization a report indicating the total value of bill credits generated by the shared solar facility in the prior month, as well as the amount of the bill credit applied to each subscriber.

E. Failure of subscriber to pay any regulated balance charges shall subject the subscriber to the same credit consequences set forth in the utility's commission-approved terms and conditions of service, including potential requirement to post security deposit or disconnection of service. The utility shall advise the subscriber directly of any pending disconnection action for nonpayment consistent with current practice, separate from the customer bill. Such notice shall identify clearly the amount that must be paid and the date by which such amount must be received and provide instructions for direct payment to the utility to avoid disconnection. A subscriber may not be disconnected for nonpayment of unregulated service charges.

F. Bill credits.

1. Bill credits shall be for a particular calendar month, regardless of the billing period or billing cycle of the individual customer's account.

2. Bill credits shall be calculated by multiplying the subscriber's portion of the kilowatt-hour electricity production from the shared solar facility by the applicable bill credit rate for the subscriber. Any portion of a bill credit that exceeds the subscriber's monthly bill shall be carried

Regulations

over and applied to the next month's bill [in perpetuity].
[~~Such carry-over plus the next month's credit cannot exceed the next month's bill.~~]

3. ~~In the event that all of the electricity generated by a shared solar facility is not allocated to subscribers in a given month, a subscriber organization may accumulate bill credits. The subscriber organization shall provide the utility allocation instructions for distributing excess bill credits to subscribers on an annual basis.~~

4. [~~In an annual proceeding, the commission shall set the~~ The] applicable bill credit [shall be determined by the commission] based upon the subscriber's [rate] class [of as] either [a] residential, commercial, or industrial [customer].

5. The utility shall provide bill credits to a shared solar facility's subscribers for not less than 25 years from the date the shared solar facility becomes commercially operational.

6. The bill credits associated with the multi-family shared solar program shall be applied through the utility's fuel factor.

[~~G. Administrative charge. In an annual proceeding, as prescribed in 20VAC5-342-80, the commission will set an administrative charge to be assessed to subscriber organizations.~~

~~H. G.] Shared solar facility requirements. [1. Regardless of whether a subscriber organization uses net crediting, a utility may bill the subscriber organization a monthly administrative charge, as approved by the commission in the annual proceeding, set forth in 20VAC5-342-80, for the costs attributed to the interconnection of the shared solar facility to the utility grid to cover the costs of providing electric services to the facility 2.] A shared solar facility must have a utility-provided meter capable of measuring output of the facility on a 30-minute interval basis.~~

[~~a. 1.] The shared solar facility's meter shall not [generally] be located behind another utility customer account.~~

[~~b. 2.] Costs of installation, maintenance, and reading of the meter shall be part of the administrative costs of the shared solar program billed to the subscriber organization.~~

20VAC5-342-70. Disputes.

A. The parties agree to resolve all disputes arising out of the shared solar program process according to the provisions of this section.

B. A subscriber organization shall establish an explicit dispute resolution procedure that identifies clearly the process that shall be followed when resolving customer disputes. A copy of such dispute resolution procedure shall be provided to a customer or the commission upon request.

C. If the dispute remains unresolved, either party may petition the commission to handle the dispute as a formal complaint or may exercise whatever rights and remedies it may have in equity or law.

D. A subscriber organization shall furnish to customers an address and [~~24-hour toll-free~~] telephone number for customer inquiries and complaints regarding services provided by the subscriber organization. The [~~24-hour toll-free~~] telephone number shall be stated on all customer-billing statements and shall provide customers the opportunity to speak to a customer representative during normal business hours. Outside of normal business hours, a recorded message shall direct customers how to obtain customer assistance.

E. A subscriber organization shall immediately direct a customer to contact the utility if the customer has a service emergency. Such direction may be given either by a customer service representative or by a recorded message on its [~~24-hour toll-free~~] telephone number.

F. A subscriber organization shall retain customer billing and account records and complaint records for at least three years and provide copies of such records to a customer or the commission upon request.

G. In the event that a customer has been referred to the utility by a subscriber organization, or to a subscriber organization by the utility, for response to an inquiry or a complaint, the party that is contacted second shall (i) resolve the inquiry or complaint in a timely fashion, or (ii) contact the other party to determine responsibility for resolving the inquiry or complaint.

H. In the event a subscriber organization and customer cannot resolve a dispute, the subscriber organization shall provide the customer with the toll-free number and address of the commission.

20VAC5-342-80. [Annual proceeding Determination of bill credit rate and administrative charge].

A. The commission shall [~~convene a proceeding annually to~~] determine [~~(i)~~] the [~~monthly~~] need for and amount of any appropriate [] administrative charge [~~to subscriber organizations and (ii) the calculation of applicable bill credit rate of each customer class for the following year. With respect to the administrative charge.~~]

1. [~~The Any~~] administrative charge [~~established annually described in this subsection must deemed necessary by the commission may~~] include [~~, at a minimum,~~ items such as] the following [~~four~~] general categories of costs, to be demonstrated by the utility:

a. Transmission and distribution costs;

b. Standby generation and balancing costs;

c. Non-bypassable charges established by the commission or otherwise by law; and

d. Other administrative costs, including such as any banking, balancing, and storing fees related to the utility's processing and handling of the excess bill credits.

2. Certain of these costs [~~including transmission and distribution costs, as well as non-bypassable charges,~~ will may] be determined by reference to rates approved in parallel rate proceedings before the commission and [shall may] be updated automatically [~~for subscriber organizations~~] when those rates are adjusted for the utility's customer population. Other components of the administrative charge [~~including those in the standby generation and balancing costs category and the other administrative costs category,~~ will may] be [evaluated] and determined by the commission in [the annual a] proceeding convened [at the commission's discretion] pursuant to this section.

B. The bill credit shall be calculated in accordance with [20VAC5-342-70 F ~~20VAC5-342-60 F~~ and § 56-585.1:12 D of the Code of Virginia].

20VAC5-342-90. Recordkeeping and reporting requirements.

A. Subscriber organizations. Each subscriber organization shall file a report annually with the commission by January 31 of each calendar year for the previous calendar year. When making the annual report, the subscriber organization shall provide the following information:

1. Total number of subscribers and the amount of kilowatts subscribed to by each subscriber; and
2. Certification that there is no subscriber whose subscription size exceeds the subscriber's average annual bill over the past 12 months for the customer account to which the subscription is attributed.

Each subscriber organization shall retain a record of all disclosure forms and subscriber allocation lists for a period of at least three years. Each subscriber organization shall retain copies of subscriber contracts for a period of at least one year from the date of their expiration. Each of these documents must be made available immediately upon request from the commission or commission staff.

A subscriber organization shall retain customer billing and account records and complaint records for at least three years.

B. Utility. [~~In accordance~~ The utility shall maintain conformance] with the commission's Regulations Governing Interconnection of Small Electric Generators (20VAC5-314) and specifically, 20VAC5-314-130 [~~;~~]

[~~1. The utility shall maintain, subject to audit, records for three years of (i) all interconnection requests received pursuant to this chapter, (ii) the times required to complete interconnection request approvals and disapprovals, and (iii)~~

~~justification for the actions taken on the interconnection requests.~~

~~2. Each utility shall annually, on or before January 31, submit a written report to the commission staff that includes the utility's shared solar facility queue and a listing of those facilities interconnected during the preceding calendar year. This report shall include the following data for each shared solar facility:~~

- ~~a. Queue number.~~
- ~~b. The physical address or geographic coordinates (latitude and longitude) of the shared solar facility.~~
- ~~c. The capacity of the shared solar facility, in terms of megawatts.~~
- ~~d. The substation and transformer to which the project will be interconnected.~~
- ~~e. The feeder or circuit to which the project will be interconnected.~~
- ~~f. The date of submission of final completed Interconnection Request Form, as provided in 20VAC5-314-170.~~
- ~~g. Interdependency status (e.g., Project A or Project B).~~
- ~~h. Status of the request in the interconnection process (e.g., interconnection agreement executed, connected, canceled).~~
- ~~i. The date of final completed signed interconnection agreement.]~~

[20VAC5-342-100. Licensing exemption process for subscriber organizations.

A. Each entity seeking to conduct business as a subscriber organization that provides less than a total of 500 kW AC solar at any one location or multiple locations shall provide notice to the commission prior to commencing any business operations. Each entity must notify the commission at PURUtilityReports@scc.virginia.gov and contemporaneously provide a copy of the information to the investor-owned utility. If the applicant becomes aware of any material changes to any information within the application, the applicant shall inform the commission within 10 calendar days. Notices shall include the following information:

1. Legal name of the applicant, as well as any trade names.
2. Physical business addresses and telephone numbers of the applicant's principal office and all offices in Virginia.
3. A description of the applicant's authorized business structure.
4. Name and business address of all principal entity officers and directors.
5. If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the

Regulations

commission or if a domestic corporation, a copy of the certificate of incorporation from the commission.

6. A list of the states, if any, in which the applicant and the applicant's affiliates conduct business related to participation in a multi-family shared solar program, the names under which such business is conducted, and a description of the business conducted.

7. Name, title, and address of the applicant's registered agent in Virginia for service of process.

8. Name, title, address, telephone number, and email address of the applicant's liaison with the commission.

9. Sufficient information to demonstrate viability to provide said service to its subscribers. (i.e., location and size of the solar installation, expected number of subscribers, expected in-service date, identity of solar developer and operator, contract term, facility maintenance agreement, revenue source, description of facility financing, nonprofit certification, etc.)

10. A copy of the applicant's dispute resolution procedure, including a telephone number.

11. A copy of the applicant's proposed standard agreement it plans to use with prospective subscribers.

12. A \$100 notice fee payable to the commission.

13. Disclosure of any civil, criminal, or regulatory sanctions or penalties imposed or in place within the previous five years against the applicant.

14. An affidavit from an appropriate officer of the applicant certifying that the applicant will indemnify and hold harmless any and all subscribers from and against claim, damage, loss, and expense arising out of the applicant's negligence or misconduct.

B. An officer with appropriate authority shall attest that all information supplied on the notice is true and correct and that the applicant will abide by all applicable laws of the Commonwealth and regulations of the commission.

C. Notification to the commission is required for transfer or assignment of said services to any third party.

D. The commission may impose conditions on any terms it determines are appropriate.]

VA.R. Doc. No. R21-6402; Filed December 23, 2020, 2:41 p.m.



TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Proposed Regulation

Title of Regulation: **22VAC40-677. State Oversight of a Local Social Services Department (adding 22VAC40-677-10).**

Statutory Authority: §§ 63.2-217 and 63.2-408 of the Code of Virginia.

Public Hearing Information: No public hearings are currently scheduled.

Public Comment Deadline: March 19, 2021.

Agency Contact: Angela Morse, Director, Regional Operations and Local Support, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804)396-0310, or email angela.morse@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia requires the State Board of Social Services to adopt such regulations as may be necessary to carry out the purpose of Title 63.2 of the Code of Virginia. In addition, §§ 63.2-203, 63.2-333, 63.2-403, and 63.2-408 of the Code of Virginia provide legal basis for promulgating this regulation.

Purpose: Each county and city must provide public assistance and social services in accordance with the provisions of Subtitle II (§ 63.2-500 et seq.) and Subtitle III (§ 63.2-900 et seq.) of Title 63.2 of the Code of Virginia. If a local department fails or refuses to provide public assistance and social services in accordance with the statute, this regulatory action is needed to provide the Commissioner of the Department of Social Services with authority to direct and oversee the provision of public assistance and social services in the locality. The regulation is essential to protecting the health and welfare of citizens because it will ensure that public assistance and social services will continue to be provided.

Substance: Substantive provisions grant the commissioner, to the extent allowed by federal and state law, authority to (i) direct and oversee public assistance and social services in a local department when the local department fails to do so, (ii) withhold reimbursement of administrative expenditures when a local department fails to provide necessary staff, (iii) file a monthly statement with the State Comptroller and local governing body showing disbursements and expenditures, and (iv) develop a transition plan in consultation with the locality.

Issues: The primary advantage to the public and local department of social services customers is assurance that, in the event a local department fails to provide public assistance or social services, assistance and services will continue in a seamless fashion. The primary advantage to the agency and Commonwealth is that Virginia Administrative Code authority will be in place for the State Board of Social Services and the commissioner to act as necessary. The need for state direction and oversight is not expected to be frequent.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to establish regulatory authority for the Commissioner of the Department of Social Services (Commissioner) to direct and oversee public assistance and social service programs in a county or city (locality), in the event the local department fails, refuses, or is unable to provide such services. This action would establish a permanent replacement regulation for an emergency regulation that became effective December 17, 2018.¹

Background. Section 63.2-408 of the Code of Virginia allows the Board to authorize the Commissioner, under regulations, to "provide for the payment of public assistance or the furnishing of social services" if a locality "fails or refuses" to provide public assistance and social services.

In response to the provision specifically requiring such action to take place "under regulations," the Board adopted an emergency regulation that became effective December 17, 2018.

Estimated Benefits and Costs. The proposed regulation appears to authorize the Commissioner to undertake two distinct activities, under different circumstances. First, the Commissioner is authorized to intervene by directing and overseeing specified programs if a locality "fails, refuses, or is unable to provide" these services. Second, the Commissioner is authorized to withhold some or all of the "reimbursement for administrative expenditures" if a locality either "fails to operate" these programs in accordance with state laws and regulations, or "fails to provide" the necessary staff. These activities can only occur after "appropriate proceedings by the Board." Potentially included in these services are programs such as Medicaid, Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families, child protective services, adoption assistance, and adult services.²

As written, the permanent regulation appears to confer certain benefits. In cases where services are not provided, because a locality "fails, refuses, or is unable" to do so, the Commissioner would have the authority to intervene. Therefore, to the degree that the possibility of direct state intervention affects the behavior of localities, this potential would incentivize local departments to provide the services in situations where they otherwise may be reluctant to do so. Under the more narrow set of conditions where a locality "fails to provide" a service as required by law or regulation, or "fails to provide the necessary staff," the possibility of withholding an administrative reimbursement may incentivize efforts to operate the programs appropriately. Under either set of conditions, exercise of such authority would allow the Commissioner to ensure that these services are appropriately provided and these programs are appropriately operated for the benefit and assistance of recipients. As noted by DSS, "the safety and well-being of those in need are seriously jeopardized."

Certain costs also appear likely, but the magnitude of the state and/or local fiscal costs would depend on the number, extent, and manner of state interventions or withholdings, which is not known at this time.

It appears that an intervention could affect staff at both the local department and state DSS, depending upon what form the intervention takes, and whether the Commissioner intercedes on behalf of one or more programs, or for an entire local department. According to DSS, direct intervention usually means that a group of DSS experts assumes responsibility for managing local department staff in lieu of local managers and/or the local director.³ However, DSS does not rule out the possibility that non-managerial staff could also be affected. The regulatory text does not indicate, and DSS staff did not clarify, how local staff could be affected, such as reassignments to other roles, suspension, layoff, or some other outcome. In addition to the effect on local staff, it is presumed that DSS employees who are assigned to intervention duties would no longer be performing their other job duties. Sending state employees to a local department may therefore require overtime pay for those state employees, expenditures to temporarily fill the affected state employee positions, or non-performance of their state duties while they are in the affected locality.

The regulation does not clearly indicate how the costs associated with an intervention would be funded. Although Virginia Code § 63.2-408 provides for provision of services "out of funds appropriated for the purpose," the regulatory text does not address or establish the source of funds. Moreover, the statute allows the appropriated funds to be used when a locality "fails or refuses" to provide the services, but does not contemplate the additional situation added to the regulation when a locality is "unable" to provide services. In contrast, both the statute and the regulation stipulate that in the more narrow instance, when a locality fails to operate programs appropriately, then the administrative reimbursement can be withheld.

State DSS staff indicate they may choose to not pass on the costs of state staff to the locality. However, the agency background document (ABD) notes, "the cost could be absorbed [by DSS] using existing resources and federal/state funds until the agency is reimbursed by the locality for all disbursements, including administrative expenditures made for and on behalf of the locality by the agency." DSS also stated that the regulation would allow DSS to use all funding sources to offset the State's costs, both the "base budget" provided to all localities and the "pass through" amounts (where the locality pays the entire non-federal share of funds to draw down the federal share).⁴ However, because the regulation does not appear to allow the Commissioner to withhold funds in cases where a locality fails, refuses, or is unable to "provide" services, then a locality may not be responsible for state costs incurred during an intervention; it is not clear, however, what source of funds DSS would use to address these expenses. In

Regulations

contrast, the regulation allows the Commissioner to withhold funds if a locality provides services, but "fails to operate" them in accordance with laws and regulations. In this situation, a locality may not have sufficient funds to pay for local staff and expenses. Moreover, the regulation does not indicate if the withholding is temporary or permanent, or the conditions under which such a distinction may be made.

Additional direct costs may result from this regulation, but an assessment is hindered by the brevity and lack of specificity of the regulation, the case-specific nature of any potential interventions or withholds, and the variation in funding sources across programs and local departments. This regulation may also create unmeasurable indirect costs due to the lack of clarity. For example, the proposed text does not define critical terms, such as what constitutes failure, refusal or inability to provide services; how those three terms differ from each other; or how failure to provide differs from failure to operate. The regulation also does not define what constitutes "appropriate proceedings" by the Board. Moreover, although the proposed text refers to development of a "transition plan" under which responsibility is transferred back to the locality, the text does not address how an intervention would initially occur. DSS staff state that an agency dashboard has been developed to track various local department performance metrics, and that DSS is developing procedures to implement an intervention, but the lack of any reference in the regulatory text to these criteria and processes hinders a full assessment of impact.

Businesses and Other Entities Affected. This regulation would apply to all 120 local departments of social services.

Localities⁵ Affected.⁶ The proposed regulation affects all local departments of social services in terms of the potential costs, which are driven in part by the duration and manner of such an intervention. In addition, a local department may have to continue to pay for its personnel costs in addition to the cost of the state personnel or outside contractors replacing them.

Projected Impact on Employment. The potential impact is unclear, owing to the variety of potential situations and the lack of clarity and specificity in the regulation. However, the potential exists for some impact upon employment if local staff are suspended, laid off, or potentially terminated

Effects on the Use and Value of Private Property. The proposed regulation does not affect the use and value of private property or real estate development costs.

Adverse Effect on Small Businesses:⁷ The proposed regulation does not adversely affect small businesses.

¹<https://townhall.virginia.gov/ViewStage.cfm?stageid=8269>

²Although the regulation does not specifically address this, according to DSS this regulation would not apply to foster care programs because Chapter 446 of the 2019 Acts of Assembly established a separate procedure for the Commissioner to intervene when foster care programs are not being administered appropriately

³It is likely that these experts would be state employees, but they may be outside contractors, or employees of a neighboring local department.

⁴According to the ABD, "if the local department reports costs through the Staff & Operations Base funds, the match rate of 15.5% local funds and 84.5% federal/state funds would apply. If this were the case, there would be no additional impact on the locality." In contrast, "if the local department reports costs through Staff & Operations Pass-Thru, the match rate of 65% local funds and 35% federal funds would apply. If this were case, there would be higher costs to the locality. This would typically occur when the locality's base budget is insufficient to cover all of its staff and operations costs."

⁵"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.

⁶§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

⁷Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

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

Summary:

The proposed amendments provide the Commissioner of the Department of Social Services with regulatory authority to direct and oversee the provision of public assistance and social services in a local department of social services, in the event the local department fails, refuses, or is unable to provide such services.

Chapter 677

State Oversight of a Local Social Services Department

22VAC40-677-10. State response to when a local department of social services fails to provide services.

A. Each county and city must provide public assistance and social services in accordance with the provisions of Subtitles II (§ 63.2-500 et seq.) and III (§ 63.2-900 et seq.) of Title 63.2 of the Code of Virginia. If any county or city, through its appropriate authorities or officers fails, refuses, or is unable to provide public assistance or social services in accordance with the Code of Virginia, and with appropriate proceedings by the State Board of Social Services as directed by § 63.2-408 of the Code of Virginia, the Commissioner of the Department of Social Services shall have the authority, to the extent allowed by federal and state law, to direct and oversee all programs set forth in Subtitles II and III for that particular county or city, including to provide for the payment of public assistance and expenditures for social services and administration.

B. The commissioner may also withhold from any county or city the entire reimbursement for administrative expenditures or any part thereof for the period of time such locality fails to operate public assistance programs or social service programs in accordance with state laws and regulations or fails to provide the necessary staff for the implementation of such programs.

C. The commissioner shall at the end of each month file with the State Comptroller and with the local governing body of such county or city a statement showing all disbursements and expenditures, including administrative expenditures, made for and on behalf of such county or city, and the State Comptroller shall from time to time as such funds become available deduct from funds appropriated by the Commonwealth, in excess of requirements of the Constitution of Virginia, for distribution to such county or city amounts required to reimburse the Commonwealth for expenditures incurred under the provisions of this section.

D. In consultation with the county or city, the commissioner shall develop a transition plan that sets the conditions under which the responsibility to direct and oversee the programs is transferred back to the county or city.

E. The commissioner shall report quarterly to the State Board of Social Services and to the local board of social services on the status of services and expenditures in the city or county as well as the progress toward developing and meeting the conditions of the transition plan.

VA.R. Doc. No. R19-5464; Filed December 23, 2020, 8:02 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, 900 East Main Street, Richmond, Virginia 23219.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Title of Document: [Virginia Cooperative Gypsy Moth Suppression Program, 2021 Guidelines for Participation Aerial Treatments.](#)

Public Comment Deadline: February 17, 2021.

Effective Date: February 18, 2021.

Agency Contact: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, or email david.gianino@vdacs.virginia.gov.

STATE AIR POLLUTION CONTROL BOARD DEPARTMENT OF ENVIRONMENTAL QUALITY VIRGINIA WASTE MANAGEMENT BOARD

Title of Document: [Virginia Environmental Excellence Program Operations Manual.](#)

Public Comment Deadline: February 17, 2021.

Effective Date: February 18, 2021.

Agency Contact: Meghann Quinn, Manager, Office of Pollution Prevention, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4021, or email meghann.quinn@deq.virginia.gov.

BOARD OF DENTISTRY

Title of Document: [Policy on Recovery of Disciplinary Costs.](#)

Public Comment Deadline: February 17, 2021.

Effective Date: February 18, 2021.

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

STATE BOARD OF EDUCATION

Title of Document: [Guidelines for the Provision of Behavior Analysis in Public Schools.](#)

Public Comment Deadline: February 17, 2021.

Effective Date: February 18, 2021.

Agency Contact: Samantha Hollins, Assistant Superintendent for Special Education and Student Services, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 786-8079, or email samantha.hollins@doe.virginia.gov.

STATE BOARD OF HEALTH

Title of Document: [Virginia Newborn Screening Services.](#)

Public Comment Deadline: February 17, 2021.

Effective Date: February 18, 2021.

Agency Contact: Christen Crews, Public Health Nurse Supervisor, Newborn Screening, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7711, or email christen.crews@vdh.virginia.gov.

* * *

Title of Document: [Virginia Sickle Cell Awareness Program School Handbook.](#)

Public Comment Deadline: February 17, 2021.

Effective Date: February 18, 2021.

Agency Contact: Shamaree Cromartie, Blood Disorders Program Coordinator, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7769, or email shamaree.cromartie@vdh.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [Addiction and Recovery Treatment Services Guidance for Hospitals.](#)

Public Comment Deadline: February 17, 2021.

Effective Date: February 18, 2021.

Agency Contact: Emily McClellan, Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, or email emily.mcclellan@dmass.virginia.gov.

DEPARTMENT OF MOTOR VEHICLES

Titles of Documents: [Virginia Motorcycle Rider Training Program Rider Training Program Policy and Procedures.](#)

[Virginia Rider Training Program Training Site License Application.](#)

Public Comment Deadline: February 17, 2021.

Effective Date: February 18, 2021.

Agency Contact: Melissa K. Velazquez, Legislative Manager, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-1844, or email melissa.velazquez@dmv.virginia.gov.

STATE WATER CONTROL BOARD

Title of Document: [Virginia Agricultural Best Management Practices Program Guidelines.](#)

Public Comment Deadline: February 17, 2021.

Effective Date: February 18, 2021.

Agency Contact: Karen Doran, Clean Water Financing and Assistance Program Manager, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4133, or email karen.doran@deq.virginia.gov.

* * *

Title of Document: [Virginia Environmental Excellence Program Operations Manual.](#)

Public Comment Deadline: February 17, 2021.

Effective Date: February 18, 2021.

Agency Contact: Meghann Quinn, Manager, Office of Pollution Prevention, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4021, or email meghann.quinn@deq.virginia.gov.

GENERAL NOTICES

DEPARTMENT OF ENVIRONMENTAL QUALITY

Availability of the 2019 Fish Tissue Monitoring Data

Purpose of notice: The Department of Environmental Quality (DEQ) announces the availability of the 2019 Fish Tissue monitoring data.

Description: DEQ conducts routine studies of fish tissue and sediment samples in state waters to assess the human health risks for individuals who may consume fish from state waters and to identify impaired aquatic ecosystems. Results are made available to the public each year on the agency's website.

In 2019, DEQ collected fish tissue samples from sites located in the York, Small Coastal and Chesapeake Bay, Potomac, James, and Roanoke River basins. Samples were analyzed for polychlorinated biphenyls and a suite of 17 metals, including mercury.

2019 monitoring results are available on the agency's website at <https://www.deq.virginia.gov/water/water-quality/water-quality-monitoring/fish-tissue-monitoring>.

Additional information: The Virginia Department of Health (VDH) uses the data generated by DEQ's fish tissue monitoring program to determine the need for fish consumption advisories. More information on VDH fish consumption advisories is available at <https://www.vdh.virginia.gov/environmental-health/public-health-toxicology/fish-consumption-advisory/>.

Contacts for more information: Questions on DEQ's fish tissue monitoring program can be directed to Rick Browder at telephone (804) 698-4134 or email richard.browder@deq.virginia.gov, or Gabriel Darkwah at telephone (804) 698-4127 or email gabriel.darkwah@deq.virginia.gov. Additional information is also available on the VADEQ Water Quality Monitoring website at <https://www.deq.virginia.gov/water/water-quality/water-quality-monitoring>.

Turkey Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) - Goochland County

Turkey Solar LLC, has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Goochland County. Turkey Solar LLC will be located approximately one and a half miles south of Gordonsville, near Jefferson Lane. Latitude and longitude coordinates are as follows: 38.113545, -78.191788. The estimated fenced-in project area will be 141 acres and the maximum generating capacity of the project in alternating current will be 14 megawatts. The solar facility will consist of approximately 59,000 photovoltaic modules which will be supported by five central inverters and transformers.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

Kangaroo Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) - Campbell County

Kangaroo Solar LLC, has provided the Department of Environmental Quality a notice of intent to submit the necessary document for a permit by rule for a small renewable energy project (solar) in Campbell County. Kangaroo Solar LLC will be located approximately five miles northwest of Nathalie and about half a mile south of Perth Road. Latitude and longitude coordinates are as follows: 37.005921, -78.984868. The estimated fenced-in project area will be 137 acres and the maximum generating capacity of the project in alternating current will be 14.5 megawatts. The solar facility will consist of approximately 57,000 photovoltaic modules which will be supported by five central inverters and transformers.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

Koala Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) - Campbell County

Koala Solar LLC, has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Campbell County. Koala Solar LLC will be located approximately three and a half miles west of Brookneal and northwest of the intersection between Epons Road and McIver Ferry Road. Latitude and longitude coordinates are as follows: 37.068832, -79.009631. The estimated fenced-in project area will be 131 acres and the maximum generating capacity of the project in alternating current will be 14.5 megawatts. The solar facility will consist of approximately 55,000 photovoltaic modules which will be supported by five central inverters and transformers.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

Naples Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) - Orange County

Naples Solar LLC, has provided the Department of Environmental Quality a notice of intent to submit the necessary document for a permit by rule for a small renewable

energy project (solar) in Orange County. Naples Solar LLC will be located about four and a half miles northeast of Gordonsville, near Madison Run Road and Barrychris Lane. Latitude and longitude coordinates are as follows: 38.171017, -78.120886. The estimated fenced-in project area will be 126 acres and the maximum generating capacity of the project in alternating current will be 14 megawatts. The solar facility will consist of approximately 53,000 photovoltaic modules which will be supported by five central inverters and transformers.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

Request for Citizen Nomination of State Surface Waters for Inclusion in Virginia Department of Environmental Quality's Annual Water Quality Monitoring Plan

In accordance with § 62.1-44.19:5 F of the Code of Virginia, Water Quality Monitoring Information and Restoration Act, any person may request that a specific body of water be included in Department of Environmental Quality's (DEQ) annual water quality monitoring plan. Such requests shall include, at a minimum (i) a geographical description of the water body recommended for monitoring; (ii) the reason the monitoring is requested; and (iii) any water quality data that the petitioner may have collected or compiled. Each request received by April 30 shall be reviewed when DEQ develops the annual water quality monitoring plan for the following calendar year. DEQ will respond in writing on its approval or denial of each nomination by August 31.

Please see the nominating form included as Attachment 1. Use of the nomination form is preferred; however, all nominations with the minimum of information as outlined above will be accepted for review.

Please note that the monitoring program covered by this process is directed at the surface waters of the state. Private ponds, privately owned lakes, and any other body of water not deemed to be "State Waters" are ineligible.

Nominations can be submitted to the contact person listed by email, postal mail, or hand delivered to the receptionist's desk at DEQ's central office at 1111 East Main Street, Richmond, Virginia.

ATTACHMENT 1: REQUEST TO INCLUDE A WATER SEGMENT IN DEQ'S ANNUAL MONITORING PLAN

Name:		Date:	
Mailing Address:			
Street			
City:	State:		Zip:

E-mail address:			
Home telephone:		Business telephone:	

Geographic description of the water body:

(1) Name of the water body or segment proposed for monitoring: _____

(2) Description of the upstream and downstream boundaries of the water body proposed for monitoring. Attach a map (preferably a photocopy of a 7.5 minute quad USGS topographic map) which delineates the boundaries: _____

(3) Reason for requesting that this water body be monitored: _____

(4) Attach any water quality data that you have collected or compiled. Include the name of the organization/entity that generated the data.

Mail to: Stuart Torbeck, Department of Environmental Quality, P.O. Box 1105, Suite 1400, Richmond, VA. 23218

FedEx to: Stuart Torbeck, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219

Email: charles.torbeck@deq.virginia.gov.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

STATE WATER CONTROL BOARD

Notice of Public Comment - Draft 2022 Water Quality Assessment Guidance Manual

The Virginia Department of Environmental Quality (DEQ) will release the draft 2022 Water Quality Assessment Guidance Manual on January 19, 2021, for public comment. Virginia's 2022 Water Quality Assessment Guidance Manual contains the assessment procedures and methods to be used for the development of Virginia's 2022 § 305(b)/ § 303(d) Integrated (i.e. combined Water Quality Assessment and Impaired Waters) Report. The assessment guidance seeks to address all key elements of the U.S. Environmental Protection Agency (EPA) 2006 Assessment Guidance and subsequent updates current to December 2020, in addition to the assessment methodology for Chesapeake Bay Water Quality Standards established by EPA and adopted by Virginia (Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity, and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries).

By the release date, a copy of the draft 2022 Water Quality Assessment Guidance Manual will be available for download from the DEQ Water Quality Assessment webpage at

General Notices

<https://www.deq.virginia.gov/water/water-quality/water-quality-assessments/most-recent-year-wqa-guidance-manual>.

Section 62.1-44.19:5 C of the Code of Virginia requires DEQ to develop and publish the procedures used for defining and determining impaired waters and provide for public comment on the procedures. The public is invited to submit written comments from January 19, 2021, through February 18, 2021. Comments should include the name, address, telephone number, and, if applicable, the e-mail address of each person or organization submitting comments. Comments and related correspondence should be addressed to Amanda Shaver (see contact information listed). Responses to comments received will be made collectively via a response document. The response document will be posted on the assessment webpage along with the final guidance manual.

Updates have been made to the guidance document since 2020. A complete list of significant guidance modifications are described in Part II of the manual. A public webinar to review these updates will be held on Thursday, February 11, 2021, from 2 pm to 4 pm. Registration link: <https://attendee.gotowebinar.com/register/1154243528623510029> Webinar ID: 917-343-155.

DEQ accepts water quality data to be reviewed and evaluated for assessment purposes on a continual basis. However, in order to be used for the 2022 Integrated Report, all data must be submitted by March 5, 2021. DEQ will hold a public webinar for citizen monitoring groups to discuss strategies for submitting their data. Data submitted after this date will be reviewed in preparation of the 2024 Integrated Report.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

ERRATA

STATE CORPORATION COMMISSION

Title of Regulation: **20VAC5-355. Rules Governing Operator's Responsibility to Redistribute Topsoil.**

Publication: 37:8 VA.R. 919-921 December 7, 2020.

Correction to Proposed Regulation:

Page 921, Column 1, 20VAC5-355-30 catchline, replace "**topsail**" with "**topsoil**"

VA.R. Doc. No. R21-6548; Filed December 14, 2020, 12:32 p.m.

Errata
